THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2017-CP-42-2072
Appellate Case No. 2019-000344

Donald and Carlee Simmons ..... Respondents,

v.

Benson Hyundai, LLC ..... Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Case No. 2017-CP-42-02072
	)	
	)	
Donald and Carlee Simmons	)	
	)	
Plaintiffs,	)	
v.	)	
	)	ORDER DENYING MOTIONS TO DISMISS
Benson Hyundai, LLC,	)	AND FOR COSTS
	)	
Defendant.	)	
	)	

I. INTRODUCTION

This Motion came before the Court on September 25, 2017. Defendant car dealer moved to dismiss this case to arbitration upon various grounds, all of which were opposed by the Plaintiffs. The Court has reviewed the various documents submitted by the parties in favor of their positions, the pleadings, and the Affidavits and incorporates them into this Order. For the reasons set forth below, Defendant's Motions are denied.

II. JURISDICTION

As a preliminary matter, Defendant argues that this Court lacks jurisdiction to determine arbitrability. However, our Supreme Court addressed this issue in *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663 (S.C. Sup. Ct. 2007). As in *Simpson*, Plaintiffs allege that the various sales and financing contracts are unconscionable and thus unenforceable:

> "[I]n this case, the trial court was the proper forum for determining the enforceability of the arbitration clause in the contract between [buyer and seller]. Although the clause specifically stated that arbitration applied to issues involving "the validity and scope of this contract," [Buyer] challenged the validity of the arbitration provision on grounds of unconscionability, bringing into question whether an arbitration agreement even existed in the first place. Under the UAA, the question of this clause's validity was for the court to

decide. See S.C. Code Ann. § 15-48-20(a) (2005).

. . . .

> Furthermore, because [plaintiff] challenged the validity of the entire arbitration clause on grounds of unconscionability, there can be no "clear and unmistakable" evidence that the parties actually agreed to arbitrate . . . . Accordingly, the trial court did not err in ruling on the issue of validity instead of submitting the issue itself to arbitration.

Simpson, 644 S.E.2d at 677.

This Court therefore finds that it has jurisdiction to rule on arbitrability.

III. FACTS

Plaintiffs are a husband and wife who traveled on July 26, 2016 to Benson Hyundai (the "Dealership") in Spartanburg. At the Dealership, numerous documents were presented to Plaintiffs regarding their purchase of a Hyundai Veloster. The Dealership's documents included two separate and contradictory sets of arbitration provisions. In addition, these two arbitration provisions each incorporated different documents with extensive sets of additional rules. These various arbitration documents use different fonts and appear to have been drafted using different forms.

According to Plaintiff Donald Simmons in his Affidavit, the documents were presented to Plaintiffs in a hurried fashion around midnight. The Simmons felt pressured because they were told that a substantial rebate worth several thousand dollars would expire, unless they purchased that night and that night only. Donald was told that the freestanding Benson arbitration provision only dealt with service work, such as oil changes or minor disputes such as whether a car was vacuumed properly. According to Simmons' Affidavit, other questions asked of the Finance Manager about the contracts were avoided or answered in vague ways.

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After arriving back in Macon, Plaintiff was contacted by the Dealership, cursed at, and informed that he must pay more for the car than their current contract read. If he did not comply, the salesman would deny their loan.

Plaintiffs contend that the Defendant was attempting a yo-yo sale by forcing Plaintiffs to pay more money:

> "Yo-yo sales are unlawful in at least seven states and several other states have issued regulations and administrative interpretations to car dealers on the subject. Such transactions are fundamentally unfair because they give all of the power to the dealer, and none to the customer:
> On the one hand, once the customer drives the car off the lot, the consumer is locked into the sale. The dealer does not want the consumer to think about the deal overnight – it wants the deal closed on the spot while the consumer has just undergone hours of sales pressure.
> On the other hand, the dealer wants to retain its options when the consumer drives off the lot with the car. It does not want to be rushed into a hasty deal. It wants time for its personnel to review the profit margin, the consumer's credit rating, and the chances of selling the vehicle to someone else. It wants time to reflect on whether it can squeeze more out of the consumer or whether it is better off selling the vehicle to someone else.
> Usually, the dealer will want to hide the one-sided nature of the transaction. It does not want consumers to think that they can get out of a deal just because the dealer can. So the dealer will not disclose that the deal, from the dealer's point of view, is not final."

Singleton v. Stokes Motors, Inc., 358 S.C. 369, 380-81 (Sup. Ct. 2004).

IV. NO MEETING OF THE MINDS ABOUT ARBITRATION

(A) Contradictory rules

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As a threshold matter, Plaintiffs contend that no meeting of the minds occurred, because several important arbitration clauses, rules, and agreements directly contradicted one another. Defendant takes the position that because Plaintiffs signed arbitration documents, there was a meeting of the minds regarding arbitration.

However, Defendant misunderstands the difference between a mere desire to arbitrate and a legally enforceable contract to arbitrate. When material terms are missing, vague, or contradictory, a court must write or rewrite the contract. It is the policy of South Carolina that the parties, not a court, write contracts between private citizens.

This Court notes that Benson's sales and arbitration documents are adhesion contracts. They are on pre-printed commercial forms, possibly drafted by different authors at different times with no consultation between them. The result is a series of material contradictions between arbitration provisions on the adhesion forms such that no meeting of the minds on arbitration occurred. These were the Dealership's documents. It could have easily avoided this confusion by presenting Plaintiffs with a set of consistent, non-contradictory closing documents.

A fortiori, not only do the actual arbitration clauses on the Retail Installment Sales Contract and Benson's Arbitration Policies and Procedures contradict one another, but both also adopt additional contradictory extrinsic rules.

(B) The four arbitration provisions and rules

Benson's arbitration documents consist of four sets of rules:

(1) Benson Arbitration Policies and Procedures (free-standing agreement entitled "Benson's Rules")

(2) Federal Rules of Civil Procedure (incorporated by into arbitration by Benson's Rules)

(3) Arbitration Agreement in Retail Installment Sales Contract (page four of the Sales/Financing Agreement).

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(4) AAA Consumer Arbitration Rules (incorporated into Retail Installment Sales Contract).

The four arbitration provisions conflict as to which rules shall apply.[1] Pursuant to the first sentence of Benson's Rules, only Benson's Rules apply: "Benson's Policies and Procedures are intended to provide the exclusive means of resolving all disputes, as defined below, which may arise between an individual and Benson."

However, Paragraph 6 of Benson's Rules (emphasis added) adopts the entire Federal Rules of Civil Procedure and states that they provide the rules: "The Federal Rules of Civil Procedure shall govern all arbitration proceedings." The Federal Rules of Civil Procedure contradict in numerous instances with Benson's Rules.

The Retail Installment Sales Contract has a different arbitration provision setting forth numerous rules, some of which conflict with Benson's Rules.

The Retail Installment Sales Contract also incorporates the AAA Consumer Arbitration Rules which purportedly are the sole rules regulating the arbitration (unless Benson gives its permission): "You may choose the American Arbitration Association to conduct the arbitration [but] any other organization [must be] subject to our

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[1] Defendant argues that the last document signed at the Dealership was the final arbitration agreement, which allegedly negates all prior arbitration provisions. Defendant submitted an Affidavit of Brian Perry who states that "the Arbitration Agreement is signed by the customer after the Buyer's Order and Retail Installment Contract." This appears to be a statement of his general practice rather than the specific procedure used on the night of the sale.

In contrast, Plaintiffs' rebuttal Affidavit shows the specific series of events occurring at the sale that night, namely that the last document signed was the Sales/Financing Agreement, which F&I Manager Perry folded, put the document into an envelope, and said "Let's run your card (for the down payment) and get you out of here."

approval. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website."

According to AAA Consumer Rule 1(a) (emphasis added), when parties have "provided for AAA's rules or AAA administration as part of their consumer agreement [as did Benson in this case via the Retail Installment Sales Contract], they shall have been deemed to have agreed that the application of the AAA's rules . . . shall be an essential term of their consumer agreement." This conflicts with Benson's claim that Benson's Rules and the Federal Rules of Civil Procedure provide the arbitration rules. To make matters more confusing, the AAA has authority to dispense with its own Consumer Arbitration Rules. See AAA Rule 1(e).

(C) Administration of the Arbitration

Possibly the most basic underlying rule of arbitration itself is that it will be conducted by a neutral administrator. However, pursuant to Benson's Rules, Tony Benson himself administers the arbitration. On the other hand, according to the Retail Installment Sales Contract's Arbitration Provision, the AAA administers the arbitration, unless Benson will consent to allow another organization to do so.[2]

Finally, pursuant to AAA Consumer Rule 1(a) (emphasis added), when parties have "provided for AAA's . . . administration as part of their consumer agreement, they shall have been deemed to have agreed that the application of the AAA's . . . administration of the consumer arbitration shall be an essential term of their

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[2] The case administrator is defined in the AAA Rules Glossary as follows:
"The Case Administrator is the AAA's employee assigned to handle the administrative aspects of the case. He or she does not decide the case. He or she manages the case's administrative steps, such as exchanging documents, matching schedules, and setting up hearings. The Case Administrator is the parties' contact point for almost all aspects of the case outside of any hearings."

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consumer agreement."

(D) Initiation of the arbitration

According to Benson's Rules, notice must be given to the Administrator "Tony Benson" on a form supplied by Tony Benson. However, pursuant to the AAA Consumer Rule R(2)(a)(1), a different procedure is to be followed. The Federal Rules of Civil Procedure have a specific rule and case law controlling initiation of an action, which is a third procedure.

(E) Contradictory rules as to filing fees

According to Benson's Rule 10, the customer must pay a $250 filing fee to Tony Benson up front "to be applied against the cost of the arbitration" and any unused portion to be returned. Benson pays nothing up front, if it files for arbitration.

The consumer must also submit a Request for Arbitration on a form supplied by Tony Benson. The arbitration is void ("as if it had never been filed") if Benson is not paid the $250 five days after notice. The receipt and determination of these issues are presumably made by Tony Benson, supposedly acting as both a "neutral" and also a party pursuant to Benson's Arbitration Rules.

However, according to the AAA Consumer Rules, Benson should pay between $1,700 and $2,200 filing fees, and $1,500 per arbitrator. *See* AAA Consumer Arbitration Rules at Page 33.

(F) Who pays costs and expenses and in what amounts?

According to Benson's Rules, Benson is liable for all of the consumers' costs, fees (other than attorneys' fees), and arbitration-related expenses. *See* Benson's Rule 22(a)-(b),[3] which is a material benefit for the Plaintiffs.

However, under the Retail Installment Sales Contract's Arbitration Provision, Benson's liability for such expenses and

[3] However, the consumer "shall" pay all costs, expenses, court fees, attorney's fees, etc. if Benson prevails.

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costs are capped. "We will pay your filing, administrative, service or case management fee and your arbitrator or hearing fee up to $5,000." Id. (emphasis added).

Under the third set of rules (i.e., the AAA Consumer Rules), "[Benson] shall pay the arbitrator's compensation unless the consumer, post dispute, voluntarily elects to pay a portion of the arbitrator's compensation." AAA Consumer Rules at Page 33.

The Federal Rules of Civil Procedure do not address arbitration fees.

(G) Frivolous claims

The Plaintiffs may be required to repay Benson for "frivolous" claims according to the Retail Installment Sales Contract's Arbitration Provision. On the other hand, Benson's Rule 22(c) requires a party to pay attorneys' fees and costs if the other party takes a position, asserts a defense, or asserts a claim "not substantially justified by the law or the facts." The AAA allows attorney's fees and costs in accordance with the law." AAA Glossary.

(H) Appeals

The Retail Installment Sales Contract's Arbitration Provision states that appeals are governed by the FAA.

In contradiction, Benson's Rule 26 sets forth a different procedure in which an "appeal arbitrator" is chosen to hear the appeal, which necessarily involves increased costs and expenses. A second appeal may be taken to a court, but Benson's Rule 26 permits more limited grounds for appeal than the FAA.

The Federal Arbitration Act allows appeals directly to a court. 9 U.S.C. § 16 (2017).

AAA Consumer Rule 47 does not deal directly with appeals.

Finally, appeals are not controlled by the Federal Rules of Civil Procedure but instead by the Federal Rules of Appellate Procedure.

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(I) Prejudice to Plaintiffs Regarding Limitations on Discovery

One critical aspect of these rules deals with discovery. Benson's Rule 18 provides for a discovery scheme, which conflicts with the AAA Consumer Rules, the Federal Rules of Civil Procedure, and the FAA.

Defendant incorporated the FAA in Benson's Rules. However, under federal law, pre-hearing depositions of third parties are generally disallowed under the FAA.[4] The ability to depose witnesses and subpoena documents from third parties and third party witnesses likely will be material in this case as Hyundai Motor Finance, which Benson alleges refused to fund the Plaintiffs' purchase of the Veloster, is located in El Dorado Hills, California.[5]

Under Benson's Rules, the arbitrator is given discretion to order pre-hearing depositions.

The AAA Consumer Rules provide for no depositions.

The FRCP set forth a presumptive limit of 10 depositions. Benson's Rules limits parties to five depositions, but this is illusory as the FAA permits no prehearing depositions.

(J) Law Regarding Conflicting Arbitration Provisions

The Florida Supreme Court in *Basulto v. Hialeah Auto.*, No. SC09-2358 (Fla. Sup. Ct. 2014) (Florida UTPA) addressed a similar scenario of contradictory documents:

> The [Trial] Court concludes as a matter of law that no valid agreement arbitrate exists in

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[4] *Comsat Corp. v. National Science Foundation*, 190 F.3d 269 (4th Cir. 1999) ("[W]e hold today that a federal court may not compel a third party to comply with an arbitrator's subpoena for prehearing discovery, absent a showing of special need or hardship."). *Accord Snyder v. Wilson*, Civil Action No. MJG-13-3595 (D. Md. 2014) (Memorandum and Order).

[5] *See* Defendant's Motion to Stay and Compel Arbitration at Exhibit B (correspondence from Hyundai Motor Finance to Plaintiff refusing loan).

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> this case. This conclusion is based on the Court's finding of fact that the various jury waiver and arbitration clauses which [the buyers] were required to sign were conflicting in their essential provisions and, taken together, provided for three separate and distinct means of dispute resolution. One of the clauses at issue provided for jury waiver[6] and (presumably) trial in a court of law. Another provision required arbitration by a single arbitrator. Another provision required arbitration by a panel of three arbitrators. In addition the methods for selecting arbitrators were conflicting as well as what law or procedure would govern the arbitration proceeding. Each of the competing dispute resolution provisions at issue contemplates the enforcement of a different remedy whose terms and conditions are irreconcilable with the terms and conditions of each of the other conflicting provisions. This Court accordingly concludes as a matter of law that there was no meeting of the minds with respect to the terms by which the [the dealership] intended the parties to be bound. There is accordingly no valid agreement for this Court to enforce.

Id. (emphasis added).

In *Ragab v. Howard,*[7] the Tenth Circuit was confronted with a similar scenario under the FAA. In *Ragab,* the district judge refused to enforce multiple conflicting arbitration provisions. The district court concluded that "the conflicting details in the multiple arbitration provisions indicate that there was no meeting of the minds with respect to arbitration."

The Tenth Circuit affirmed:

"[t]he agreements contain conflicting arbitration

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[6] Benson's Arbitration Policies and Procedures provides for a trial in small claims court. The Sales/Financing Arbitration provision does so also. AAA Consumer Rules do not allow a jury waiver.

[7] 841 F.3d 1134 (10th Cir. 2016).

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> provisions. Suffice it to say the conflicts involve (1) which rules will govern, (2) how the arbitrator will be selected, (3) the notice required to arbitrate, and (4) who would be entitled to attorneys' fees and on what showing."[8]

In support, the Tenth Circuit also cited *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, 838 F. Supp. 2d 967, 992 (C.D. Cal. 2012) and *Basulto*.

See also NAACP of Camden Cty. E. v. Foulke Mgmt. Corp., 24 A.3d 777, 794 (N.J. Super. Ct. App. Div. 2011) (cited in *Ragab*) (even if a buyer is educated and reads well, conflicting provisions can prevent him or her from understanding the document's meaning).

V. ILLUSORY CONTRACTS

Even had there been a meeting of the minds, the contracts and arbitration clauses were illusory and thus unenforceable.

If there is no contract, there is no valid arbitration agreement.[9] The contracts signed by Plaintiffs were illusory because although Plaintiffs thought they were bound, the contracts gave the Dealership unrestricted discretion to reject the purchase and the financing.[10]

The Special Delivery Agreement, executed by Plaintiffs (but

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[8] *Id.* F.3d at 1336.

[9] *Penn v. Ryans Family Steak Houses, Inc.*, 269 F.3d 753 (7th Cir. 2001) (citations omitted). *See also Floss v. Ryan's Family Steak Houses*, Inc., 211 F.3d 306, 315-16 (6th Cir. 2000) (finding arbitration clauses in illusory employment contracts unenforceable under Tennessee and Kentucky law).

[10] *Accord Singleton v. Stokes Motors, Inc.*, 358 S.C. 369 (Sup. Ct. 2004). *Cf. Poole v. Incentives Unlimited, Inc.*, 338 S.C. 271, 525 S.E.2d 898 (Ct. App. 2000) ("The promise of continued employment was illusory because even though Poole signed the covenant, Incentives retained the right to discharge her at any time.").

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not the Defendant), *see* Plaintiff's Memorandum in Opposition to Motion to Stay and Compel Arbitration, Exhibit F (emphasis added), provides that "Seller will attempt to assign contract on terms satisfactory to Seller.[11] At Paragraph 2, it states that "[i]f seller does not receive approval from a financial source acceptable to Seller, Buyer agrees that upon notice, Buyer shall return the vehicle in good condition and without excess mileage and the sales transaction may be rescinded."[12]

There must be an agreement to arbitrate.[13] To decide if there is an agreement, courts resort to time-honored state contract-law principles.

In Penn v. Ryans Family Steak Houses, Inc., 269 F.3d 753, 759 (7th Cir. 2001) (interpreting Indiana contact law essentially the same as in South Carolina), the Seventh Circuit refused to enforce an arbitration clause in an illusory contract, described as one which "by its terms makes performance entirely optional with the promisor." An illusory contract cannot form the basis for a valid contract, because "a contract is unenforceable if it fails to obligate [one party] to do anything."

VI. UNCONSCIONABILITY

In *Herron v. Century BMW*,[14] our Supreme Court opined that "unconscionability is defined as 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

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[11] Special Delivery Agreement at Paragraph 1 (emphasis added).

[12] *Id.* at Para 2 (emphasis added).

[13] *AT & T Techs., Inc. v. Communications Workers of Am.*, 475 U.S. 643, 648 (1986) ("[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.").

[14] 387 S.C. 525 (2011).

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person would make them and no fair and honest person would accept them."[15]

Applying the Supreme Court's definition to the contracts at issue, the Benson contract was one such oppressive contract of adhesion presented in final form, and the Plaintiffs had no part in drafting the documents.[16] However, the fact that a contract is one of adhesion is merely the starting point in the analysis of unconscionability, keeping in mind that courts approach adhesion contract between consumers and car dealers with considerable skepticism.[17]

(A) Absence of a meaningful choice

Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. In determining whether there is an absence of a meaningful choice, courts consider certain factors. A discussion of each factor is made below:

(i) The relative disparity in the parties' bargaining power

As in *Herron*, there was "an inherent disparity in bargaining power between the parties, as this was a transaction between a consumer and a commercial entity." Plaintiffs are consumers who are starting out as a family and are not wealthy.

(ii) The parties' relative sophistication

In *Simpson v. MSA of Myrtle Beach, Inc.*,[18] the Supreme Court noted that "we also acknowledge Simpson's claim that she did not

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[15] *Id.* at 532.

[16] *Herron v. Century BMW*, 387 S.C. 525, 532 (2010) ("We agree with the trial court that this is an adhesion contract. This was a contract on a standard form, presented on a take-it-or-leave-it basis.").

[17] *Id.*

[18] 373 S.C. 14, 27 (2007).

possess the business judgment necessary to make her aware of the implications of the arbitration agreement, and that she did not have a lawyer present to provide any assistance in the matter."

Plaintiffs were without a lawyer at Benson's dealership, were unaware of the effect that waiving a jury trial would have,[19] and were being pressured to finalize the sale. Moreover, it is unreasonable to assume that while being pressured to sign a contract "this night only" lest Plaintiffs lose a large discount, that they could understand the various contradictory arbitration provisions and the Federal Rules of Civil Procedure, the study of which takes a year in law school.[20]

(iii) The nature of the injuries suffered by the Plaintiff

The Plaintiffs have lost the use of the Saab, their Hyundai, and their money used as a down payment, all of which is in Benson's possession. They also have made monthly payments to Hyundai through Benson since the vehicle was driven off the lot, which have not been deposited by Defendant.

(iv) Whether the defendant is a substantial business concern

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[19] There is substantial case law recognizing the disparity in bargaining power and sophistication between consumers and car dealers. For example, as a remedial statute, the Truth in Lending Act is designed to aid unsophisticated consumers who might be easily misled about the total costs of financing. *In re Wright*, 133 B.R. 704, 707 (Bankr. E.D. Pa. 1991). The Truth in Lending Act's enforcement is through a system of "strict liability favoring consumers. *Thomka v. A.Z. Chevrolet, Inc.*, 619 F.2d 246, 248 (3d Cir. 1980).

[20] Plaintiff Donald Simmons teaches art at Middle Georgia State University and Mrs. Simmons is on the staff in the Office of Marketing and Communications there also. However, there is no evidence that they are experienced in contract, arbitration, tort, or consumer law. As with every auto dealer in South Carolina, Defendant was required to take a mandatory, formal pre-licensing course to learn the applicable laws, the proper way to document sales transactions, and how to sell vehicles ethically according to South Carolina law.

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Benson is a dealership selling new vehicles for Hyundai Motor Company and financing such vehicles through Hyundai Motor Finance.

(v) Whether there is an element of surprise in the inclusion of the challenged clause

The Plaintiffs were presented with the arbitration document along with several other documents, all of which they saw for the first time during the closing process shortly before midnight.

(vi) The conspicuousness of the clause

Benson's own arbitration clause was in a freestanding document and in that sense was conspicuous. *See* Exhibit C. The Retail Sales and Financing Arbitration Provision was on page four (the back of the Retail Installment Sales Contract). They were given no copies of the AAA rules, Exhibit E, or the Rules of Civil Procedure, according to Mr. Simmons.

(vii) Dealer's remedies not stayed pending outcome of arbitration

In *Simpson*, the supreme court noted a clause allowing the dealer to litigate and dispose of the claim, even while arbitration is pending.[21]

As in *Simpson*, Benson's Arbitration Rule 3 allows many creditor's remedies. It permits Benson to repossess the car, try the case in small claims court, litigate a set-off, or seek injunctive relief. Thus, in many cases, Benson may completely deal with the dispute and obtain a judgment before arbitration is completed.

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[21] The clause in *Simpson* read as follows: "Nothing in this contract shall require the Dealer to submit to arbitration any claims by Dealer against Customer for claim and delivery, repossession, injunctive relief, or monies owed by Consumer in connection with the purchase or lease of any vehicle and any claims by Dealer for these remedies shall not be stayed pending the outcome of arbitration." *Simpson*, 644 S.E.2d 663, 672 (Supreme Court 2007).

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Similarly, under the Retail Installment Sales Contract Arbitration Provision in the last paragraph, Benson may repossess the vehicle, sue, litigate a deficiency judgment, and file an action to recover the vehicle before or simultaneously with arbitration.

(viii) Severance

"[S]everability is not always an appropriate remedy for an unconscionable provision in an arbitration clause . . . . Although, 'a critical consideration in assessing severability is giving effect to the intent of the contracting parties,' the D.C. Circuit . . . cautioned, 'If illegality pervades the arbitration agreement such that only a disintegrated fragment would remain after hacking away the unenforceable parts, the judicial effort begins to look more like rewriting the contract than fulfilling the intent of the parties.' Similarly, . . . it is not the function of the [South Carolina courts] to rewrite contracts for parties."[22]

Severance in this case would be unworkable and contrary to public policy. Fairness dictates that the Defendants not be allowed to insert improper provisions in a contract that ward off lawsuits or bind non-signatory third persons, then come to the court to ask for help in enforcing it.[23]

(ix) Oppressive One-Sided Terms

Further regarding unconscionability, the one-sided nature of the arbitration terms in this illusory contract has been discussed

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[22] *Simpson* (citing *Lewis v. Premium Inv. Corp.*, 351 S.C. 167 (2002)).

[23] *See Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663, 673 (2007) (citing *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1180 (9th Cir. 2003) (finding arbitration agreement wholly unenforceable because of an "insidious pattern" of unconscionable provisions, and therefore "any earnest attempt to ameliorate the unconscionable aspects of [the] arbitration agreement would require [the] court to assume the role of contract author rather than interpreter").

above. Tony Benson's appointment of himself as arbitration Administrator, the $250 initial filing fee Plaintiffs must pay (but not Benson), the requirement of a request for arbitration from Plaintiffs on Benson's special form, Benson's requirement that the $250 filing fee be paid only five days after notice or the claim is void, exceptions to the arbitration rules allowing the dealer to proceed out of court, and multiple provisions requiring Plaintiffs to pay attorneys' fees and costs are examples of the oppressive, one-sided nature of these terms.

VII. ORDER

Defendant's Motions are denied. The Court finds several bases why the arbitration provisions are unenforceable.

First, the numerous provisions in the arbitration provisions (and incorporated documents) mentioned above directly contradict one another such that there was no meeting of the minds. This Court would be required to rewrite the documents to create a new, clear, and understandable contract, which it declines to do. Defendant is in the business of contracting with consumers such as Plaintiffs. It could easily have presented clear, consistent, understandable documents to Plaintiffs, but failed to do so.

Second, there is prejudice to Plaintiffs as Defendant has incorporated the Federal Arbitration Act into the contractual rules. Thus, Plaintiffs are unable to do pretrial depositions or subpoenas. As to discovery of Hyundai Motor Finance and any other out-of-state entities, the arbitration contracts provide no authority to compel discovery of out-of-state businesses or persons.

Third, Defendant's Special Delivery Agreement makes the entire contractual arrangement subject to Dealer's unfettered discretion, and thus illusory.

Fourth, the contractual agreements are unconscionable for the reasons discussed above. They carry terms so oppressive that no

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reasonable person would make them and no fair and honest person would accept them. They are paradigm examples of adhesion contracts on preprinted forms using one-sided language and giving no meaningful choice as to the terms. The Court further notes that the rules in Benson's Arbitration Agreement making Tony Benson Arbitration Administrator is per-se improper; an Arbitration Administrator must be a neutral, otherwise consumer trust is eroded.

For these reasons, the Court denies Defendant's Motions and remands this case to the jury roster. The Court makes no ruling on whether this case involves a "yo-yo deal" as described in *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 380-81 (Sup. Ct. 2004), and the parties are free to contest this issue at trial.

_____
Circuit Judge J. Derham Cole

_____, South Carolina

_____, 2017

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Spartanburg Common Pleas

Case Caption: Donald Simmons , plaintiff, et al VS Benson Hyundai Llc

Case Number: 2017CP4202072

Type: Order/Other

IT IS SO ORDERED!

s/J. Derham Cole 2053

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF **SPARTANBURG**
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. **2017-CP-42-02072**

Donald and Carlee **SIMMONS**,

Plaintiff(s)

Benson **HYUNDAI**, LLC,

Defendant(s)

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other SCRCP 56.

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other .

IT IS ORDERED AND ADJUDGED: ☐ formal order to follow; ☒ **Statement of Judgment by the Court**:

This matter came before this court on **MOTION** of the defendant **TO ALTER OR AMEND** the Court's judgment pursuant to *Rule 59(e), SCRCP.*

After consideration of the applicable statutory and case law this court finds that the defendant's **MOTION** should be and **IS** therefore **DENIED.**

J. Derham Cole, **Presiding Judge**

This judgment was entered on the day of and a copy mailed first class this day of to attorneys of record or to parties (when appearing pro se) as follows:

E. Warren Moise, *Esq.*

ATTORNEY(S) FOR PLAINTIFF(S)

Bradford Neal Martin, *Esq.*

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

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Spartanburg Common Pleas

Case Caption: Donald Simmons , plaintiff, et al VS Benson Hyundai Llc

Case Number: 2017CP4202072

Type: Order/Form 4

IT IS SO ORDERED!

s/J. Derham Cole 2053

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG)	Case No. 2017-CP-42-
Donald and Carlee Simmons)	
)	
Plaintiffs,)	
)	**S U M M O N S**
v.)	
)	
Benson Hyundai, LLC)	
)	
Defendant.)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to respond to the Complaint in this action, a copy of which is herewith served upon you and to appear and defend by serving a copy of your Answer or other responsive pleading on the subscriber at his office, 473 Savannah Highway, P. O. Box 816, Charleston, South Carolina 29402, within thirty days after the service hereof, exclusive of the date of such service, and if you fail to respond to the Complaint within the time aforesaid, the Plaintiffs will apply to the court for judgment by default for the relief demanded in the Plaintiffs' Complaint.

GRIMBALL & CABANISS, L.L.C.

By: _____

E. WARREN MOÏSE
473 SAVANNAH HIGHWAY
CHARLESTON, SC 29407
(843) 722-0311
(843) 722-1374 fax
warren.moise@gmail.com
ATTORNEY FOR THE PLAINTIFFS

Charleston, South Carolina
Date: June 14, 2017

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Case No. 2017-CP-42-
Donald and Carlee Simmons	)	
	)	
Plaintiffs,	)	
	)	**C O M P L A I N T**
v.	)	
	)	Jury Trial Demanded
Benson Hyundai, LLC	)	
	)	
Defendant.	)	

The Plaintiffs complain of the Defendant as follows:

I. OVERVIEW

This consumer case involves a classic "Yo-Yo Deal." See Exhibit A (F.T.C. Bulletin). A Yo-Yo Deal, recognized as an improper sales tactic throughout the industry, occurs where an automobile dealer sells a vehicle to a customer on credit. The customer is told by the dealer's manager that her credit has been approved. After signing several contracts, the customer is sent on her way.

The next day the auto dealer calls the buyer. The auto dealer informs the customer that she must return the vehicle, or otherwise she must pay more for it. If she does not comply, the car will be repossessed.

Carlee Simmons is a Web Consultant Strategist, and Donald Simmons is an Assistant Professor in the Art Department at Middle

Georgia State University, residing in Bibb County, Georgia. In this case, Carlee Simmons, who had an 833 ("Excellent") credit score, was approved for a loan by Benson's manager on the spot, Plaintiffs have made a substantial down payment, have given Benson their SAAB as a trade in, stood ready to repay the financed amount, and sent on-time monthly loan checks to Hyundai Motor Finance as instructed by Benson.

II. JURISDICTION AND VENUE

The Court has subject matter and personal jurisdiction over the case and parties. Venue is proper in Spartanburg County.

III. FACTS

2. The Plaintiffs, Donald and Carlee Simmons, are residents of Bibb County, Georgia.

3. Benson Hyundai, LLC [hereinafter "Benson" or the "Dealership"] is a motor vehicle dealer within the meaning of the South Carolina Motor Vehicle Dealers Act residing and doing business in Spartanburg County, South Carolina. At all times relevant and in connection with the transactions noted below, Tony Benson was owner and president of Benson; Jeff Belsky was its general manager; Nate Burden was its New Car Manager; upon information and belief John Bandy was employed in Benson's Parts Department; Robert Winecoff was a salesperson for Benson; Brian

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Perry was its Finance and Insurance Manager; Daryl Turner was also a salesperson as was Alexa Matos. All of these persons acted within the course and scope of their agency for the Dealership and also were motor vehicle dealers within the meaning of the South Carolina Motor Vehicle Dealers Act at all times relevant.

4. On or about July 26, 2016, Plaintiffs went to the Dealership in hopes of purchasing a car. They had planned to start a family and needed a reliable car at a price they could afford. The Plaintiffs had done an internet search to find a Hyundai Veloster at a suitable price. Plaintiffs had previously called the Dealership and spoke to salesman, Robert Winecoff, who promised over the phone to match a price Plaintiffs had gotten elsewhere for the Hyundai.

5. Upon arrival, Plaintiffs agreed to go into the general sales manager's office to talk numbers for a potential purchase of the vehicle after being told that Benson Hyundai would start negotiations at around $19,600. Brian Perry, Finance and Insurance Manager, drafted a proposed contract with Plaintiffs showing the purchase price, down payment, and a loyal Hyundai buyer discount. A copy of this agreement is attached as Exhibit B.

6. Among the other numbers discussed was a special rebate of $3,750.00, which General Sales Manager Nathan Burden stated was

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only available to Plaintiffs "this night only."

7. In addition, Plaintiffs agreed to sell/trade in Donald Simmons' SAAB 9-2X for $3,500.00, which Benson has kept in its possession since that day. Plaintiffs allowed Benson to debit $1,000 from Plaintiffs' bank account and accepted a personal check for $2,800 as down payments. Those funds are still in Benson's possession also.

8. Donald Simmons told the Dealership that they wanted to finance the rest of the amount owed on the Hyundai. Benson effected credit inquiries on both Plaintiffs. Both Mr. and Mrs. Simmons' credit scores were good; however, Mrs. Simmons' 833 score was exceptional (anything from 750 and above is considered "excellent" and between 700 and 749 as "good") and higher than Mr. Simmons' score. When General Sales Manager Nate Burden learned of Carlee's excellent credit score and ran credit checks on the three credit bureaus, he told her on the spot he had all he needed and that her loan with Hyundai Motor Credit was approved.

9. Mr. Simmons had lived in South Carolina several years ago when foreign hackers accessed the South Carolina Department of Revenue's computer system. The hackers stole as many as 4.25 million tax records of individuals and businesses, and 387,000 credit card numbers. As a result, Mr. Simmons (a South Carolina

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resident at the time of the hacking incident) like many South Carolinians has frozen his Equifax credit from inquiries. Despite his Equifax credit being frozen, he is nonetheless able to easily "un-freeze" it.

10. That night at the Dealership in the presence of the Finance and Insurance Manager Brian Perry and Carlee Simmons, Donald requested an immediate lift of the freeze to take place and to remain open for several days until the 30th of July so that the Dealership could have free access to Donald's credit history. Thus, Benson was aware that Mr. Simmons' Equifax credit was unfrozen and available to Benson to access for three days from the 27th to the 30th. This is true despite Benson's representation that Carlee's loan was already approved.

11. However, the Dealership alleged that it was unable to access his credit even after Mr. Simmons' express request to the credit bureau that his credit block be lifted. This may either be because Benson neglected to access the credit or because Benson submitted it incorrectly by repeatedly misspelling Donald's Simmons' name as "DonalEd."

12. Carlee was asked to sign onto the deal, and she said that she would do so. Having been informed that Carlee's loan was already approved by Hyundai Motor Finance and that Plaintiffs were

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getting the best interest rate they possibly could, Plaintiffs began to sign the contracts. The Simmons were shown numerous documents by Benson's Finance & Insurance Manager, Brian Perry, in a rushed way such as a buyer's order, financing agreement, and a two-page arbitration agreement in single-spaced, tiny font with technical terms. For example, as to the Arbitration Agreement, the entire Federal Rules of Civil Procedure were adopted into it. In addition, the other arbitration rules would take an attorney an hour or more to comprehend. Neither of the Simmons are lawyers and did not have an attorney with them. Then, they were asked to sign a financing agreement with a second (different) arbitration agreement.

13. Plaintiffs were told by Finance & Insurance Manager Brian Perry and sales person Daryl Turner that they would transfer the Simmons' tags and title by mailing the paperwork to Georgia, process the sales documents, and pay Plaintiffs' ad valorem fees. The costs were deducted from Plaintiffs' down payment.

14. Plaintiffs were given the keys to their new Hyundai, congratulated on purchase of their car, and allowed to take their car home. Benson asked that Donald mail Benson the SAAB's title. Donald did this the next day, and Benson still has the car and title. Since this time, the Simmons' lives have been in turmoil.

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15. Plaintiffs subsequently discovered that despite its retention of Plaintiffs' $1,000 down payment, $2,800 check, and Plaintiffs' SAAB, Benson failed to pay the ad valorum taxes due to the Macon-Bibb Georgia Tax Commission. Commissioner McCord of the Georgia Tax Commission contacted Benson regarding this failure to pay the taxes due the first week of January, 2017. The female to whom he spoke at Benson's Dealership, "Robin Collins," promised the Commissioner that the title would be delivered by hand and in person to his office by the next week (the second week of January 2017). This was never done. Fines have been charged to Plaintiffs by the Tax Commission and are still accruing.

16. Plaintiffs were told that first night that their monthly payments would be $155.00, payable to "Hyundai Motor Finance." Following Benson's instructions, Plaintiffs have sent monthly checks to Benson in the amount of $155.00 payable to Hyundai Motor Finance since the night that their Hyundai was first purchased. Plaintiffs have never missed or been late for a payment. Plaintiffs also have kept the Hyundai insured.

IV. PRESSURE TO "RE-DO" THE SALE FOR MORE MONEY

17. The day after Plaintiffs purchased their Hyundai, Carlee was called by General Sales Manager Nathan Burden, was told that she needed to "re-do" the contract, and that he was sending his

boys down to meet Carlee and her husband in Macon. The Dealership's story changed depending upon whom its employees were telling it to. On this occasion, however, Burden says Carlee and Donald signed a contract worth more money when they were with him and that Benson gave Plaintiffs too many discounts. Burden sent her a cropped portion of a Buyer's Order. Burden told Carlee that Plaintiffs needed to come back and pay more money. Brian Ferry also called Carlee and left a voice mail.

18. Donald and Carlee met at home after work that day and called Nate Burden several times but only received a text in response.

19. Later that day, Nate Burden texted Carlee back only, and stated that he was sending someone to Macon in the morning to re-do the contract.

20. Early the next morning at approximately 7 A.M., Donald texted Nate Burden requesting he send Plaintiffs an email explaining exactly what he needed Plaintiffs to "re-do" and explain what was wrong with the contract.

21. Burden called back, ignored Donald's earlier text requesting an explanation, and again stated that he was sending his boys to talk to Plaintiffs in Macon. Burden told Donald to "tear up" the contract, claiming that it was "no good." Donald told

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Burden that there was no need to send anyone until he explained why this needed to be redone and asked why he wanted Plaintiffs to tear up their contract.

22. Burden became irate and began cursing at Donald, using words such as "asshole" and "fucking" in an effort to pressure him. Donald pointed out that the Dealership wrote this contract and that everyone agreed to it. Donald said that the Dealership's own contract provided for no cooling-off period. Burden continued to curse. He also threatened that "if you don't re-do it, I just won't approve your financing."

23. Later that evening at approximately 8:18 P.M., Brian Perry (Finance & Insurance Manager) called Donald and asked Donald if he had his credit unlocked. Donald said yes and let him know that he already requested Equifax be unlocked up until the end of that week right at the Dealership. Donald asked why Perry hadn't accessed his credit yet and pointed out that Perry had agreed to do this on the 27th. Brian Perry did not state why he didn't access it on the 27th. Donald told Brian that after Nate's outburst and threat not to approve Plaintiffs' loan, they need to stop calling Plaintiffs and harassing them and call Plaintiffs' attorney, Stanley Martin, if they need anything.

24. On Friday, July 29th, 2016, Plaintiffs' Georgia attorney,

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Stanley Martin, called Benson Hyundai and spoke to Nathan Burden. Mr. Martin let them know that he had looked at the contract and found it perfectly legitimate. He asked what the problem was and why Benson Hyundai would not put in writing what they want "redone." Burden was rude with Plaintiffs' attorney and threatened to repossess Plaintiffs' car.

25. On August 11th, 2016, Carlee called Equifax. She was alerted that her account was being accessed by Hyundai Motor Finance over and over. The customer service representative said she had never seen anything like it and encouraged Carlee to lock her credit to protect her score from any further damage. The customer service representative said that Carlee's score had dropped significantly in the past week, about 50 points so far. Carlee placed a freeze, fraud alert, and monitoring system on her credit which costs her $20.00 every month. Equifax stated that her entire file was sent to the requesting party each time it was pulled and that she received a hard credit pull for each inquiry.

26. In the midst of Benson's threats and refusals to process the Plaintiffs' paperwork, on August 5th, 2016, Carlee was sent an email from corporate Hyundai congratulating her on her new Veloster purchase and asked to take their customer survey. The next day, two letters were received by Plaintiffs on letterhead, one for Donald

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and the other for Carlee, which appear to be credit denials from Hyundai Motor Finance regarding a recent application with Benson Hyundai. Carlee called Hyundai Motor Finance and was told that Hyundai did not know who Plaintiffs were and that there was not an application on file in either of their names. However there is a credit inquiry on Carlee's report.

27. On August 16, 2016, Donald's TransUnion Monitoring System received a hard inquiry from US BANK, an inquiry and bank of which he was unaware and had not authorized.

28. On August 18, 2016, Brian Perry (Finance & Insurance Manager) called Donald from number 843.318.4159 and said, "Hey Buddy. I'm just calling because we need you to unlock your credit. We haven't pulled it yet." In fact, Donald hadn't locked his credit and suggested that Perry call his attorney. Donald's Equifax account had been open for three days at the start but not accessed by the Benson; TransUnion had been open the entire time and accessed by Benson.

29. To be more precise, Donald's credit account had been opened for Benson on the following days: Experian – July 28th; August 5th; Equifax: July 27th to July 30th; and TransUnion: July 27th to August 17, 2016 and December 25th, 2016 to January 22nd, 2017.

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30. Toward the end of January, 2017, a salesperson, Alexa Matos, overwrote Carlee's name on her Hyundai BlueLink account VIN. Upon contacting BlueLink, Carlee was told that a salesperson named Alexa entered Matos' own personal credit card information and her own address, instead of the dealer's ID.

31. On February 15th, 2017, Benson's employee and agent, who upon information and belief was Parts Department employee John Bandy, and possibly a second agent of the Dealership, showed up on campus where Carlee works. Bandy appeared to be over 200 pounds and over six-feet tall, as opposed to Carlee who is four-feet, ten-inches tall and weighs 100 lbs. After remaining on the campus a significant part of the day, Bandy waited until Carlee was alone in her office. Benson knew she was represented by an attorney at the time.

32. Repossession occurs when an agent of the owner seizes a motor vehicle and tows it away. However, with no knowledge of the vehicle's whereabouts and no way to discover it, except to intimidate or otherwise force Carlee into revealing its location, Bandy attempted to do just that: Bandy situated himself between Carlee and the door and hovered above her. He stated that he was from Benson Hyundai and that "Tony" sent him. He said that he was going to take the car. This caused Carlee to be greatly frightened

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for her safety. Bandy never showed any identification or paperwork to Carlee and ran off when she threatened to call the police. She was frightened enough that she reported the matter to two law enforcement agencies. As a result of this chaotic series of events, Carlee's pre-existing medical condition was aggravated and caused her distress and anxiety for which she sought medical treatment.

FOR A FIRST CAUSE OF ACTION
(Breach of Written Contract)

33. The Plaintiffs restate all prior paragraphs as if fully stated herein.

34. Plaintiffs were instructed by Benson to make monthly payments to Hyundai Motor Finance as part of the financing agreement; Plaintiffs have made all payments to date and done so in a timely manner.

35. As part of the sale, Benson was to pay for taxes, tags, other incidentals, and to transfer title of the Hyundai to Plaintiffs. This they have not done.

36. Plaintiffs have offered and stood ready at all times to pay the balance of money owed for purchase of the Hyundai. Benson, however, requires a liability release. Meanwhile, Benson still keeps the Plaintiffs' down payments and the SAAB.

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37. As a direct and proximate result of Benson's breaches of contract, Plaintiffs have lost use of their Hyundai, have incurred numerous fees, which are still increasing, from the State of Georgia for Benson's failure to process transfer of the Hyundai and pay the property taxes, and have lost possession of their SAAB and down payment.

38. The Plaintiffs pray for a judgment against Benson in an amount of actual damages to be determined by the jury, for costs, and for such further relief as the Court and jury deem appropriate.

AND IN THE ALTERNATIVE,
FOR A SECOND CAUSE OF ACTION
(Breach of Oral Agreements)

39. The Plaintiffs reassert all prior paragraphs as if fully stated herein.

40. As part of the sales agreement for the Hyundai Veloster, Plaintiffs agreed to pay, and Benson accepted, two down payments toward purchase of the Hyundai. Plaintiffs also agreed to transfer ownership and possession of Donald Simmons' SAAB to Benson as part of the down payment on the Hyundai. Plaintiffs and Benson signed documents transferring title of the SAAB to Benson. A sales contract (also known as a Buyer's Order) and a financing agreement also were signed. Plaintiffs were charged a fee in return for Benson processing the transfers of the two vehicles and payment of

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related expenses, taxes, and fees.

41. Benson has breached the written agreements; however Plaintiffs have performed their obligations and stand ready to pay their remaining obligations as they come due. Should the Court find that the written agreements are not valid because they are contracts of adhesion, unconscionable or another reason, then Plaintiffs submit that oral contracts exist for the sale of the Veloster for $19,600 less the discounts and down payments stated above.

42. As a direct and proximate result of Benson's breaches of contract, Plaintiffs have lost use of the Hyundai, have incurred numerous fees and tax penalties, which are still increasing, from the State of Georgia for Benson's failure to process transfer of the Hyundai, and have lost possession of their SAAB and down payment.

43. The Plaintiffs pray for a judgment against Benson in an amount to be determined by the jury, for costs, and for such further relief as the Court and jury deem appropriate.

FOR A THIRD CAUSE OF ACTION
(Negligence)

44. The Plaintiffs reassert all prior paragraphs as if fully stated herein.

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45. Benson owes duties to Plaintiffs to use due care in selling automobiles and financing them in consumer transactions, preparation of documents, calculation of costs, fees, and other financial matters, to deal truthfully with its customers, and to monitor the staff so that they deal honestly and transparently with its customers.

46. Moreover, Plaintiffs are owed duties by Benson to use reasonable care in the investigation, including background investigations, hiring, training, monitoring, and supervision, of its employees.

47. Benson breached its duties to Plaintiffs in one or more of the following ways:

(A) In failing to investigate, do reasonable background checks on, to hire, train, monitor, and supervise its sales staff and employees;

(B) In being untruthful to Plaintiffs during its transactions with them;

(C) In cursing at Plaintiff; threatening them; attempting to force Plaintiff to tear up a valid contract or otherwise Benson would not approve their financing; and in attempting to pressure and intimidate Carlee Simmons into giving Benson the Hyundai she has paid for and owns;

(D) In attempting to mislead Plaintiffs; and

(E) In failing to run credit checks in a timely and proper manner when they were supposed to do so.

48. As a direct and proximate result of Benson's negligence and recklessness, the Plaintiffs have been without use of the Hyundai for a significant time, have continued to pay for insurance, are obligated to pay tax charges and penalties, have suffered stress, frustration, mental distress, embarrassment, and worry, have had Carlee's credit damaged; and have been set back in their plans to have a family.

49. The Plaintiffs are informed and believe they are entitled to actual and punitive damages in amounts to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION
(South Carolina Motor Vehicle Dealer's Act)

50. The Plaintiffs reassert all prior paragraphs as if fully stated herein.

51. Benson is an automobile Dealership, and the Hyundai is a motor vehicle under the South Carolina Motor Vehicle Dealers Act, S.C. Code § 56-15-10 et seq.

52. The aforementioned acts and practices of Benson were unfair, deceptive, violate the public policy of South Carolina, and

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were done maliciously.

53. Benson acted wilfully and wantonly because it knew or should have known that its conduct was deceptive, unfair, and a violation of state and federal statutes.

54. As a direct and proximate result of Benson's aforementioned practices, Plaintiffs are left without use of a vehicle for which they have continued to make payments and insure, owe incidental payments and penalties for taxes, title transfer, and processing fees, have suffered impaired credit, have suffered stress and frustration, were required to hire attorneys, and are required to pay costs and expenses of litigation.

55. The Plaintiffs are informed and believe they are entitled to a verdict for actual and punitive damages in an amount to be determined by the jury, double their actual and punitive damages together with attorneys' fees not to exceed three time the Plaintiffs' actual damages, plus costs and disbursements of this action.

FOR A FIFTH CAUSE OF ACTION
(Unfair Trade Practices Act)

56. The Plaintiffs reassert all prior paragraphs as if fully stated herein.

57. The aforementioned acts and practices of Benson were

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unfair, deceptive, and violate the public policy of South Carolina.

58. The aforementioned acts and practices of Benson affect the public interest, may have occurred before upon information and belief, and are capable of repetition. Moreover, because Benson is still engaged in automotive sales and financing and also upon information and belief lack proper policies and procedures to avoid such wrongful acts in the future, there is not only a potential for repetition but actual repetition.

59. Benson acted willfully and wantonly because it knew or should have known that its conduct was deceptive, unfair, and a violation of federal and state statutes.

60. As a direct and proximate result of Benson's aforementioned practices, the Plaintiffs are left without use of a vehicle for which they have continued to make payments and insure, owe incidental payments for taxes and penalties, title transfer, and processing fees, have suffered impaired credit, have suffered mental distress, stress and frustration, were required to hire attorneys, have had a reduction in the credit score of one or both, and are required to pay costs and expenses of litigation.

61. Plaintiffs are informed and believe they are entitled to three times their actual damages together with attorneys' fees, plus costs and disbursements.

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FOR A SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

62. The Plaintiffs reassert all prior paragraphs as if fully stated herein.

63. Benson directly and through its agents made the aforementioned false and half-truth representations at a time when they had a pecuniary interest in the sale and financing.

64. Benson owed a duty to the Plaintiffs to use due care to be truthful in making the representations but breached that duty. Had Plaintiffs known that Benson would go back on its word, they would never have dealt with Benson.

65. The Plaintiffs justifiably relied on Benson's representations because the Plaintiffs had limited knowledge and access to information about the inner workings of the automobile and auto-finance businesses while at the same time, Benson's employees had far superior knowledge of the same.

66. As a direct and proximate result of Benson's aforementioned practices, the Plaintiffs are left without a vehicle for which they have continued to make payments and insure, owe incidental payments for taxes and penalties, title transfer, and processing fees, have suffered impaired credit, have suffered stress and frustration, were required to hire attorneys, have had

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a reduction in the credit score of one or both, and are required to pay costs and expenses of litigation.

67. The Plaintiffs are informed and believe they are entitled to actual damages and punitive damages in an amount to be determined by the jury, plus costs and expenses.

WHEREFORE, the Plaintiffs pray for judgment against Benson as follows:

1. For actual damages, costs, and fees under the First Cause of Action for breach of written contract in an amount to be determined by the jury and Court or, in the alternative,

2. For actual damages, costs, and fees under the Second Cause of Action for breach of oral contract, in amounts to be decided by the jury and Court.

3. For actual and punitive damages under the Third Cause of Action for negligence in an amount to be decided by the jury and Court;

4. For double their actual and punitive damages together with attorneys' fees not to exceed three time the Plaintiffs' actual damages in an amount to be determined by the jury and Court, plus costs and disbursements of this action, under the Fourth Cause of Action arising under the South Carolina Motor Vehicle Dealers Act;

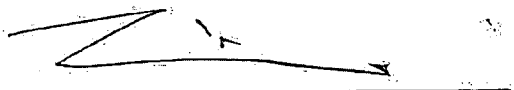
5. For three times their actual damages in an amount to be determined by the jury, together with attorneys' fees in an amount to be determined by the Court on the Fifth Cause of Action under the Unfair Trade Practices Act;

6. For actual and punitive damages in an amount to be determined by the jury on the Sixth Cause of Action for negligent misrepresentation;

7. For prejudgment interest on all causes of action where applicable; and

8. For such other and further relief as the jury and Court deem just and proper.

GRIMBALL & CABANISS, L.L.C.

By: 

E. WARREN MOÏSE
473 SAVANNAH HIGHWAY
CHARLESTON, SC 29407
(843) 722-0311
(843) 722-1374 fax
warren.moise@gmail.com
ATTORNEYS FOR THE PLAINTIFFS
DONALD AND CARLEE SIMMONS

Charleston, South Carolina

Dated: June 14, 2017

ELECTRONICALLY FILED - 2017 Jun 14 12:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

Exhibit A

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

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FTC Charges Los Angeles-Based Sage Auto Group With Using Deceptive and Unfair Sales and Financing Tactics

FOR RELEASE

September 29, 2016

TAGS: deceptive/misleading conduct | Automobiles | Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing

The Federal Trade Commission has charged nine Los Angeles-area auto dealerships and their owners with using a wide range of deceptive and unfair sales and financing practices. The FTC's action filed in the U.S. District Court for the Central District of California seeks to end these practices and return money to consumers.

This is the FTC's first action against an auto dealer for "yo-yo" financing tactics: using deception or other unlawful pressure tactics to coerce consumers who have signed contracts and driven off the dealership lots into accepting a different deal. The FTC also alleges that the defendants packed extra, unauthorized charges for "add-ons," or aftermarket products and services, into car deals financed by consumers.

"The car-buying process is a two-way street," said Jessica Rich, Director of the FTC's Bureau of Consumer Protection. "The FTC expects dealers to honor their contractual obligations, and will pursue those who use yo-yo financing tactics and pack unwanted costly add-ons onto consumers' contracts."

According to the FTC's complaint, the defendants entice consumers, particularly financially distressed and non-English speaking consumers, into their dealerships with print, internet, radio and television ads that make an array of misleading claims, including that vehicles are generally available for the advertised terms and that consumers can buy vehicles for low prices, finance with low monthly payments, or make low down payments. Other allegedly misleading claims include that consumers can finance the purchase of vehicles – when in fact they are lease offers – and that the defendants will pay off consumers' trade-in vehicles, despite the fact that consumers ultimately are responsible for paying off any amount owed on the trade-in.

The FTC also alleges that the defendants use phony online reviews to tout their dealerships and discredit negative reviews that highlighted their unlawful practices. They and their employees or agents allegedly post positive, five-star online reviews that purport to be from objective or independent reviewers without disclosing their relationship to the dealerships.

In addition to the deceptive advertising and marketing allegations, the FTC has charged that several financing tactics of the defendants are deceptive and unfair. As part of the sales and financing process, the defendants offer add-ons such as extended warranties, guaranteed auto protection (GAP), and maintenance or service plans. The FTC alleges the defendants have violated the FTC Act by charging some consumers for add-ons without their consent or falsely claiming the products were required or were free.

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And according to the complaint, in some instances after the consumers have signed contracts, the defendants falsely represent that consumers are required to sign a new contract with different terms. In other instances, the defendants tell consumers who have completed finance contracts that the contracts are cancelled and falsely represent that the defendants are permitted to keep consumers' down payments or trade-ins. When consumers request compliance with the terms of the contract or refuse the defendants' demands, the defendants, in some instances, have falsely represented that consumers will be liable for legal action, including lawsuits, repossession, or criminal arrest for a stolen vehicle.

The FTC's complaint also charges the defendants with violating the Truth In Lending Act and Regulation Z, and the Consumer Leasing Act and Regulation M, for failing to clearly disclose required credit information and lease information in their advertising.

The defendants are Universal City Nissan, Inc., also d/b/a Universal Nissan; Sage Downtown, Inc., also d/b/a Kia of Downtown Los Angeles; Glendale Nissan/Infiniti, Inc., also d/b/a Glendale Infiniti and Glendale Nissan; Valencia Holding Co., LLC, also d/b/a Mercedes-Benz of Valencia; West Covina Auto Group, LLC, also d/b/a West Covina Toyota and West Covina Toyota/Scion; West Covina Nissan, LLC; Covina MJL, LLC, also d/b/a Sage Covina Chevrolet; Sage North Hollywood, LLC, also d/b/a Sage Pre-Owned; and Sage Vermont, LLC, also d/b/a Sage Hyundai.

Also charged are Joseph Schrage, a/k/a Joseph Sage; Leonard Schrage, a/k/a Leonard Sage; and Michael Schrage, a/k/a Michael Sage; Sage Holding Company Inc.; and Sage Management Company Inc..

The Commission vote authorizing the filing of the complaint against the Sage Auto Group defendants was 2-1, with Commissioner Ohlhausen dissenting.

NOTE: The Commission files a complaint when it has "reason to believe" that the law has been or is being violated and it appears to the Commission that a proceeding is in the public interest. The case will be decided by the court.

To learn more, read *Are Car Ads Taking You For a Ride?*, *Buying A New Car*, and *Buying A Used Car*.

The Federal Trade Commission works to promote competition, and protect and educate consumers. You can learn more about consumer topics and file a consumer complaint online or by calling [redacted]. Like the FTC on Facebook, follow us on Twitter, read our blogs and subscribe to press releases for the latest FTC news and resources.

PRESS RELEASE REFERENCE:
Los Angeles-Based Sage Auto Group Will Pay $3.6 Million to Settle FTC Charges

Contact Information

MEDIA CONTACT:
Frank Dorman
Office of Public Affairs
[redacted]

STAFF CONTACT:
Thomas Widor
Bureau of Consumer Protection
[redacted]

Daniel Dwyer
Bureau of Consumer Protection
[redacted]

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BENSON

NISSAN KIA HYUNDAI

P. O. Box 8669
Spartanburg, South Carolina 29305
Nissan: (864) 585-3611
Kia: (864) 699-9090
Hyundai: (864) 541-0029
DEAL# 8136

BIRTHDAY INFORMATION
BUYER [redacted]
CO-BUYER [redacted]
ANNIVERSARY

E-MAIL
1) DRIVER LIC#
2) DRIVER LIC#
South Carolina and North Carolina require names and addresses on deal to match names and addresses on driver licenses

RETAIL BUYER'S ORDER

CUST. NO. 10637
DATE 07/26/2016
WORK PHONE [redacted]
HOME PHONE [redacted]
SS # □□□-□□-□□□□
SS # □□□-□□-□□□□

THE UNDERSIGNED PURCHASER CARLEE ROBIN SIMMONS OR DONALD LAWRENCE SIMMONS
ADDRESS [redacted] ZIP [redacted]

Hereby agrees to purchase from Benson Cadillac-Nissan, Inc.: hereinafter referred to as Seller, subject to all terms, conditions and agreements contained herein, the following: [X] NEW [ ] USED [ ] DEMONSTRATOR

YEAR	MAKE	MODEL	TYPE	CYL.	SERIAL #													
2016	HYUNDAI	VELOSTER	TURBO	4	K	M	H	T	C	6	A	E	5	G	U	2	5	9

COLOR	STOCK #	MILEAGE	COUNTY	INSPECTION #	SALESMAN'S NAME
ELITE WH	H60666	5	BIBB		ROBERT M WINECOFF

LIST PRICE OR MSRP		$ 19600	00
ADDED EQUIPMENT:			
TOTAL SALES PRICE		19600	00
TRADE IN ALLOWANCE		3500	00
DIFFERENCE		16100	00
SUB TOTAL		16100	00
S.C. SALES TAX	324 / 324A	931	00
LICENSE TITLE & REGIST.	908	36	00
CLOSING FEE	905C	225.00 $889	00
SECURE ETCH	905E	$209	00
RESISTALL	905K	299	00
DENT REPAIR	905T		N/A
LIFE & A&H	807 / 809		N/A
GAP INSURANCE	807G / 809G		N/A
SERVICE PROGRAM	444 / 455		N/A
ROAD HAZARD	444R / 455R		N/A
MAINTENANCE	444G		N/A
SUB-TOTAL		17593	00
AMOUNT OWING ON TRADE-IN	300B		N/A
TOTAL AMOUNT DUE		17593	00
DEPOSIT WITH ORDER Rec#	220A		N/A
CASH ON DELIVERY Rec#	220A	3800	00
FACTORY REBATE	220	3750	00
UNPAID BALANCE DUE:		$ 10043	00

CLOSING FEE

This fee includes complete cosmetic detail materials, administrative services, notary services, courier service, fuel, hazardous waste removal such as oil filters, oil, antifreeze, tires. This charge represents costs and/or profit to the seller/dealer for items such as inspecting, cleaning and adjusting new and used vehicles and preparing documents related to the sale. This fee does not represent any payment for mechanical services which have been reimbursed to the dealer by the manufacturer.

[XX] This vehicle delivered subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

Carlee Robin Simmons
Purchaser's Signature

[ ] I agree to pay any difference in lien payoff.

Purchaser's Signature

REMARKS

CONTRACTUAL DISCLOSURE STATEMENT

"The information you see on the window form (Buyer's Guide) for this vehicle is part of the contact. Information on the window form overrides any contrary provision in the contract of sale."

LICENSE TAG INFORMATION: ACV:

PURCHASE NEW TAG [X] TRANSFER [ ]
1) DL#
2) DL#
TAG #
EXP. DATE
VALIDATION #

INSURANCE INFORMATION

POLICY # PHONE #
COMPANY CINCIATTI EFFECTIVE DATES
AGENT VERIFIED BY

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	TYPE	COLOR
2006	SAAB	9-2X	2006 SAAB	[GRAY]

CYL.	SERIAL #																	
4	J	F	4	G	G	6	1	6	4	6	H	0	5	0	0	2	9	

STATE COUNTY LIC.# MILEAGE 123635

1ST LIEN 2ND LIEN

NAME ON TITLE:
LIENHOLDER:
ADDRESS:
AMT. (15 DAYS):
GOOD THRU:
ACCT. NO.:
VERIFIED BY:
QUOTED BY:
PHONE NO.:

As part of the purchase price, the Purchaser does hereby grant, bargain, sell and convey the above described automobile to Seller. Purchaser warrants title to and possession of said automobile to be in him, and that same is free from encumbrances, and all debts, except the pay-off amounts stated above. Purchaser further warrants his good right to sell and deliver the above described automobile with clear title - no salvage title.

DISCLAIMER OF WARRANTIES

NEW VEHICLE. All warranties on this new vehicle are those offered by the Manufacturer. The Seller hereby expressly disclaims all warranties either express or implied including any implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, and the Seller neither assumes nor authorizes any person to assume for it any liability in connection with the sale of the vehicle. This disclaimer by the Seller in no way affects the terms of the Manufacturer's warranty. Buyer shall not be entitled to recover from the Selling Dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.

Purchaser hereby acknowledges that he has read and understands the above and that Seller has made available to him prior to the purchase the factory warranty which Purchaser understands constitutes all of the warranties with respect to the sale of this vehicle.

USED VEHICLES: In the event that the vehicle being purchased is a used vehicle, Purchaser hereby acknowledges that the above disclaimer will also apply to said used vehicle. EXCEPT AS MAY BE EXPRESSED COMPLETELY IN WRITING BY THE SELLER ON SEPARATE INSTRUMENT DELIVERED TO THE PURCHASER, ALL USED VEHICLES ARE SOLD "AS IS - WITH NO WARRANTY." Purchaser hereby acknowledges that Seller has made available to him and Purchaser has read any limited warranty delivered to him by separate instrument and said limited warranty constitutes all of the warranties with respect to the sale of this used vehicle and that any implied warranty that may not be waived by law is limited to the duration of said limited warranty. Purchaser understands that any new or remaining Manufacturer's warranties on used vehicles are not the responsibility of Seller.

ADDITIONAL TERMS AND CONDITIONS

This Order shall not become binding upon either the Purchaser or the Seller until the vehicle described above is physically delivered and Purchaser has received the Disclosure required under Federal Law, if applicable. In the case of a credit sale, the Seller shall not be obligated to sell until a finance source approves this Order and agrees to purchase a retail instalment contract between the Purchaser and the Seller based on this Order.

As a part of the New Car Pre Delivery Procedures or Used Car Reconditioning of the Seller all body repairs in an amount not exceeding three hundred dollars ($300.00) have been made prior to the delivery of the described automobile. Purchaser waives notice concerning said repairs and accepts the automobile as delivered. Any body repairs made by the Seller exceeding $300.00 have been set out herein or in a separate disclosure statement if said repairs were made by the Seller of which made known to and said repairs are hereby accepted and approved by Purchaser.

The trade-in allowance shown in the Order is that amount that the Seller agrees to allow at the time the Purchaser accepts delivery and completes the Order. In the event of any disagreement over the value of the car traded in, the Seller will not be liable for any more than the wholesale market value as determined by the loan value of the automobile as shown in the Black Book less the estimated cost of reconditioning same.

It is agreed and understood that the legal title to the described automobile does not pass to Purchaser until the entire purchase price is paid in full and the bank on which it is drawn. check given by the Purchaser for all or part of the payment for said automobile clears the

The Purchaser agrees that all provisions stated herein are part of this Order and that this Order supersedes any prior agreement and is the complete and exclusive agreement on the subject matters covered by this Order. Further Purchaser and Seller agree that no person is authorized to make any representations beyond those expressed in this Order. Verbal promises by salesman are not valid and any promises or understandings not herein specified in writing are hereby expressly waived by the Purchaser.

The purchaser warrants that he is of majority age and further warrants that all statements made by him are true and correct, and that the Seller may accept the as being true representations of existing facts.

Purchaser has read all the provisions of this Order including the Disclaimer of Warranties. Purchaser acknowledges that he has received a true copy of this Order and that the Order has been completely filled in and signed.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Purchaser's Signature Carlee Robin Simmons ACCEPTED BY N/A

THIS ORDER NOT VALID UNLESS ACCEPTED BY AN AUTHORIZED MANAGER OF THE COMPANY.

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EXHIBIT 1

Buyer Name and Address (Including County and Zip Code)	Co-Buyer Name and Address (Including County and Zip Code)	Seller-Creditor (Name and Address)
CARLEE ROBIN SIMMONS	DONALD LAWRENCE SIMMONS	BENSON HYUNDAI

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 Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New/Used	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2016	HYUNDAI VELOSTER	KMHTC6AE5GU281959	Personal, family, or household unless otherwise indicated below. ☐ business ☐ agricultural ☐ N/A

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount the credit will cost you	Amount Financed The amount of credit provided to you or on your behalf	Total of Payments The amount you will have paid after you have made all payments as scheduled	Total Sale Price The total cost of your purchase on credit, including your down payment of $ 11050.00
3.09 %	$ 985.96	$ 10043.00	$ 11028.96	$ 22078.96

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
72	153.18	Monthly beginning 09/09/2016
N/A	N/A	N/A

Or As Follows: N/A

Late Charge. If a payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late, with a minimum charge of $7.20. The charge will not exceed $18.00 if you bought the vehicle primarily for personal, family, or household use. We may charge the maximum and minimum late charge dollar amounts as allowed by S.C. Code Ann. 37-1-109 of the South Carolina Consumer Protection Code.
Prepayment. If you pay off all your debt early, you will not have to pay a penalty.
Security Interest. You are giving a security interest in the vehicle being purchased.
Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including $ 300.00 sales tax and $ 225.00 closing fee)	$ 20424.00	(1)
2 Total Downpayment =		
Trade-In 2006 SAAB 9-2X (Year) (Make) (Model)		
Gross Trade-In Allowance	$ 3500.00	
Less Pay Off Made By Seller	$ N/A	
Equals Net Trade In	$ 3500.00	
+ Cash	$ 3800.00	
+ Other REBATES	$ 3750.00	
(If total downpayment is negative, enter "0" and see 4I below)	$ 11050.00	(2)
3 Unpaid Balance of Cash Price (1 minus 2)	$ 9374.00	(3)
4 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):		
A Cost of Optional Credit Insurance Paid to Insurance Company or Companies.		
Life $ N/A		
Disability $ N/A	$ N/A	
B Vendor's Single Interest Insurance Paid to Insurance Company	$ N/A	
C Other Optional Insurance Paid to Insurance Company or Companies	$ N/A	
D Optional Gap Contract	$ N/A	
E Official Fees Paid to Government Agencies		
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
F Government Taxes Not Included in Cash Price	$ N/A	
G Government License and/or Registration Fees LIC 20.00	$ 20.00	
H Government Certificate of Title Fees	$ 18.00	
I Other Charges (Seller must identify who is paid and describe purpose)		
to N/A for Prior Credit or Lease Balance	$ N/A	
to GA DEPT OF REV for GA TAVT	$ 631.00	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
	$ 669.00	(4)

Insurance. You may buy the physical damage insurance the 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 we are indicating Vendor's Single Interest Insurance is required as checked below.
If any insurance is checked below, policies or certificates for the insurance coverages will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

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

Premium:
Credit Life $ N/A
Credit Disability $ N/A
Insurance Company Name N/A
Home Office Address N/A

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

Other Optional Insurance

☐ N/A — Type of Insurance — Term N/A
Premium $ N/A
Insurance Company Name N/A
Home Office Address N/A

☐ N/A — Type of Insurance — Term N/A
Premium $ N/A
Insurance Company Name N/A
Home Office Address N/A

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

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

X N/A — Buyer Signature — Date N/A

X N/A — Co-Buyer Signature — Date N/A

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

X N/A — Buyer Signature — Date N/A

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

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B	Vendor's Single Interest Insurance Paid to Insurance Company	$	N/A
C	Other Optional Insurance Paid to Insurance Company or Companies	$	N/A
D	Optional Gap Contract	$	N/A
E	Official Fees Paid to Government Agencies		
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
F	Government Taxes Not Included in Cash Price	$	N/A
G	Government License and/or Registration Fees: LIC=25.00	$	25.00
H	Government Certificate of Title Fees	$	19.00
I	Other Charges (Seller must identify who is paid and describe purpose)		
	to N/A for Prior Credit or Lease Balance	$	N/A
	to GA DEPT OF REV for GA TAVT	$	631.00
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	Total Other Charges and Amounts Paid to Others on Your Behalf	$	669.00 (4)
5	Amount Financed (3 + 4)	$	10043.00 (5)

Insurance Company Name: N/A

Home Office Address: N/A

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

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

X N/A — Buyer Signature — N/A Date

X N/A — Co-Buyer Signature — N/A Date

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

X N/A — Buyer Signature — N/A Date

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

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 N/A, Year N/A. SELLER'S INITIALS N/A

Agreement to Arbitrate: By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

Buyer Signs X Carla Richa Simmons — Co-Buyer Signs X David Lewis Simms

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

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

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

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

I want to buy a gap contract.

Buyer Signs X N/A

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 Carla Richa Simmons Co-Buyer Signs X David Lewis Simms

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 provision on the reverse side, before signing below. You confirm that you received a completely filled in copy when you signed it.

Buyer Signs X Carla Richa Simmons Date 07/26/16 Co-Buyer Signs X David Lewis Simms Date 07/26/16

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

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

Seller signs HENSON HYUNDAI Date 07/26/16 X Title

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

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

HENSON HYUNDAI
Seller By Title

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THE PRINTER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

CUSTOMER/TRUTH IN LENDING COPY

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 computed 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.
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.

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 PROVISION
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 Provision, 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 Provision 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. You may choose the American Arbitration Association, 1633 Broadway, 10th Floor, New York, New York 10019 (www.adr.org), or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the 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 and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor 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 pay your filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of $5000, unless the law or the rules of the chosen arbitration organization require us to pay more. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. 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 Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

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, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual injunctive relief. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, 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 Provision shall be unenforceable.

ELECTRONICALLY FILED - 2017 Jun 14 12:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

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 (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.

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 computed 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 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 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.

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF SPARTANBURG	)	**FOR THE 7TH JUDICIAL CIRCUIT**
	)	
Donald and Carlee Simmons,	)	C.A. No. 2017-CP-42-02072
	)	
Plaintiffs,	)	
vs.	)	**MOTION TO STAY AND COMPEL ARBITRATION**
	)	
Benson Hyundai, LLC,	)	
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Defendant, Benson Hyundai, LLC, move before the Judge of the Seventh Judicial Circuit at such time and place as this Court may designate, pursuant to Rule 12(b)(1) (lack of jurisdiction over the subject matter) of the South Carolina Rules of Civil Procedure for an Order Compelling Arbitration as Plaintiffs agreed to in their contract with Benson Hyundai, LLC.

1. The Complaint alleges six causes of action (Breach of a Written Contract, Breach of Oral Agreements, Negligence, Violation of the South Carolina Motor Vehicle Dealer's Act, Violation of the South Carolina Unfair Trade Practices Act, and Negligent Misrepresentation) against Benson Hyundai that all arise out of Plaintiffs' conditional agreements for the purchase of a vehicle. The car involved is a 2016 Hyundai Veloster manufactured in a state other than South Carolina and sold in South Carolina. Therefore, this transaction involves interstate commerce. Furthermore, Plaintiffs reside and work in Georgia.

2. Plaintiff signed a document entitled "Benson Arbitration Policies and Procedures" which stated, in capital letters, on an 11 X 17 (standard size paper is 8 ½ X 11) sheet of paper:

ARBITRATION POLICIES AND PROCEDURES

Benson's Policies and Procedures are intended to provide the exclusive means of resolving all Disputes, as defined below, which may arise between an individual and

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> Benson. In consideration for their mutual promises, both parties, by entering into the Agreement, give up their right to trial by court or by jury.

Arbitration Agreement (Exhibit A)

3. Plaintiffs also read and agreed that the contract "evidences a 'transaction involving commerce' under the Federal Arbitration Act...and is subject to the FAA."

4. The Arbitration Agreement defines the disputes that are subject to arbitration as follows:

> DISPUTES SUBJECT TO ARBITRATION. Disputes subject to arbitration are any claim or dispute, whether in contract, tort, statute or otherwise (*including the interpretation and scope of this Arbitration Agreement, and the arbitrability of the claim or dispute*), between Customer and Benson or our employees, agents, successors, or assigns, which arise out of or relate to Customer's credit application, purchase or condition of this vehicle. Customer's purchase or financing contract or any resulting transaction or relationship. Also, subject to arbitration are disputes involving any person or entity whose liability or right of recovery derives from a Dispute that is covered by this Agreement.

(Ex. A, ¶3) The claims asserted by Plaintiff are expressly and impliedly covered by the terms of the Arbitration Agreement.

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

6. The Federal Arbitration Act preempts state law rules and holdings that invalidate the parties' agreement to arbitrate. *See AT&T Mobility v. Concepcion*, 563 U.S. 333, 131 S.Ct. 1740 (2011).

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7. Furthermore, after attempting to resolve any disputes prior to formal legal proceedings, Benson Hyundai initiated arbitration on May 8, 2017, serving both Plaintiffs and their counsel with an Arbitration Complaint. (Ex. B)

8. On June 12, 2017, Plaintiffs filed an Answer to Benson Hyundai's Arbitration Complaint, thereby acceding jurisdiction (Ex. C). On the same date, Plaintiffs also filed a Counterclaim, Motion to Stay, and Motion to Dismiss, *Id.*, again, acknowledging binding arbitration as the proper jurisdiction.

9. On July 10, 2017, Benson Hyundai was served a Summons and Complaint by Plaintiffs in Circuit Court (Ex. D). This Complaint arises from the same set of facts and legal issues that have already been raised by both parties in the action already pending pursuant to FAA rules. The lawsuit therefore involves a dispute which is subject to arbitration.

10. The Arbitration Agreement contains a paragraph addressing the filing of a lawsuit:

> 9. *FILING OF LAWSUIT.* In the event a party to the Agreement files a lawsuit involving a Dispute which is subject to arbitration, the other party shall give notice of the existence of this Agreement. If the lawsuit is not voluntarily stayed or dismissed with ten (10) calendar days of service of that notice, the party filing the lawsuit shall be liable for any and all costs and attorneys' fees incurred by the other party in successfully staying or dismissing the lawsuit.

11. Benson's attorney sent a request to Plaintiffs' attorney requesting they stay or dismiss the lawsuit on July 29, 2017 (Ex. E). Plaintiffs' have failed to do so.

12. Therefore, pursuant 9 U.S.C. §4, Benson Hyundai seeks an order compelling Plaintiffs to proceed in the manner provided in the Arbitration Agreement, to require them to arbitrate each and every claim they may have against Benson Hyundai, (as they have already done).

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

August 9, 2017

Respectfully submitted,

s/Bradford N. Martin

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ATTORNEYS FOR BENSON HYUNDAI, LLC

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BENSON
ARBITRATION POLICIES AND PROCEDURES

Benson's Policies and Procedures are intended to provide the exclusive means of resolving all Disputes, as defined below, which may arise between an individual and Benson. In consideration for their mutual promises, both parties, by entering into the Agreement, give up their right to trial by court or by jury. This Agreement evidences a "transaction involving commerce" under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 and is subject to the FAA. In the event that it is determined that the FAA does not apply, then the Agreement shall be enforced by the South Carolina Arbitration Act.

Description of Vehicle: 2016 HYUNDAI VELOSTER Customer: Buyer CARLEE ROBIN SIMMONS

Co-Buyer DONALD LAWRENCE SIMMONS

1. *PARTIES.* For purposes of the Policies and Procedures, the term "Benson" shall include Benson Cadillac-Nissan, Benson Chrysler, Benson Ford, as well as any other affiliated entity, parent or subsidiary, their successors and assigns and all of their owners, shareholders, managers and agents. "Customer" shall include the Buyer and Co-Buyer listed above.
2. *DISPUTES SUBJECT TO ARBITRATION.* Disputes subject to arbitration are any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Agreement, and the arbitrability of the claim or dispute), between Customer and Benson or our employees, agents, successors or assigns, which arise out of or relate to Customer's credit application, purchase or condition of this vehicle, Customer's purchase or financing contract or any resulting transaction or relationship. Also subject to arbitration are disputes involving any person or entity whose liability or right of recovery derives from a Dispute that is covered by this Agreement (e.g. partner, agent, subsidiary or parent corporation, affiliate, shareholder, successor or assign of a party).
3. *DISPUTES THAT MAY BE ADDRESSED OUTSIDE OF ARBITRATION.* If the Claim or Dispute is within the jurisdiction of the small claims court in the State, either Benson or Customer may take the dispute to small claims court rather than to arbitration. Also, this Agreement to arbitrate does not limit the rights of Benson or Customer, whether before, during, or after the pendency of any arbitration proceeding, to exercise self-help remedies such as set-off, repossession, and the like. This Agreement to arbitrate does not limit Benson or Customer, whether before or during the pendency of any arbitration proceeding to bring an action individually to obtain provisional or ancillary remedies or injunctive relief (other than a stay of arbitration) to protect the rights or property of the party seeking such relief. However, the arbitrator(s) shall have the power to vacate and/or stay any such proceedings or orders granting provisional or ancillary remedies or injunctive relief, upon application by Benson or Customer. The taking by either Customer or Benson of any of the self-help remedies or by filing any action in court or before an administrative agency, including but not limited to the actions described in the preceding sentence, shall not be deemed to be a waiver of the right to elect BINDING ARBITRATION of any Claim upon the filing of a counter claim or the like by either Benson or Customer in response to any such action.
4. *AGREEMENT NOT TO PARTICIPATE IN CLASS OR GROUP ACTION.* Because all of the above disputes are subject to arbitration, you agree that there will be no right to participate as a class or group representative or class or group member of any class or group claim you may have against Benson, including any right to class or group arbitration or any consolidation of individual arbitrations.
5. *AUTHORITY OF THE ARBITRATOR.*
   a. Action by either party for a temporary restraining order or other preliminary injunctive relief may be pursued in a court of competent jurisdiction pending resolution of the underlying dispute in arbitration.
   b. Resolution of Disputes shall be based solely upon the law governing the claims and defenses asserted. The Arbitrator shall have the authority of a trial court judge sitting without a jury, but may not add to, modify, invalidate or ignore any provision of the Agreement or the Policies and Procedures, nor may the Arbitrator invoke any basis (such as "just cause" or seniority") other than controlling law. The Arbitrator shall be a former federal judge or federal magistrate judge, a former judge of a state court of general jurisdiction or state appellate court or an experienced attorney, selected as provided under the Policies and Procedures.

I AGREE TO ARBITRATE ANY DISPUTES AND UNDERSTAND THAT I AM GIVING UP MY RIGHT TO A JURY AND TO PARTICIPATE IN A CLASS OR GROUP ACTION.

07/26/16 Carlee Robin Simmons
Date Buyer

07/26/16 Donald Lawrence Simmons
Date Co-Buyer

07/26/16
Date Dealer/Benson

I AGREE THAT THE FOLLOWING RULES GOVERN ANY ARBITRATION BETWEEN THE PARTIES.

07/26/16 Carlee Robin Simmons
Date Buyer

07/26/16 Donald Lawrence Simmons
Date Co-Buyer

07/26/16
Date

EX A 57

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07/26/16
Date

Dealer: Benson

I AGREE THAT THE FOLLOWING RULES GOVERN ANY ARBITRATION BETWEEN THE PARTIES.

07/26/16
Date

Buyer

07/26/16
Date

Co-Buyer

07/26/16
Date

Dealer: Benson

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

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

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

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

10. REQUEST FOR ARBITRATION.

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

1. To initiate arbitration, the Claimant must submit a written "Request for Arbitration" ("RFA") by hand delivery or certified mail with return receipt to the Arbitration Administrator who shall be Tony Benson or his designee, and serve a copy of the RFA on the party or parties against whom the claim is brought (Respondents) by having it hand-delivered to each Respondent or by certified mail with return receipt.

2. An RFA form may be obtained from the Arbitration Administrator. The party requesting arbitration must identify persons having knowledge regarding the Dispute, the issue(s) to be arbitrated, the legal rights upon which the claims are founded (if known), the facts relevant to the Dispute, and the remedies sought. All related claims must be asserted in the same arbitration and failure to assert such a claim shall constitute a full release of the Respondent.

3. A filing fee in the amount of $250 made payable to Benson must be deposited with the Arbitration Administrator. The filing fee will be applied against the cost of the arbitration and any unused portion shall be returned. If the filing fee is not deposited as required, the Arbitration Administrator shall immediately so notify the delinquent claimant by certified mail or hand delivery. If the Claimant does not make the required deposit within five (5) days of receipt of the notification, the RFA shall be void, the same as if it had never been filed. When the Claimant asserts financial inability to pay the filing fee, the Arbitrator shall determine whether to waive this requirement using the same standard applied by federal courts.

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

11. RESPONSE, OTHER CLAIMS AND AMENDMENTS.

a. When a Response is Due. Within thirty (30) calendar days of a Respondent's receipt of the RFA, Respondent shall serve a response on all parties and provide a copy to the Arbitration Administrator.

b. Contents of the Response. The Response shall be on the form supplied by the Arbitration Administrator. The Response shall identify additional issues to be arbitrated, persons having knowledge regarding the Dispute, legal defenses which will be relied upon (if known), and facts relevant to the Dispute.

c. Counter-RFA. If the Respondent has a Dispute with the Claimant which has not been identified in the RFA but arises out of the same factual circumstances as the RFA, the Respondent must assert the Dispute as a Counter-RFA, with failure to do so constituting a full release of the Claimant.

d. Reply to the Counter-RFA. Within ten (10) calendar days from the service of the Counter-RFA, the Claimant shall serve a Response. The Reply shall conform to the content requirements of a Response.

e. Adding and Changing Disputes. At any time prior to the Initial Conference, any party may amend, add, or withdraw a Dispute as of right. Thereafter, no Dispute or Claim may be added except by motion to the Arbitrator, upon showing that manifest injustice would result from failure to permit the amendment and that the party did not have notice of the facts and circumstances relating to such Dispute or Claim at the time of the Initial Conference.

f. Additional RFAs. The Respondent to the Initial RFA may serve other non-parties who are subject to the Arbitration Agreement with an RFA if that person may be liable in whole or in part for the damages alleged in the initial RFA or Response. An "additional" RFA is treated the same as an initial RFA with regard to the receiving party.

g. Unavailable Non-Parties. Where a non-party who is alleged by either party to be jointly or partly responsible for [illegible] who is allowed to share a Claim is not subject to this Arbitration

EX. A 58

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of the appeal and any further proceedings pursuant to the appeal shall then constitute the final award, which may be enforced by a court as provided by law.

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

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

10. REQUEST FOR ARBITRATION.

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

1. To initiate arbitration, the Claimant must submit a written "Request for Arbitration" ("RFA") by hand delivery or certified mail with return receipt to the Arbitration Administrator who shall be Tony Benson or his designee, and serve a copy of the RFA on the party or parties against whom the claim is brought (Respondents) by having it hand-delivered to each Respondent or by certified mail with return receipt.

2. An RFA form may be obtained from the Arbitration Administrator. The party requesting arbitration must identify persons having knowledge regarding the Dispute, the issue(s) to be arbitrated, the legal rights upon which the claims are founded (if known), the facts relevant to the Dispute, and the remedies sought. All related claims must be asserted in the same arbitration and failure to assert such a claim shall constitute a full release of the Respondent.

3. A filing fee in the amount of $250 made payable to Benson must be deposited with the Arbitration Administrator. The filing fee will be applied against the cost of the arbitration and any unused portion shall be returned. If the filing fee is not deposited as required, the Arbitration Administrator shall immediately so notify the delinquent claimant by certified mail or hand delivery. If the Claimant does not make the required deposit within five (5) days of receipt of the notification, the RFA shall be void, the same as if it had never been filed. When the Claimant asserts financial inability to pay the filing fee, the Arbitrator shall determine whether to waive this requirement using the same standard applied by federal courts.

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

11. RESPONSE, OTHER CLAIMS AND AMENDMENTS.

a. When a Response is Due. Within thirty (30) calendar days of a Respondent's receipt of the RFA, Respondent shall serve a response on all parties and provide a copy to the Arbitration Administrator.

b. Contents of the Response. The Response shall be on the form supplied by the Arbitration Administrator. The Response shall identify additional issues to be arbitrated, persons having knowledge regarding the Dispute, legal defenses which will be relied upon (if known), and facts relevant to the Dispute.

c. Counter-RFA. If the Respondent has a Dispute with the Claimant which has not been identified in the RFA but arises out of the same factual circumstances as the RFA, the Respondent must assert the Dispute as a Counter-RFA, with failure to do so constituting a full release of the Claimant.

d. Reply to the Counter-RFA. Within ten (10) calendar days from the service of the Counter-RFA, the Claimant shall serve a Response. The Reply shall conform to the content requirements of a Response.

e. Adding and Changing Disputes. At any time prior to the Initial Conference, any party may amend, add, or withdraw a Dispute as of right. Thereafter, no Dispute or Claim may be added except by motion to the Arbitrator, upon showing that manifest injustice would result from failure to permit the amendment and that the party did not have notice of the facts and circumstances relating to such Dispute or Claim at the time of the Initial Conference.

f. Additional RFAs. The Respondent to the Initial RFA may serve other non-parties who are subject to the Arbitration Agreement with an RFA if that person may be liable, in whole or in part, for the damages alleged in the initial RFA or Response. An "additional" RFA is treated the same as an initial RFA with regard to the receiving party.

g. Unavailable Non-Parties. Where a non-party who is alleged by either party to be jointly or partly responsible for injuries alleged, or who is alleged to share a Claim, is not subject to the Arbitration Agreement or is otherwise unavailable, the arbitration shall proceed notwithstanding the absence of said party and the Arbitrator shall fashion an award which is fair and equitable to all parties, given the absence of the non-party. In order to protect a party against multiple or inconsistent judgments, the Arbitrator may, in the interest of justice, require a party to proceed with a claim against a non-party to a final resolution or waive any such Claim prior to proceeding with the arbitration.

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

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

14. SELECTION OF AN ARBITRATOR.

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

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

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

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

d. Disqualification or Other Disability.

1. Challenge to Qualifications. Any party, upon learning of a reason that would disqualify the Arbitrator from deciding the Dispute, may request that the Arbitrator recuse herself or himself. The Arbitrator shall rule upon the request applying the standards a judge would use in deciding a motion to recuse in South Carolina.

2. Inability to Serve. In the event that an Arbitrator should resign, die, withdraw, or otherwise be unable to perform as an Arbitrator, the process for selecting an Arbitrator shall be repeated.

15. *SCOPE OF ARBITRAL AUTHORITY*

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

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

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

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

17. *REQUIRED CONFERENCES*

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

b. Final Pre-Arbitration Conference. Prior to the arbitration hearing, the Arbitrator shall conduct a final conference to address and determine, at a minimum, the issues to be arbitrated, the form of the award, evidentiary issues, dispositive motions, location, and time, and date, for the arbitration and any other issues relating to the subject matter or conduct of the arbitration.

18. *DISCOVERY*

a. Arbitrator's Authority to Order Discovery. The Arbitrator shall have the authority to order and enforce such discovery, by way of deposition, interrogatory, document production, independent medical examination, or otherwise (collectively referred to as "Information Requests"), as the Arbitrator considers necessary to a full and fair exploration of the issues in Dispute.

b. Discovery Requests. Any party may conduct discovery after the Arbitrator is selected. Discovery need not be filed with the Arbitrator unless necessary for the resolution of any motion. Unless a greater time is allowed by the requesting party, Information Requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. The form and content of the request for discovery and responses thereto, shall be the same as required by Rules 26, 30, 32, 33, 34, and 35 of the Federal Rules of Civil Procedure.

c. Limitations Upon Discovery. The discovery taken by each party shall be limited as set forth below, except that the parties may agree to modify these limitations, and absent an agreement, the Arbitrator may upon motion by a party which demonstrates a compelling need for additional discovery, expand these discovery limitations.

1. Depositions. The number of depositions to be taken by each party shall not exceed five (5).

2. Interrogatories. The number of written interrogatories requested by a party at any one time or cumulatively shall not exceed thirty (30). Each subdivision of an interrogatory shall be construed as a separate interrogatory.

3. Document Requests. The number of requests for documents by a party at any one time or cumulatively including by subpoena addressed to a party or the party's agent, shall not exceed thirty (30).

d. Compelling Discovery. Upon written motion to the Arbitrator by a party whose information is unsatisfied, the matter will be resolved by the Arbitrator pursuant to this section and 18. g., below. Any request for resolution by the Arbitrator must be accompanied by a statement that the parties have attempted in good faith but failed to resolve their discovery dispute, and must explain what good faith efforts were made. Upon request, the Arbitrator shall issue subpoenas to compel the attendance and testimony of a witness and/or the production of documents. A party shall respond to a motion to compel within fourteen (14) days.

e. Discovery of Experts. A party may through Information Requests require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. A party may also depose the expert. Unless manifest injustice would result, the Arbitrator shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this Rule.

f. Supplementation of Discovery. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

1. A party is under a duty to seasonably supplement the response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert is expected to testify and the substance of the expert testimony.

2. A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which (a) the party knows that the response was incorrect when made, or (b) the party knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment, or (c) a duty to supplement responses may be imposed by order of the Arbitrator, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

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

1. The Arbitrator should order production where the discovery request seeks evidence which is relevant or reasonably calculated to lead to the discovery of admissible evidence;

2. The Arbitrator should refuse to order production of Information Requests which are unreasonably cumulative, burdensome, or duplicative, or which exceed the discovery limits set forth in 18. c.;

3. The Arbitrator should refuse to order production of requests that seek documents which are prepared in anticipation of arbitration or litigation by or for a party or by or for that party's attorney, consultant, surety, indemnitor, insurer, or agent unless the requesting party shows that it has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Arbitrator shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the arbitration or litigation;

4. The Arbitrator may make any ruling to protect any party to the arbitration from unreasonable discovery requests and may issue any other discovery order which justice requires;

5. The Arbitrator should look to the terms of Rules 26, 30, 32, 33, 34, 35 and 37 of the Federal Rules of Civil Procedure and federal cases interpreting those Rules for guidance in resolving discovery disputes; and

EX. A 60

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a separate interrogatory.

3. Document Requests. The number of requests for documents by a party at any one time or cumulatively including by subpoena addressed to a party or the party's agent, shall not exceed thirty (30).

d. Compelling Discovery. Upon written motion to the Arbitrator by a party whose information is unsatisfied, the matter will be resolved by the Arbitrator pursuant to this section and 18. g., below. Any request for resolution by the Arbitrator must be accompanied by a statement that the parties have attempted in good faith but failed to resolve their discovery dispute, and must explain what good faith efforts were made. Upon request, the Arbitrator shall issue subpoenas to compel the attendance and testimony of a witness and/or the production of documents. A party shall respond to a motion to compel within fourteen (14) days.

e. Discovery of Experts. A party may through Information Requests require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. A party may also depose the expert. Unless manifest injustice would result, the Arbitrator shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this Rule.

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2. A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which (a) the party knows that the response was incorrect when made, or (b) the party knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment, or (c) a duty to supplement responses may be imposed by order of the Arbitrator, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

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1. The Arbitrator should order production where the discovery request seeks evidence which is relevant or reasonably calculated to lead to the discovery of admissible evidence;

2. The Arbitrator should refuse to order production of Information Requests which are unreasonably cumulative, burdensome, or duplicative, or which exceed the discovery limits set forth in 18. c.;

3. The Arbitrator should refuse to order production of requests that seek documents which are prepared in anticipation of arbitration or litigation by or for a party or by or for that party's attorney, consultant, surety, indemnitor, insurer, or agent unless the requesting party shows that it has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Arbitrator shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the arbitration or litigation;

4. The Arbitrator may make any ruling to protect any party to the arbitration from unreasonable discovery requests and may issue any other discovery order which justice requires;

5. The Arbitrator should look to the terms of Rules 26, 30, 32, 33, 34, 35 and 37 of the Federal Rules of Civil Procedure and federal cases interpreting those Rules for guidance in resolving discovery disputes; and

6. The Arbitrator may assess the Arbitrator's costs and/or award reasonable attorneys' fees and costs incurred in hearing and resolving any discovery dispute against the losing party to such discovery dispute, if the losing party's position was not substantially justified.

h. Time Limitations for Discovery. Because it is the parties' intent that these procedures be expedited to the greatest extent possible, all requests for discovery must be initiated such that discovery can be completed no more than ninety (90) calendar days after the date of the Initial Conference.

19. *SUMMARY JUDGMENT*

a. Time Requirements. A party may, at any time after the expiration of thirty (30) calendar days from the Initial Conference, move for summary judgment upon all or any part of a disputed claim. A party must file a response or opposition to a motion for summary judgment within thirty (30) days of service of the motion. Any reply must be served within fifteen (15) days of service of the response.

b. Standard. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Arbitrator may permit affidavits to be supplemented or opposed by depositions, answers to Information Requests, or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue for the hearing. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. Summary Judgment is appropriate if the pleadings, depositions, and answers to information requests, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A party opposing summary judgment does not raise genuine issues of material fact by contradicting that party's own prior sworn statement unless said party explains to the satisfaction of the Arbitrator the reason for the subsequent change and shows that the subsequent changed testimony or statement is more likely true than the former testimony or statement which the party would contradict. In construing and applying this section, the Arbitrator should look to Rule 56 of the Federal Rules of Civil Procedure.

20. *ARBITRATION HEARING*

a. Hearing Requirement-Waiver of Hearing. A hearing shall be held to resolve a Dispute which is not decided by dismissal or summary judgment, unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings, documentary evidence, and briefs submitted. The Arbitrator shall determine the time and date of the hearing which shall be held no later than one hundred eighty (180) days following the selection of the Arbitrator. Notice of the hearing date shall be given at least thirty (30) calendar days prior to the hearing.

b. Failure to Appear. The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement.

c. Attendance at Hearings. The Arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The Arbitrator shall exclude any persons whose presence is not necessary to the resolution of the Dispute. All parties, including a corporate representative, shall have the right to be present during the proceedings.

d. Burden of Proof. The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their Dispute had been brought in court.

e. Evidence. The Arbitrator shall determine the materiality and relevance of any evidence proffered and shall be bound by rules governing the admissibility of evidence contained in the Federal Rules of Evidence.

f. Record of Proceedings. A verbatim record of all arbitration hearings may be kept by stenographic reporter or tape recording. If a party or parties to a Dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless a non-requesting party subsequently requests a copy of the transcript in which case the total costs of transcription (including duplicate copies, court reporter's fee and Arbitrator's copy) shall be borne equally by all parties having access to the transcript.

g. Oaths of the Witnesses. All testimony shall be under oath or affirmation administered by the Arbitrator.

h. Confidentiality of Hearings. The Arbitrator shall maintain the confidentiality of the hearings and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.

i. Post-Hearing Briefs. At any party's election, or at the request of the Arbitrator, post-hearing briefs may be filed by the parties, and the record shall not be deemed to be closed until the last day on which briefs could be timely submitted; provided, however, that no such briefs shall contain or refer to evidence not adduced at the hearing.

j. Privileged Communications. The Arbitrator shall have the immunity of a judicial officer from civil liability, when acting in the capacity of an Arbitrator, which immunity supplements any other

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h. Time Limitations for Discovery. Because it is the parties' intent that these procedures be expedited to the greatest [illegible] can be completed no more than ninety (90) calendar days after the date of the Initial Conference.

19. *SUMMARY JUDGMENT*

a. Time Requirements. A party may, at any time after the expiration of thirty (30) calendar days from the Initial Conference, move for summary judgment upon all or any part of a disputed claim. A party must file a response or opposition to a motion for summary judgment within thirty (30) days of service of the motion. Any reply must be served within fifteen (15) days of service of the response.

b. Standard. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Arbitrator may permit affidavits to be supplemented or opposed by depositions, answers to Information Requests, or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue for the hearing. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. Summary Judgment is appropriate if the pleadings, depositions, and answers to information requests, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A party opposing summary judgment does not raise genuine issues of material fact by contradicting that party's own prior sworn statement unless said party explains to the satisfaction of the Arbitrator the reason for the subsequent change and shows that the subsequent changed testimony or statement is more likely true than the former testimony or statement which the party would contradict. In construing and applying this section, the Arbitrator should look to Rule 56 of the Federal Rules of Civil Procedure.

20. *ARBITRATION HEARING*

a. Hearing Requirement-Waiver of Hearing. A hearing shall be held to resolve a Dispute which is not decided by dismissal or summary judgment, unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings, documentary evidence, and briefs submitted. The Arbitrator shall determine the time and date of the hearing which shall be held no later than one hundred eighty (180) days following the selection of the Arbitrator. Notice of the hearing date shall be given at least thirty (30) calendar days prior to the hearing.

b. Failure to Appear. The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement.

c. Attendance at Hearings. The Arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The Arbitrator shall exclude any persons whose presence is not necessary to the resolution of the Dispute. All parties, including a corporate representative, shall have the right to be present during the proceedings.

d. Burden of Proof. The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their Dispute had been brought in court.

e. Evidence. The Arbitrator shall determine the materiality and relevance of any evidence proffered and shall be bound by rules governing the admissibility of evidence contained in the Federal Rules of Evidence.

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g. Oaths of the Witnesses. All testimony shall be under oath or affirmation administered by the Arbitrator.

h. Confidentiality of Hearings. The Arbitrator shall maintain the confidentiality of the hearings and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.

i. Post-Hearing Briefs. At any party's election, or at the discretion of the Arbitrator, the parties may submit post-hearing briefs to the Arbitrator, and the record shall not be deemed to be closed until the last day on which briefs could be timely submitted; provided, however, that no such briefs shall contain or refer to evidence not adduced at the hearing.

j. Privileged Communications. The Arbitrator shall have the immunity of a judicial officer from civil liability, when acting in the capacity of an Arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or in connection with the arbitration proceedings are privileged in accordance with state law applicable to judicial proceedings.

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

22. *COSTS AND FEES*

a. Filing Fee. Upon the filing of an RFA, the party so filing shall pay a filing fee of $250.00 made payable to Benson. The filing fee shall be applied to administrative costs and Arbitrator's fees and expenses.

b. Expense of Arbitration. Except as otherwise provided in this paragraph, the Arbitrator's fees and expenses, together with the other expenses, not including attorneys' fees, incurred in the conduct of the arbitration, shall be paid by Benson.

c. Costs and Attorneys' Fees. The prevailing party shall be awarded costs of the Arbitration, including the filing fee, subpoena service fees and witness fees, deposition and hearing transcription costs and similar expenses, but not including expert fees unless the expert testimony was necessary to establishing or refuting liability. In cases where a party asserts any claim, position or defense that is not substantially justified by the law or facts, the Arbitrator shall award to the opposing party that party's reasonable attorneys' fees incurred as a result of that party's defending any such claim, position or defense.

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

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

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

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

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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

May 9, 2017

Donald and Carlee Simmons
[redacted]

RE: Hyundai Veloster

Dear Mr. and Mrs. Simmons:

Attached please find a Request for Arbitration with attached Complaint, which is being served upon you in accordance with Benson Hyundai's Arbitration Policies and Procedures. Please respond within thirty days using the form provided.

Sincerely,

James A. Benson

cc: Warren Moise, Esq. *via email*

Main – P. O. BOX 8669 • SPARTANBURG, SC 29305 • 864-585-3611
Nissan – 1100 N. PINE STREET • SPARTANBURG, SC 29303 • 864-585-3611
KIA – 1098 N. PINE STREET • SPARTANBURG, SC 29303 • 864-699-9090
Hyundai – 2550 REIDVILLE ROAD • SPARTANBURG, SC • 864-541-0029

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

STATE OF SOUTH CAROLINA	**ARBITRATION**
COUNTY OF SPARTANBURG	**FOR THE 7TH JUDICIAL CIRCUIT**
Benson Hyundai, LLC	No. _____
Plaintiff,	
vs.	**COMPLAINT**
Carlee Robin Simmons and Donald Lawrence Simmons	
Defendants.	

The Plaintiff, Benson Hyundai, LLC ("Benson") complaining of Defendants, would respectfully show to the Court:

INTRODUCTION

1. Business depends upon people keeping their word. This is a case where an out-of-state couple came in to purchase a vehicle from Benson Hyundai. After selecting the vehicle they wished to purchase, they requested Benson to see if they could get approved for a loan, since they did not have the funds to buy the car.

2. The couple had blocked their credit at the time of the purchase. Benson Hyundai was able to see the actual credit score of Mrs. Simmons, which was good. Armed with this fact and that Hyundai Financing had previously financed this couple on another vehicle, Benson Hyundai allowed the couple to drive the vehicle home to Macon, Georgia. The Simmons agreed in writing that they would unblock their credit and return the car if financing was not approved.

3. Benson Hyundai was unable to obtain financing through Hyundai Financing and therefore, the Simmons were obligated to return the vehicle. They failed to do this. Therefore, the Simmons have enjoyed the use and control of the car that does not belong to them for approximately 10 months and have refused to keep their word to return the car.

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THE PARTIES

4. Plaintiff Benson Hyundai, LLC is a corporation organized under the laws of the State of South Carolina and which does business in Spartanburg County, South Carolina.

5. Defendants Carlee Robin Simmons and Donald Lawrence Simmons ("The Simmons" collectively), upon information and belief, are citizens and residents of Macon County, Georgia.

JURISDICTION & VENUE

6. Jurisdiction and venue in this Court are proper. The most substantial part of the acts or omissions giving rise to this matter occurred in Spartanburg County, South Carolina.

FACTS

7. On or about July 26, 2016, the Simmons came to Benson Hyundai interested in purchasing a new car.

8. After exploring the cars at Benson Hyundai, the Simmons decided to purchase a 2016 Hyundai Veloster Turbo VIN # KMHTC6AE5GU281969. Salesman Robert Winecoff informed the Simmons that this car cost $26,691.00, as it was also displayed on the car. Carlee Simmons agreed to this price and acknowledged this purchase on the initial Retail Buyer's Order with her signature. (Exhibit A)

9. The Simmons expressed that they wanted to trade in their 2006 Saab 9-2X VIN # JF4GG61646H050029 to lower the purchase price of the Veloster. Benson Hyundai gave a $3500 trade-in allowance to be applied to the price of the Veloster. (Exhibit A)

10. The Simmons were then directed to the Financial and Insurance Office to complete their transaction. The paperwork completed in the F&I office was mistakenly inputted,

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listing the price of the Veloster at $19,600.00, an error in the Simmons' favor in the amount of $7,091. (Exhibit B)

11. Carlee Simmons signed this new Retail Buyer's Order but never pointed out the mistake.

12. Also, in the F&I Office, Benson was able to pull up Carlee's credit score, which was in the approximately 800 range. Benson was also able to see that Hyundai Finance had previously approved the Simmons for an earlier car loan. However, because Carlee's credit was blocked, Benson was unable to pull a full credit report. Hyundai Motor Financing requires a full credit report prior to financing any vehicles. (Exhibit C)

13. Prior to leaving with the car, however, Carlee signed a Special Delivery Agreement. This document specifically stated:

> If Seller does not receive approval from a financial source for assignment of the Contract on terms acceptable to Seller, Buyer agrees that upon notice from Seller, Buyer shall return the vehicle in good condition without excess mileage and the sales transaction may be rescinded. Seller retains a priority security interest in the vehicle, Seller shall be entitled to all statutory and common law remedies including, but not limited to, the right of self-help, repossession, collection/repossession costs, reasonable interest and reasonable attorney's fees.

(Exhibit D)

14. The transaction occurred late at night and the Simmons agreed to call the next day to unblock their credit. Based on the credit score and the fact that the Simmons had previously been financed by Benson Hyundai, Benson allowed the Simmons to leave that evening with the vehicle.

15. The following day the F&I Manager began to review the previous day's sales. He noticed the discrepancy in the price agreed upon with the salesman and the price that was entered

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into the Retail Buyer's Order. He called the Simmons and asked if they were aware of the mistake and asked if they would be willing to fix it. They said they would call the dealership back regarding this matter. About an hour later, Benson Hyundai received a call from an attorney representing the Simmons who refused to acknowledge the obvious mistake.

16. Benson Hyundai indicated to the attorney that it would honor the lower price, ultimately saving the Simmons $7,091.00 and selling the car for less than Benson Hyundai had paid for it.

17. On August 6, 2016, Benson Hyundai submitted the requisite paperwork to Hyundai Motor Finance in an attempt to finance Donald Simmons. Hyundai Finance ran the Simmons credit report and were informed that it was blocked. (Exhibit E). On August 12, 2016, Benson Hyundai again submitted the requisite paperwork and Hyundai Finance ran Donald's credit report and were informed that it was blocked. (Exhibit F). On August 18, 2016, Benson Hyundai again submitted the requisite paperwork; Hyundai Finance ran Donald's credit report and were informed that it was blocked. (Exhibit G)

19. On August 26, 2016, Benson Hyundai again submitted the requisite paperwork and Hyundai Finance ran Donald's credit report and was informed that it was blocked. (Exhibit H). On August 28, 2016, Benson Hyundai again submitted the requisite paperwork to Hyundai Motor Finance in an attempt to finance Donald Simmons. Hyundai Finance ran Donald's credit report and were informed that it was blocked. (Exhibit I). On September 3, 2016, Benson Hyundai again submitted the requisite paperwork and Hyundai Finance ran Donald's credit report and were informed that it was blocked. (Exhibit J).

20. On August 6, 2016, Benson Hyundai submitted the requisite paperwork and Hyundai Finance ran Carlee's credit report and were informed that it was blocked. (Exhibit K).

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In total, Benson Hyundai tried six different dates to get the loan approved and to no avail. On August 12, 2016, Benson Hyundai again submitted the requisite paperwork and Hyundai Finance sent a letter sent to Carlee Simmons stating that her application was denied. (Ex. L). Hyundai Finance listed "too many accounts with balances, too many inquiries in the last 12 months, and too few account currently paid as agreed" as the reasons for the denial.

21. Upon information and belief, Hyundai Finance called the Simmons requesting that they unblock their credit.

22. Under the terms of the Special Delivery Agreement, the Simmons should have then immediately returned the vehicle. (Exhibit D) However, the Defendants refused to return the car.

23. Benson Hyundai contacted the Simmons' and offered to help them find alternate financing. The Simmons refused and continued to refuse to return the car.

23. Benson Hyundai then hired a company to repossess the vehicle that was rightfully owned by them. Upon information and belief, the Simmons either blocked the vehicle in so that a tow truck could not get to it or outright hid the vehicle.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

24. The allegations of the previous paragraphs not inconsistent are incorporated by reference.

25. Plaintiff and Defendants entered into a Special Delivery Agreement on July 26, 2016 (Ex. D). The parties clearly and unequivocally agreed that Benson Hyundai would allow the Simmons to take the vehicle off the lot; however, the possession and ownership was contingent upon a financial source approving their contingent loan agreement.

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26. Benson Hyundai did not receive approval from a financial source and duly informed Defendants.

27. The Contract required Defendants to return the car in sound condition without excess mileage. Defendants have refused and have hidden the car.

28. Defendants also agreed that Benson Hyundai was entitled to all statutory and common law remedies including, but not limited to, the right to self help, repossession, collection/repossession costs, reasonable interest and reasonable attorneys' fees.

29. Due to Defendants breach, Benson Hyundai has suffered the damages mentioned in paragraph 27, and requests an award from the arbitration for these damages.

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

30. The allegations of the previous paragraphs not inconsistent are incorporated by reference.

31. As set forth above, Defendants breached the contract with Benson Hyundai by failing to return the vehicle when proper financing was not obtained.

32. Defendants' breach was accompanied by a fraudulent act of hiding the vehicle to avoid repossession.

33. As a result, Benson Hyundai has suffered damages and is entitled to actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Conversion)

34. The allegations of the previous paragraphs not inconsistent are incorporated by reference.

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35. Benson Hyundai had a right to possession of the vehicle in that the entire sale of the vehicle was contingent upon obtaining proper financing.

36. Defendants intentionally and wrongfully deprived Benson Hyundai of its possession of the vehicle by failing to return the vehicle to Benson Hyundai and evading repossession.

37. Benson Hyundai has been harmed as a result of Defendants' actions and believes that it is entitled to repossession and judgment against Defendants for actual damages, punitive damages, and prejudgment interest.

FOR A FOURTH CAUSE OF ACTION
(Constructive Trust)

38. The allegations of the previous paragraphs not inconsistent are incorporated by reference.

39. Defendants have unlawfully deprived Benson Hyundai of possession of the vehicle in violation of South Carolina law.

40. The vehicle which Defendants have taken should therefore be held in a constructive trust by the Arbitrator for the benefit of Benson Hyundai until the case is resolved.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for repossession, actual damages for the depreciation of the vehicle, consequential damages, attorneys fees, prejudgment interest, punitive damages, costs, and for such other and further relief as this Arbitrator may deem just and proper.

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May 9, 2017

Respectfully submitted,

Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
Ann Marie Howell, Esq. (SC Bar No. 76121)
BRADFORD N. MARTIN & ASSOCIATES, P.A.
Post Office Box 10410
Greenville, South Carolina 29603
864.552.9990
864.552.9992 (facsimile)
bmartin@bnmlaw.com

ATTORNEYS FOR PLAINTIFF BENSON HYUNDAI, LLC

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Ex. B

7/26/2016

Worksheet

2550 Reidville Road
Spartanburg, SC 29301
Phone: (864) 541-0029

BIRTHDAY INFORMATION

BUYER [redacted]
CO-BUYER [redacted]
ANNIVERSARY
E-MAIL
1) DRIVER LIC#
2) DRIVER LIC# [redacted]

South Carolina and North Carolina require names and addresses on deal to match names and addresses on driver's licenses.

RETAIL BUYER'S ORDER

CUST. NO
DATE 07/26/2016
WORK PHONE [redacted]
HOME PHONE [redacted]

THE UNDERSIGNED PURCHASER CARLEE ROBIN SIMMONS DONALD LAWRENCE SIMMONS
ADDRESS [redacted] ZIP 31201

Hereby agrees to purchase from Inc.: hereinafter referred to as Seller, subject to all terms, conditions, and agreements contained herein, the following: ☑ NEW ☐ USED ☐ DEMONSTRATOR

YEAR	MAKE	MODEL	TYPE	CYL	SERIAL#
2016	Hyundai	Veloster	Turbo (A7) 3dr		KMHTC6AE6GU281969

COLOR	STOCK #	MILEAGE	COUNTY	INSPECTION #	SALESMAN'S NAME
ELITE WHITE	H60660	5	MA		Robert Winecoff

LIST PRICE OR MSRP		26,691	00
ADDED EQUIPMENT			
TOTAL SALES PRICE		26,691	00
TRADE IN ALLOWANCE		3,500	00
DIFFERENCE		23,191	00
SUB TOTAL		23,191	00
SALES TAX	324 / 324A	1,376	62
LICENSE TITLE & REGIST.	906	39	00
CLOSING FEE	905C	225	00
SECURE ETCH	905E		
RESISTALL	905K		
ROAD HAZARD	444R / 466R		
LIFE & A&H	807 / 809		
GAP INSURANCE	807G / 809G		
SERVICE PROGRAM	444 / 466		
SUB-TOTAL		24,831	62
AMOUNT OWING ON TRADE-IN	300B		
TOTAL AMOUNT DUE		24,831	62
DEPOSIT WITH ORDER REC#	220A		
CASH ON DELIVERY REC#	220A	3,800	00
FACTORY REBATE	220C / 220N	3,750	00
UNPAID BALANCE DUE		17,281	62

CLOSING FEE
This fee includes complete cosmetic detail materials, administrative services, notary services, courier services, mail, hazardous waste removal such as oil filters, oil, antifreeze, tires. This charge represents costs and/or profit to the seller/dealer for items such as inspecting, cleaning and advising new and used vehicles and preparing documents related to the sale. This fee does not represent any payment for mechanical services which have been reimbursed to the dealer by the manufacturer.

☐ The vehicle delivered is subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

Carlee Simmons
Purchaser's Signature

☐ I agree to pay any difference in the loan payoff.

Carlee Simmons
Purchaser's Signature

REMARKS

CONTRACTUAL DISCLOSURE STATEMENT
"The information you see on the window form (Buyer's Guide) for this vehicle is part of the contact. Information on the window form overriders any contrary provision in the contract of sale."

LICENSE TAG INFORMATION: ACV: $ 0.00

PURCHASE NEW TAG ☐	TRANSFER ☐
1) DL#	TAG #
2) DL#	EXP. DATE
	VALIDATION #

INSURANCE INFORMATION

POLICY #	PHONE # 0
COMPANY	EFFECTIVE DATES
AGENT	VERIFIED BY

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	TYPE	COLOR
2006	Saab	9-2X	2.5i 4dr All	[Gray] Sati

CYL	SERIAL#																
	J	F	4	G	G	6	1	6	4	6	H	0	5	0	0	2	9

STATE	COUNTY	LIC. #	MILEAGE
			123635

1ST LIEN 2ND LIEN

NAME ON TITLE: CARLEE ROBIN SIMMONS
LIENHOLDER:
ADDRESS:
AMT. (15 DAYS):
GOOD THRU:
ACCT. NO.:
VERIFIED BY:
QUOTED BY:
PHONE NO:

As part of the purchase price, the Purchaser does hereby grant, bargain, sell and convey the above described automobile to Seller. Purchaser warrants title to and possession of said automobile to be in him, and that same is free from encumbrances, and all liens, except the pay-off amounts stated above. Purchaser further warrants his good right to sell and deliver the above described automobile with clear title - no salvage title.

DISCLAIMER OF WARRANTIES

NEW VEHICLE: All warranties on this new vehicle are those offered by the Manufacturer. The Seller hereby expressly disclaims all warranties either express or implied including any implied warranty or MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, and the Seller either assumes nor authorizes any person to assume for it any liability in connection with the sale of the vehicle. This disclaimer by the Seller in no way affects the terms of the Manufacturer's warranty. Buyer shall not be entitled to recover from the Selling Dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or any other incidental damages.

Purchaser hereby acknowledges that he has read and understands the above and that Seller has made available to him prior to the purchase the factory warranty which Purchaser understands constitutes all of the warranties with respect to the sale of the vehicle.

USED VEHICLE: In the event that the vehicle being purchased is a used vehicle, Purchaser hereby acknowledges that the above disclaimer will also apply to said used vehicle, EXCEPT AS MAY BE EXPRESSED COMPLETELY IN WRITING BY THE SELLER ON SEPARATE INSTRUMENT DELIVERED TO THE PURCHASER, ALL USED VEHICLES ARE SOLD "AS IS - WITH NO WARRANTY". Purchaser hereby acknowledges that Seller has made available to him and Purchaser has read any limited warranty delivered to him by separate instrument and said limited warranty constitutes all of the warranties with respect to the sale of this used vehicle and that any implied warranty that may not be waived by law is limited to the duration of said limited warranty. Purchaser understands that any new or remaining Manufacturer's warranties on used vehicles are not the responsibility of Seller.

ADDITIONAL TERMS AND CONDITIONS

This order shall not binding upon either the Purchaser or the Seller until the vehicle described above is physically delivered and Purchaser has received the Disclosure required under Federal Law if applicable, in the case of a credit sale the seller should not be obligated to sell until a finance source approves this Order and agrees to purchase a retail installment contract between the Purchaser and the Seller based on this Order.

As a part of the New Car Pre-Delivery Procedures or Used Car Reconditioning of the Seller all body repairs in an amount not exceeding three hundred dollars ($300.00) have been made prior to the delivery of the described automobile. Purchaser waives notice concerning said repairs and accepts the automobile as delivered. Any body repairs made by the Seller or were made known to and said repairs are hereby accepted and approved by Purchaser.

The trade-in allowance shown in the Order is that amount that the Seller agrees to allow at the time the Purchaser accepts delivery and completes the Order. In the event of any disagreement over the value of the car trade-in, the Seller will not be liable for any more than the wholesale market value as determined by the loan value of the automobile as shown in the Black Book less the estimated cost of reconditioning same.

It is agreed that the legal title to the described automobile does not pass to Purchaser until the entire purchase price is paid in full and also until the check given by the Purchaser for all or part of the payment for said automobile clears the bank on which it is drawn.

The Purchaser agrees that all provisions stated hereon are part of this Order and that this Order supersedes any prior agreement and is the complete and exclusive agreement on the subject matter covered by this Order. Further Purchaser and Seller agree that no person is authorized to make any representations beyond those expressed in this Order. Verbal promises by salesman and/or Manager and any promises or understandings not herein specified in writing are hereby expressly waived by the Purchaser.

The purchaser warrants that he is of majority age and further warrants that all statements made by him are true and correct, and that the Seller may accept them as being true representations of existing facts.

Purchaser has read all provisions of this Order including the Disclaimer of Warranties. Purchaser acknowledges that he has received a true copy of this Order and that the Order has been completely filled in and signed.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.

Purchaser's Signature Carlee Simmons ACCEPTED BY

Ex. A

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

BENSON

NISSAN KIA HYUNDAI

P. O. Box 8669
Spartanburg, South Carolina 29305
Nissan: (864) 585-3611
Kia: (864) 699-9090
Hyundai: (864) 541-0029

BIRTHDAY INFORMATION
BUYER [redacted]
CO-BUYER [redacted]
ANNIVERSARY

E-MAIL ****
1) DRIVER LIC#
2) DRIVER LIC#

South Carolina and North Carolina require names and addresses on deal to match names and addresses on driver licenses

RETAIL BUYER'S ORDER

CUST. NO. 10637
DATE 07/26/2016
WORK PHONE [redacted]
HOME PHONE
SS # ☐☐☐ - ☐☐ - ☐☐☐☐
SS # ☐☐☐ - ☐☐ - ☐☐☐☐

DEAL# 8136
THE UNDERSIGNED PURCHASER CARLEE ROBIN SIMMONS OR DONALD LAWRENCE SIMMONS
ADDRESS [redacted] ZIP 31201

Hereby agrees to purchase from Benson Cadillac-Nissan, Inc.; hereinafter referred to as Seller, subject to all terms, conditions and agreements contained herein, the following: ☒ NEW ☐ USED ☐ DEMONSTRATOR

YEAR	MAKE	MODEL	TYPE	CYL	SERIAL #
2016	HYUNDAI	VELOSTER	TURBO A	4	KMHTC6AE5GU281969

COLOR	STOCK #	MILEAGE	COUNTY	INSPECTION #	SALESMAN'S NAME
ELITE WH	H60666	5	BIBB		ROBERT M WINECOFF

LIST PRICE OR MSRP		$ 19600.00
ADDED EQUIPMENT:		
TOTAL SALES PRICE		19600.00
TRADE IN ALLOWANCE		3500.00
DIFFERENCE		16100.00
SUB TOTAL		16100.00
S.C. SALES TAX	324 / 324A	931.00
LICENSE TITLE & REGIST.	909	38.00
CLOSING FEE	905C	225.00
SECURE ETCH	905E	
RESISTALL	905K	299.00
DENT REPAIR	905T	N/A
LIFE & A&H	807 / 809	N/A
GAP INSURANCE	807G / 809G	N/A
SERVICE PROGRAM	444 / 455	N/A
ROAD HAZARD	444R / 455R	N/A
MAINTENANCE	444G	N/A
SUB-TOTAL		17593.00
AMOUNT OWING ON TRADE-IN	300B	N/A
TOTAL AMOUNT DUE		17593.00
DEPOSIT WITH ORDER Rec#	220A	N/A
CASH ON DELIVERY Rec#	220A	3800.00
FACTORY REBATE	220	3750.00
UNPAID BALANCE DUE		$ 10043.00

REMARKS

CONTRACTUAL DISCLOSURE STATEMENT

"The information you see on the window form (Buyer's Guide) for this vehicle is part of the contact. Information on the window form overrides any contrary provision in the contract of sale."

LICENSE TAG INFORMATION: ACV:

PURCHASE NEW TAG ☒ TRANSFER ☐
1) DL# TAG #
2) DL# EXP. DATE
VALIDATION #

INSURANCE INFORMATION

POLICY # PHONE #
COMPANY CINCIATTI EFFECTIVE DATES
AGENT VERIFIED BY

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	TYPE	COLOR
2006	SAAB	9-2X	2006 SAAB	[GRAY]

CYL	SERIAL #															
4	J	F	4	G	G	6	1	6	4	6	H	0	5	0	0	2	9

STATE COUNTY LIC.# MILEAGE 129635

1ST LIEN 2ND LIEN

NAME ON TITLE:
LIENHOLDER:
ADDRESS:
AMT. (15 DAYS):
GOOD THRU:
ACCT. NO.:
VERIFIED BY:
QUOTED BY:
PHONE NO.:

CLOSING FEE

This fee includes complete cosmetic detail materials, administrative services, notary services, courier service, fuel, hazardous waste removal such as oil filters, oil, antifreeze, tires. This charge represents costs and/or profit to the seller/dealer for items such as inspecting, cleaning and adjusting new and used vehicles and preparing documents related to the sale. This fee does not represent any payment for mechanical services which have been reimbursed to the dealer by the manufacturer.

☒ This vehicle delivered subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

Carlee Robin Simmons
Purchaser's Signature

☐ I agree to pay any difference in lien payoff.

Purchaser's Signature

As part of the purchase price, the Purchaser does hereby grant, bargain, sell and convey the above described automobile to Seller. Purchaser warrants title to and possession of said automobile to be in him, and that same is free from encumbrances, and all debts, except the pay-all amounts stated above. Purchaser further warrants he/she good right to sell and deliver the above described automobile with clear title - no salvage title.

DISCLAIMER OF WARRANTIES

Ex. B

NEW VEHICLE. All warranties on the new vehicle are those offered by the Manufacturer. The Seller hereby expressly disclaims all warranties other express or implied including any implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, and the Seller neither assumes nor authorizes any person to assume for it any liability in connection with the sale of the vehicle. This disclaimer by the Seller in no way affects the terms of the Manufacturer's warranty. Buyer shall not be entitled

Ex. B

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Red Flag Summary

Name: CARLEE SIMMONS

Red Flag Score: 75

Score Risk Level: Risk Remediated

Status: Ok to proceed

KIQ Score: 100 (5/5) PASSED

Section	Result	Alert	Next Steps
OFAC	Clear		
ID Match	Clear	Address: No Match	Questions Completed
Red Flag Alerts	Clear		-
ID Verification	Clear		ID Verification Completed

View Detail Report

700credit

CREDIT REPORT

TransUnion

Subscriber Name: BENSON HYUNDAI Sub. Code: [redacted] In Info: 08/01/1998 Date: 07/26/2016 Time: 9:36:16 PM

CARLEE SIMMONS
[redacted]
SSN: [redacted]
DOB: [redacted]
Date Reported: 08/26/2013

Previous Addresses:

Name	City	State	Zip	Date Reported
[redacted]	SPARTANBURG	SC	29302	06/18/2012
	SPARTANBURG	SC	29306	

Aliases:
Name
ORMOND,CARLEE,ROBIN

Employment:

Employer	Occupation	Date Hired	Date Separated	Date Reported
MEDIA GENERAL WSPA-Y	DIGITAL SALES COORD			09/30/2015
MEDIA GENRALWSPA CHANNEL 7				06/12/2013

Special Messages

SSN Match Ind: Exact match between SSN on input and SSN on file.

Score Summary

ScoreCard	Score	Code	Score Factor Description
FICO Auto 08	822	003	Proportion of loan balances to loan amounts is too high
		005	Too many accounts with balances
		012	Length of time revolving accounts have been established

Bureau Summary

PR=0 COL=0 NEG=0 HSTNEG=0-0 TRD=12 RVL=6 INST=5 MTG=1 OPN=0 INQ=1

	HIGH CRED	CRED LIM	BALANCE	PAST DUE	MNTHLY PAY	AVAILABLE
REVOLVING:	$13.4K	$27.7K	$600	$0	$27	97%
INSTALLMENT:	$20.4K	$0	$15.2K	$0	$271	
TOTALS:	$33.9K	$27.7K	$15.8K	$0	$298	

Ex. C

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SPECIAL DELIVERY AGREEMENT

The Special Delivery Agreement is incorporated into the Retail Installment Sale Contract or Lease (the Contract) dated this date between Benson Hyundai, as Seller, and the undersigned Purchaser(s) as Buyer, with respect to the vehicle listed below under the following conditions.

1. Buyer acknowledges an represents that he/she possesses a valid driver's license, current motor vehicle liability insurance and assumes risk of loss of the vehicle while in his/her possession. Buyer understands that all financing/lease decisions are made by a financial source not affiliated with Benson Hyundai and said source is the credit reporting agency in accordance with the Equal Credit Opportunity and the Fair Credit Reporting Act. Seller will attempt to assign the contract on terms satisfactory to the Seller. If the Seller is successful in so doing, the contract (and all other documents executed by Buyer) shall be deemed delivered and fully binding.

2. If Seller does not receive approval from a financial source for assignment of the Contract on terms acceptable to Seller, Buyer agrees that upon notice from Seller, Buyer shall return the vehicle in good condition without excess mileage and the sales transaction may be rescinded. Seller retains a priority security interest in the vehicle and upon Buyer's failure to return the vehicle, Seller shall be entitled to all statutory and common law remedies including, but not limited to, the right of self-help, repossession, collection/repossession costs, reasonable interest and reasonable attorney's fees.

3. Upon return of the vehicle, both Buyer and Seller shall be relieved of any further obligation or liability to the other, except that Seller shall return any trade vehicle and shall refund any cash deposit- less any expense from repairs or reconditioning seller incurred on the trade vehicle or any expense from repairs or reconditioning on the vehicle listed below.

4. Buyer agrees that if a financing source other than the one originally contemplated agrees to accept assignment of the Contract on the same terms and conditions as the original lending source, Buyer will execute a replacement Contract and related documents on the same terms and conditions as the original Contract.

Date: 07/26/2016 Year: 2016 Make: Hyundai

Model: Veloster VIN: KMHTC6AE5GU281969

Purchaser

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HYUNDAI FINANCE

HYUNDAI MOTOR FINANCE
PO BOX 620027
EL DORADO HILLS, CA 95762-0027

Date: August 6, 2016

MB 01 002500 57884 B 18 A
DONALED L SIMMONS
[redacted]

Re: Our credit application with respect to the purchase of a motor vehicle from the dealer referenced below.

Application Number: SO-20160727-0022

Dear Donaled Simmons:
We have received your recent credit application from BENSON HYUNDAI. The law requires us to notify an applicant when we have decided to take adverse action with respect to the application. Our decision on your application is checked below.

☐ We have conditioned our approval on terms different from those proposed or we need additional information to complete our evaluation process. Should you fail to meet the proposed terms or to provide adequate additional information, your application is deemed declined and this is your notification of that adverse action.

☒ We regret at this time that we are unable to grant the credit you requested. If you would like a statement of specific reasons why your application was denied, please contact us at the number shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

You have the right to know if our decision was either wholly or partially based on (a) information contained in a report from a consumer reporting agency, or (b) information obtained from a source other than a consumer reporting agency. If checked, our decision was based either wholly or partially upon:

☐ Disclosure inapplicable

☒ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency marked below. You have the right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have declined the request credit to you. You also have a right to a free copy of your consumer credit report from the consumer reporting agency if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the consumer credit report you receive is inaccurate or incomplete, you have the right to dispute the matter with the consumer reporting agency. The report(s) was/were obtained from:

	Name	Address	Toll Free Number	Score Range	Website
☒	Equifax	PO Box 105873, ATLANTA, GA 30348	1-800-685-1111	250-900	www.Equifax.com
☐	Experian	PO Box 2002, ALLEN, TX 75013	1-888-397-3742	250-900	www.experian.com
☐	TransUnion	PO Box 1000, CHESTER, PA 19022	1-800-888-4213	250-900	www.transunion.com

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your Score: ### Date of score: 07/27/2016 Key factors that adversely affected your credit score:
No Credit File

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request to us within 60 days after the date you receive this notification for disclosure of the nature of this information.

Although we are unable to extend credit at this time or under the terms requested, we thank you for the opportunity to have reviewed your application. We hope that we will be able to consider another application for you sometime in the future. If you have any questions regarding this notification, please contact us at 1-855-362-5753. **Ohio, Massachusetts, New York, Nevada, Washington, and California residents should also note important information on the reverse side of this notice.**

Sincerely,

Hyundai Motor Finance

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington D.C. 20580.

Decline Notice - HMF.2.11-07-21

Ex. E

Ex. B

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

HYUNDAI FINANCE

HYUNDAI MOTOR FINANCE
PO BOX 629027
EL DORADO HILLS, CA 95762-9027

Date: August 12, 2016

MB 01 002899 00047 E 12 A
DONALED L SIMMONS
[redacted]

Re: Our credit application with respect to the purchase of a motor vehicle from the dealer referenced below.

Application Number: SO-20160802-0049

Dear Donaled Simmons:
We have received your recent credit application from BENSON HYUNDAI. The law requires us to notify an applicant when we have decided to take adverse action with respect to the application. Our decision on your application is checked below.

☐ We have conditioned our approval on terms different from those proposed or we need additional information to complete our evaluation process. Should you fail to meet the proposed terms or to provide adequate additional information, your application is deemed declined and this is your notification of that adverse action.

☒ We regret at this time that we are unable to grant the credit you requested. If you would like a statement of specific reasons why your application was denied, please contact us at the number shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

You have the right to know if our decision was either wholly or partially based on (a) information contained in a report from a consumer reporting agency, or (b) information obtained from a source other than a consumer reporting agency. If checked, our decision was based either wholly or partially upon:

☐ Disclosure inapplicable

☒ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency marked below. You have the right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have declined the request credit to you. You also have a right to a free copy of your consumer credit report from the consumer reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the consumer credit report you receive is inaccurate or incomplete, you have the right to dispute the matter with the consumer reporting agency. The report(s) was/were obtained from:

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☐	Experian	PO Box 2002, ALLEN, TX 75013	1-888-397-3742	250-900	www.experian.com
☐	TransUnion	PO Box 1000, CHESTER, PA 19022	1-800-888-4213	250-900	www.transunion.com

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your Score: ### Date of score: 08/02/2016 Key factors that adversely affected your credit score:
No Credit File

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request to us within 60 days after the date you receive this notification for disclosure of the nature of this information.

Although we are unable to extend credit at this time or under the terms requested, we thank you for the opportunity to have reviewed your application. We hope that we will be able to consider another application for you sometime in the future. If you have any questions regarding this notification, please contact us at 1-866-262-5758. **Ohio, Massachusetts, New York, Nevada, Washington, and California residents should also note important information on the reverse side of this notice.**

Sincerely,

Hyundai Motor Finance

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington D.C. 20580.

Decline Notice - HMF.8.11-07-21

Ex. F

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

HYUNDAI FINANCE

HYUNDAI MOTOR FINANCE
PO BOX 626027
EL DORADO HILLS, CA 95762-9027

Date: August 18, 2016

MB 01 001985 66866 E 12 A
DONALED L SIMMONS
[redacted]

Re: Our credit application with respect to the purchase of a motor vehicle from the dealer referenced below.

Application Number: SO-20160808-0338

Dear Donaled Simmons:
We have received your recent credit application from BENSON HYUNDAI. The law requires us to notify an applicant when we have decided to take adverse action with respect to the application. Our decision on your application is checked below.

☐ We have conditioned our approval on terms different from those proposed or we need additional information to complete our evaluation process. Should you fail to meet the proposed terms or to provide adequate additional information, your application is deemed declined and this is your notification of that adverse action.

☒ We regret at this time that we are unable to grant the credit you requested. If you would like a statement of specific reasons why your application was denied, please contact us at the number shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

You have the right to know if our decision was either wholly or partially based on (a) information contained in a report from a consumer reporting agency, or (b) information obtained from a source other than a consumer reporting agency. If checked, our decision was based either wholly or partially upon:

☐ Disclosure inapplicable

☒ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency marked below. You have the right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have declined the request credit to you. You also have a right to a free copy of your consumer credit report from the consumer reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the consumer credit report you receive is inaccurate or incomplete, you have the right to dispute the matter with the consumer reporting agency. The report(s) was/were obtained from:

	Name	Address	Toll Free Number	Score Range	Website
☒	Equifax	PO Box 105873, ATLANTA, GA 30348	1-800-685-1111	250-800	www.Equifax.com
☐	Experian	PO Box 2002, ALLEN, TX 75013	1-888-397-3742	250-900	www.experian.com
☐	TransUnion	PO Box 1000, CHESTER, PA 19022	1-800-888-4213	250-900	www.transunion.com

We also obtained your credit score from the consumer reporting agency, and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your Score: ### Date of score: 08/08/2016 Key factors that adversely affected your credit score:
No Credit File

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request to us within 60 days after the date you receive this notification for disclosure of the nature of this information.

Although we are unable to extend credit at this time or under the terms requested, we thank you for the opportunity to have reviewed your application. We hope that we will be able to consider another application for you sometime in the future. If you have any questions regarding this notification, please contact us at 1-855-362-5763. **Ohio, Massachusetts, New York, Nevada, Washington, and California residents should also note important information on the reverse side of this notice.**

Sincerely,

Hyundai Motor Finance

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington D.C. 20580.

Decline Notice - HMF.3.11-07-21

Ex. G

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

Date: August 26, 2016

MB 01 002409 76016 E 12 A
DONALED L SIMMONS
[redacted]

Re: Our credit application with respect to the purchase of a motor vehicle from the dealer referenced below.

Application Number: SO-20160816-0028

Dear Donaled Simmons:
We have received your recent credit application from BENSON HYUNDAI. The law requires us to notify an applicant when we have decided to take adverse action with respect to the application. Our decision on your application is checked below.

☐ We have conditioned our approval on terms different from those proposed or we need additional information to complete our evaluation process. Should you fail to meet the proposed terms or to provide adequate additional information, your application is deemed declined and this is your notification of that adverse action.

☒ We regret at this time that we are unable to grant the credit you requested. If you would like a statement of specific reasons why your application was denied, please contact us at the number shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

You have the right to know if our decision was either wholly or partially based on (a) information contained in a report from a consumer reporting agency or (b) information obtained from a source other than a consumer reporting agency. If checked, our decision was based either wholly or partially upon:

☐ Disclosure inapplicable

☒ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency marked below. You have the right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have declined the request credit to you. You also have a right to a free copy of your consumer credit report from the consumer reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the consumer credit report you receive is inaccurate or incomplete, you have the right to dispute the matter with the consumer reporting agency. The report(s) was/were obtained from:

	Name	Address	Toll Free Number	Score Range	Website
☒	Equifax	PO Box 105873, ATLANTA, GA 30348	1-800-685-1111	280-800	www.Equifax.com
☐	Experian	PO Box 2002, ALLEN, TX 75013	1-888-397-3742	250-900	www.experian.com
☐	TransUnion	PO Box 1000, CHESTER, PA 19022	1-800-888-4213	250-900	www.transunion.com

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your Score: HHH Date of score: 08/16/2016 Key factors that adversely affected your credit score:
No Credit File

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request to us within 60 days after the date you receive this notification for disclosure of the nature of this information.

Although we are unable to extend credit at this time or under the terms requested, we thank you for the opportunity to have reviewed your application. We hope that we will be able to consider another application for you sometime in the future. If you have any questions regarding this notification, please contact us at 1-855-362-5763. **Ohio, Massachusetts, New York, Nevada, Washington, and California residents should also note important information on the reverse side of this notice.**

Sincerely,

Hyundai Motor Finance

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicant's on the basis of race, color, religin, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington D.C. 20580.

Decline Notice - HMF.3.11-07-21

Ex. H

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

Date: August 28, 2016

MB 01 001934 77117 B 10 A
DONALED L SIMMONS
[redacted]

Re: Our credit application with respect to the purchase of a motor vehicle from the dealer referenced below.

Application Number: SO-20160818-0259

Dear Donaled Simmons:
We have received your recent credit application from BENSON HYUNDAI. The law requires us to notify an applicant when we have decided to take adverse action with respect to the application. Our decision on your application is checked below.

☐ We have conditioned our approval on terms different from those proposed or we need additional information to complete our evaluation process. Should you fail to meet the proposed terms or to provide adequate additional information, your application is deemed declined and this is your notification of that adverse action.

☒ We regret at this time that we are unable to grant the credit you requested. If you would like a statement of specific reasons why your application was denied, please contact us at the number shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

You have the right to know if our decision was either wholly or partially based on (a) information contained in a report from a consumer reporting agency, or (b) information obtained from a source other than a consumer reporting agency. If checked, our decision was based either wholly or partially upon:

☐ Disclosure inapplicable

☒ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency marked below. You have the right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have declined the request credit to you. You also have a right to a free copy of your consumer credit report from the consumer reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the consumer credit report you receive is inaccurate or incomplete, you have the right to dispute the matter with the consumer reporting agency. The report(s) was/were obtained from:

	Name	Address	Toll Free Number	Score Range	Website
☒	Equifax	PO Box 105873, ATLANTA, GA 30348	1-800-685-1111	280-900	www.Equifax.com
☐	Experian	PO Box 2002, ALLEN, TX 75013	1-888-397-3742	280-900	www.experian.com
☐	TransUnion	PO Box 1000, CHESTER, PA 19022	1-800-888-4213	280-900	www.transunion.com

We also obtained your credit score from the consumer reporting agency, and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your Score: ### Date of score: 08/18/2016 Key factors that adversely affected your credit score:
No Credit File

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request to us within 60 days after the date you receive this notification for disclosure of the nature of this information.

Although we are unable to extend credit at this time or under the terms requested, we thank you for the opportunity to have reviewed your application. We hope that we will be able to consider another application for you sometime in the future. If you have any questions regarding this notification, please contact us at 1-855-362-5753. **Ohio, Massachusetts, New York, Nevada, Washington, and California residents should also note important information on the reverse side of this notice.**

Sincerely,

Hyundai Motor Finance

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington D.C. 20580.

Decline Notice - HMF3.11-07-21

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

Date: September 3, 2016

MB 01 002097 84076 E 11 A
DONALED L SIMMONS
[redacted]

Re: Our credit application with respect to the purchase of a motor vehicle from the dealer referenced below.

Application Number: SO-20160824-0616

Dear Donaled Simmons:
We have received your recent credit application from BENSON HYUNDAI. The law requires us to notify an applicant when we have decided to take adverse action with respect to the application. Our decision on your application is checked below.

☐ We have conditioned our approval on terms different from those proposed or we need additional information to complete our evaluation process. Should you fail to meet the proposed terms or to provide adequate additional information, your application is deemed declined and this is your notification of that adverse action.

☒ We regret at this time that we are unable to grant the credit you requested. If you would like a statement of specific reasons why your application was denied, please contact us at the number shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

You have the right to know if our decision was either wholly or partially based on (a) information contained in a report from a consumer reporting agency, or (b) information obtained from a source other than a consumer reporting agency. If checked, our decision was based either wholly or partially upon:

☐ Disclosure inapplicable

☒ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency marked below. You have the right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have declined the request credit to you. You also have a right to a free copy of your consumer credit report from the consumer reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the consumer credit report you receive is inaccurate or incomplete, you have the right to dispute the matter with the consumer reporting agency. The report(s) was/were obtained from:

	Name	Address	Toll Free Number	Score Range	Website
☐	Equifax	PO Box 105873, ATLANTA, GA 30348	1-800-685-1111	280-800	www.Equifax.com
☒	Experian	PO Box 2002, ALLEN, TX 75013	1-888-397-3742	250-900	www.experian.com
☐	TransUnion	PO Box 1000, CHESTER, PA 19022	1-800-888-4213	250-900	www.transunion.com

We also obtained your credit score from the consumer reporting agency, and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your Score: #### Date of score: 08/24/2016 Key factors that adversely affected your credit score:
No Credit File

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request to us within 60 days after the date you receive this notification for disclosure of the nature of this information.

Although we are unable to extend credit at this time or under the terms requested, we thank you for the opportunity to have reviewed your application. We hope that we will be able to consider another application for you sometime in the future. If you have any questions regarding this notification, please contact us at 1-855-362-6753. **Ohio, Massachussetts, New York, Nevada, Washington, and California residents should also note important information on the reverse side of this notice.**

Sincerely,

Hyundai Motor Finance

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Decline Notice - HMF.3.11-07-21

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

HYUNDAI FINANCE

HYUNDAI MOTOR FINANCE
PO BOX 026027
EL DORADO HILLS, CA 95762-9027

Date: August 6, 2016

MB 01 002661 57864 B 19 A
CARLEE R SIMMONS
[redacted]

Re: Our credit application with respect to the purchase of a motor vehicle from the dealer referenced below.

Application Number: SO-20160727-0022

Dear Carlee Simmons:
We have received your recent credit application from BENSON HYUNDAI. The law requires us to notify an applicant when we have decided to take adverse action with respect to the application. Our decision on your application is checked below.

☐ We have conditioned our approval on terms different from those proposed or we need additional information to complete our evaluation process. Should you fail to meet the proposed terms or to provide adequate additional information, your application is deemed declined and this is your notification of that adverse action.

☒ We regret at this time that we are unable to grant the credit you requested. If you would like a statement of specific reasons why your application was denied, please contact us at the number shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

You have the right to know if our decision was either wholly or partially based on (a) information contained in a report from a consumer reporting agency, or (b) information obtained from a source other than a consumer reporting agency. If checked, our decision was based either wholly or partially upon:

☐ Disclosure Inapplicable

☒ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency marked below. You have the right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have declined the request credit to you. You also have a right to a free copy of your consumer credit report from the consumer reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the consumer credit report you receive is inaccurate or incomplete, you have the right to dispute the matter with the consumer reporting agency. The report(s) was/were obtained from:

	Name	Address	Toll Free Number	Score Range	Website
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☐	Experian	PO Box 2002, ALLEN, TX 75013	1-888-397-3742	250-900	www.experian.com
☐	TransUnion	PO Box 1000, CHESTER, PA 19022	1-800-888-4213	250-900	www.transunion.com

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your Score: ### Date of score: 07/27/2016 Key factors that adversely affected your credit score:
No Credit File

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request to us within 60 days after the date you receive this notification for disclosure of the nature of this information.

Although we are unable to extend credit at this time or under the terms requested, we thank you for the opportunity to have reviewed your application. We hope that we will be able to consider another application for you sometime in the future. If you have any questions regarding this notification, please contact us at 1-855-662-5758. **Ohio, Massachussetts, New York, Nevada, Washington, and California residents should also note important information on the reverse side of this notice.**

Sincerely,

Hyundai Motor Finance

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Decline Notice - HMFS.11-07-21

Ex. K

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

HYUNDAI FINANCE

HYUNDAI MOTOR FINANCE
PO BOX 629027
EL DORADO HILLS, CA 95762-9027

Date: August 12, 2016

MB 01 002394 68647 E 12 A
CARLEE R SIMMONS
[redacted]

Re: Our credit application with respect to the purchase of a motor vehicle from the dealer referenced below.

Application Number: SO-20160802-0049

Dear Carlee Simmons:
We have received your recent credit application from BENSON HYUNDAI. The law requires us to notify an applicant when we have decided to take adverse action with respect to the application. Our decision on your application is checked below.

☐ We have conditioned our approval on terms different from those proposed or we need additional information to complete our evaluation process. Should you fail to meet the proposed terms or to provide adequate additional information, your application is deemed declined and this is your notification of that adverse action.

☒ We regret at this time that we are unable to grant the credit you requested. If you would like a statement of specific reasons why your application was denied, please contact us at the number shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

You have the right to know if our decision was either wholly or partially based on (a) information contained in a report from a consumer reporting agency or (b) information obtained from a source other than a consumer reporting agency. If checked, our decision was based either wholly or partially upon:

☐ Disclosure inapplicable

☒ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency marked below. You have the right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have declined the request credit to you. You also have a right to a free copy of your consumer credit report from the consumer reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the consumer credit report you receive is inaccurate or incomplete, you have the right to dispute the matter with the consumer reporting agency. The report(s) was/were obtained from:

	Name	Address	Toll Free Number	Score Range	Website
☒	Equifax	PO Box 105873, ATLANTA, GA 30348	1-800-685-1111	250-900	www.Equifax.com
☐	Experian	PO Box 2002, ALLEN, TX 75013	1-888-397-3742	250-900	www.experian.com
☐	TransUnion	PO Box 1000, CHESTER, PA 19022	1-800-888-4213	250-900	www.transunion.com

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your Score: 533 Date of score: 08/02/2016 Key factors that adversely affected your credit score:
Proportion of loan balances to loan amounts is too high
Too many accounts with balances
Too many inquiries last 12 months
Too few accounts currently paid as agreed

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request to us within 60 days after the date you receive this notification for disclosure of the nature of this information.

Although we are unable to extend credit at this time or under the terms requested, we thank you for the opportunity to have reviewed your application. We hope that we will be able to consider another application for you sometime in the future. If you have any questions regarding this notification, please contact us at 1-866-332-8763. **Ohio, Massachusetts, New York, Nevada, Washington, and California residents should also note important information on the reverse side of this notice.**

Sincerely,

Hyundai Motor Finance

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington D.C. 20580.

Decline Notice - HMF.3.11-07-21

Ex. L

Ex. B
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dealertrack

Application Details

Back to Application Status

DT ID: 128628 - BENSON HYUNDAI - Lender ID: SC043

Hyundai Motor Finance / Genesis Finance Application Status

HYUNDAI FINANCE

Customer Information

Applicant Name:	Simmons, Carlee R.
Co Applicant Name:	Simmons, Donald L.
Reference Number:	SO-20160727-0022
Status:	Decline
eContract Status:	Not Available

Vehicle Information

N/U/D Year:	New 2016
Make:	HYUNDAI
Model:	VELOSTER
Trim:	3DR CPE AT TURBO
VIN #:	KMHTC6AE6GU281969
Mileage:	5
Book/Invoice:	$19,500.00

CounterOffer/Decline Reason

Unable to verify information contained in the credit application

Comments

Line 2 has a credit freeze on bureau

For shipments via FedEX: Send complete package to: Hyundai Motor Finance, eDocs Program, Suite 2065, 4054 Willow Lake Boulevard, Memphis, TN 38153

For shipments via UPS, USPS, or any other courier: Send complete package to: Hyundai Motor Finance, eDocs Program, 3258 Progress Way, Suite 2065, Wilmington, OH 45177

Approvals are good for 90 days from approved date. All approvals are subject to verification. Purchase and acceptance of the Funding package is subject to the above requirements to the satisfaction of Hyundai Motor Finance.

Your Support Team

Decision Analyst:	Alisha Walker	BDM:	Martin Blackwood
Support Analysis:	0		
Phone:	(800)523-6010	Fax:	(800)231-9432
Funding Hot Line:	(800)523-6010	Funding Fax #:	(800)231-9432

Prefill/View eMenu Deal

Prefill Aftermarket Deal

Export To DMS

Copy This Application | DealUpdate

Sign Application

Submit To Other Lenders

Create Dealer Participation Cert. Form

Comments To Credit Analyst

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REQUEST FOR ARBITRATION

1. Name of party requesting arbitration:

   Benson Hyundai, LLC

2. Name(s) of persons having knowledge regarding the Dispute:

   Tony Benson

   Carlee Simmons

   Donald Simmons

   Jeff Belsky

   Robert Winecoff

3. Set forth the issue(s) to be arbitrated:

   See Attached Complaint and Exhibits

4. Set forth the facts relevant to the Dispute, including the date the relevant events occurred:

   The event occurred on July 26, 2016. Please see the attached Complaint and Exhibits.

5. State the legal rights upon which the claims listed in Paragraph 3 are founded (if known):

   See Attached Complaints and Exhibits.

6. Set forth the remedy(ies) sought:

   See Attached Complaints and Exhibits.

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RESPONSE TO REQUEST FOR ARBITRATION

1. Name of party responding:

_____.

2. Name(s) of persons having knowledge regarding the Dispute:

_____ _____

_____ _____

_____ _____

_____ _____

3. Set forth any additional issue(s) to be arbitrated:

_____

_____

_____

_____

_____

_____

4. Set forth the facts relevant to the Dispute:

_____

_____

_____

_____

_____

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5. Set forth any legal defenses which will be relied upon (if known):

_____

_____

_____

_____

6. If the Respondent has a Dispute with the Claimant which has not been identified in the Request for Arbitration (RFA) but arises out of the same factual circumstances as the RFA, set forth the issue(s) to be arbitrated, the relevant facts, and remedies sought:

_____

_____

_____

_____

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GRIMBALL & CABANISS, L.L.C.
ATTORNEYS AT LAW
473 SAVANNAH HIGHWAY
CHARLESTON, SOUTH CAROLINA 29407

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FACSIMILE (843) 722-1374
www.grimcab.com

WILLIAM H. GRIMBALL (1917-1999)
JOSEPH W. CABANISS (RETIRED)

e-mail: warren.moise@gmail.com
writer's extension no. 329

June 12, 2017

Tony Benson
Benson Hyundai
2550 Reidville Road
Spartanburg, SC 29301

Re: Donald and Carlee Simmons v. Benson Hyundai
2016 Hyundai Veloster
Date of Sale: July 26, 2016
Our File No. 17031

Dear Mr. Benson:

Enclosed with this letter are the following:

(1) Answer to Complaint, Counterclaim, and Motion to Dismiss

(2) Response to Request for Arbitration.

Please let me know if you have any questions.

With kindest regards, I am

Sincerely yours,

E. Warren Moïse

EWM/lt

Enclosures

cc: Brad Martin
Anne Marie Howell
(w/enclosures)

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RESPONSE TO REQUEST FOR ARBITRATION

1. Name of party responding: Carlee and Donald Simmons

2. Names of persons having knowledge regarding the dispute:

Tony Benson, Jeff Belsky, Nate Burden, Alexa Matos, John Bandy, Brian Perry, Robert Winecoff, Darryl Turner, Carlee and Donald Simmons, other persons listed in the Complaint and Counterclaim.

3. Set forth any additional issues to be arbitrated:

Carlee and Donald Simmons have a Counterclaim. Moreover, there is a threshhold issue that needs to be addressed, that being whether the arbitrator has jurisdiction. This is discussed in a Motion to Dismiss.

4. Set forth the facts relevant to the dispute:

Please see Carlee and Donald Simmons' Answer to the Complaint, defenses included therein, and their Counterclaims.

5. Set forth any legal defense which will be relied upon:

Please see defenses set forth in Carlee and Donald Simmons' Answer to the Complaint.

6. If the Respondent has a dispute with the Claimant which has not been identified in the Request for Arbitration, but arises out of the same factual circumstances as the RFA, set forth the issues to be arbitrated, the relevant facts, and remedies sought:

Respondents contend that the arbitrator lacks jurisdiction to hear these disputes and that they should be heard before the circuit court. There is a Counterclaim by the Simmonses, and if the arbitrator ultimately has jurisdiction, the Simmonses request that the arbitrator hear these also.

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STATE OF SOUTH CAROLINA	)	BEFORE THE ARBITRATOR
	)	
COUNTY OF SPARTANBURG	)	Case No.
Benson Hyundai, LLC	)	
	)	
Plaintiff,	)	
	)	ANSWER TO COMPLAINT, COUNTERCLAIMS,
v.	)	AND MOTIONS TO DISMISS AND TO STAY
	)	(Jury Trial Requested)
Donald and Carlee Simmons	)	
	)	
Defendants.	)	

Defendants answer the Complaint as follows:

ANSWER TO THE COMPLAINT

1. Paragraph 1 is admitted, except that Mrs. Simmons' credit scores were not good, but rather with a score of 833, her scores were "excellent" as defined by the credit bureaus. The scores were so high that when General Sales Manager Nate Burden saw Carlee's excellent credit score, he told her that he had everything he needed and on the spot said that her loan was approved. (Benson's contract defines Benson itself as the creditor in the first instance, unless and until the loan is sold to a third party such as Hyundai Motor Finance.) The Defendant and Plaintiffs signed a financing agreement that night.

2. Paragraph 2 is denied. Carlee Simmons' credit was not blocked that night. As to Donald Simmons, he had frozen his credit based on the hacking of the South Carolina Department of Revenue

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computers. This was explained to Benson. While at the dealership that first night in the presence of Nathan Burden, Daryl Turner, and Carlee Simmons, Donald requested an immediate lift of the freeze to take place and to remain open for several days so that the dealership could have free access to Donald's Equifax account. Thus, Benson was fully aware that Mr. Simmons' credit was unfrozen and available to Benson.

3. Paragraph 3 is denied. Benson could have easily gotten the Simmons approved had they processed a loan the proper way.

4. Paragraph 4 is admitted.

5. Paragraph 5 is denied.

6. Paragraph 6 is denied.

7. Paragraph 7 is admitted.

8. Paragraph 8 is denied.

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied, except that the Defendants did go into the F&I Manager's office and the F&I Manager did input the agreed upon terms onto the Buyer's Order. Later, the Defendant again submitted a document to Hyundai Motor Finance reaffirming that the sale price was $19,600.00.

11. Paragraph 11 is denied. However, Carlee did sign a Buyer's Order. There was no mistake on the basic terms. The

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starting price had been orally agreed upon twice beforehand; the contracts themselves (which were oppressively worded in the dealership's favor) were drafted by Benson; and the F&I Manager filled out the contract himself. Later, Benson again documented that the selling price was $19,600. On the financing agreement, see Ex. A, the "Amount Financed" was $10,043.

12. Paragraph 12 is denied. The General Sales Manager Nate Burden did access Carlee Simmons' credit, said that he had everything he needed, and told her on the spot that she was "approved" for a loan. Defendants deny that Carlee's credit was blocked that night.

13. Paragraph 13 is admitted.

14. Paragraph 14 is denied, except that Defendants admit Carlee's credit had been accessed and showed a credit score of 833, the sale occurred late at night, and that the Defendants went home with the vehicle they had paid for, having left a significant down payment and transferred possession of the SAAB to Plaintiff.

15. Defendants admit only so much of Paragraph 15 stating that Benson began calling the next day demanding more money and that an attorney was retained by Defendants to deal with the Plaintiff's attempts to pressure them into paying more money. The Dealership did speak with Defendants' attorney in a rude manner.

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Defendants' attorney examined the contract, found it to be valid, and informed the Defendants of his opinion.

16. Paragraph 16 is denied. Plaintiffs did want to "renegotiate in return for a full release.

17. Paragraph 17 is denied. The paperwork was submitted for a "DONALED Simmons," not "Donald Simmons."

18. There is no Paragraph 18.

19. Paragraph 19 is denied. The paperwork was submitted for a "Donaled Simmons," not "Donald Simmons." Moreover, Defendants lack information sufficient to form a belief as to the veracity or preparation of these exhibits.

20. Defendants admit only so much of Paragraph 20 alleging that the report attached as Exhibit K states that Carlee had a credit score of 833 and also listed denial reasons inconsistent with a score of 833. Defendants also admit that later Carlee's score was blocked and that she was advised to do so because of the repeated activity on her account.

21. Paragraph 21 is denied.

22. Paragraph 22 is denied.

23. Paragraph 23 is denied.

Second Paragraph 23. The Second Paragraph 23 is admitted to the extent that Benson attempted to pressure Carlee into turning

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over the vehicle while retaining Defendants' down payments and their SAAB.

24. Defendants reaffirm all admissions and denials in the preceding paragraphs.

25. Defendants admit so much of Paragraph 25 stating that Plaintiff agreed to let Defendants take the vehicle off the lot, but this is because Defendants owned the vehicle even though title had not been transferred. Defendants further agree that a Special Delivery Agreement was executed that evening and would state that the document speaks for itself.

26. As to Paragraph 26, Defendants lack sufficient information to form a belief as to whether a loan was not placed by Plaintiff. However, it seems unlikely that the dealership would be unable to find a loan for an employed woman with a 833 credit score.

27. Defendants admit so much of Paragraph 27 stating that the agreement allowed a customer to test drive a vehicle for a period of time. Defendants deny that it required them to return the vehicle.

28. Paragraph 28 is admitted to the extent that the Defendants have attempted to reserve for themselves all rights under statutory and common law, apparently including without

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limitation under federal and state laws.

29. Paragraph 29 is denied.

30. Defendants reaffirm all admissions and denials in the preceding paragraphs.

31. - 33. Paragraphs 31 to 33 are denied.

34. Defendants reaffirm all admissions and denials in the preceding paragraphs.

35. - 37. Paragraphs 35 to 37 are denied.

38. Defendants reaffirm all admissions and denials in the preceding paragraphs.

39. - 40. Paragraphs 39 to 40 are denied.

41. Defendants deny every allegation in the Complaint not admitted and demand strict proof thereof.

FOR A FIRST DEFENSE
(Lack of Jurisdiction)

42. Defendants reaffirm all prior paragraphs.

43. The Plaintiff's sales and arbitration documents are contracts of adhesion, are contradictory, and reserve the Plaintiff the right to pursue against Defendants any conceivable remedy under federal or state law while still essentially limiting Defendants to arbitration without a jury. As a result they are unconscionable and unenforceable under South Carolina contract law.

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44. Defendants were given inadequate time to review the lengthy arbitration agreement before it was snatched back by the Plaintiff on the night of the sale. The arbitration agreement was written in small, single-spaced type using technical legal language, such that even an attorney would be unable to comprehend and understand the document in an hour's time. Defendants had no lawyer present.

45. The Plaintiff required Defendants to sign two separate and contradictory arbitration agreements, plus a Special Delivery Agreement dealing with the same remedies covered under the two arbitration clauses, such that it is unclear to this day what the rights and duties are. Thus there is no meeting of the minds as to arbitration.

46. Moreover, the decision as to whether arbitration is proper is one for the Court. However, Plaintiff's arbitration procedure levies a penalty on plaintiffs who attempt to have the proper forum decide arbitrability by requiring them to pay attorneys' fees and costs if they lose.

47. The Complaint fails to provide language excepting Magnuson-Moss Warranty Act claims from arbitration. South Carolina has made it clear that even when warranties are not at issue in a claim, the contract must except Magnuson-Moss claims from

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arbitration.

48. For these reasons, this arbitration should be dismissed as this forum lacks jurisdiction

FOR A SECOND DEFENSE
(Comparative Negligence)

49. Defendants reaffirm all prior paragraphs.

50. Plaintiff owes duties to Defendants to use due care in selling automobiles and financing them in consumer transactions, preparation of documents, calculation of costs, fees, and other financial matters, and to monitor them so that Plaintiff's employees deal honestly and transparently with its customers.

51. Moreover, Defendants are owed duties by Plaintiff to use reasonable care in the investigation, including background investigations, hiring, training, monitoring, and supervision, of its employees.

52. Plaintiff breached its duties to Defendants in one or more of the following ways:

(A) In failing to investigate, do reasonable background checks on, hire, train, monitor, and supervise its sales staff and employees;

(B) In being untruthful to Defendants during its transactions with them;

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(C) In cursing at Defendant; threatening him; and attempting to force Defendants to tear up a valid contract or otherwise Plaintiff would not approve their financing;

(D) In attempting to mislead Defendants;

(E) In failing to run credit checks in a timely and proper manner when they were supposed to do so; and

(F) In attempting to pressure Carlee Simmons into returning a vehicle owned by Defendant.

53. All of which were the proximate cause of any damages suffered by Plaintiff and which were greater than any negligence of Defendants, Defendants' negligence being specifically denied. As a result, Plaintiff's claims should be dismissed.

FOR A THIRD DEFENSE
(Unclean Hands)

54. Defendants reaffirm all prior paragraphs.

55. Benson's aforementioned conduct was inequitable, misleading, and unconscionable. As a result, its claims are barred.

FOR A FOURTH DEFENSE
(Failure to State a Claim)

56. Defendants reaffirm all prior paragraphs.

57. Plaintiff has failed to state a claim upon which relief may be granted. Thus, Plaintiff's claims must be dismissed.

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FOR A FIFTH DEFENSE
(Failure to Mitigate)

58. Defendants reaffirm all prior paragraphs.

59. Plaintiff failed to mitigate its damages, and thus any claims it submits must be reduced by that amount.

FOR A SIXTH DEFENSE AND BY WAY OF MOTION TO DISMISS

60. Defendants reaffirm all prior paragraphs.

61. The Defendants move pursuant to South Carolina Rule of Civil Procedure 12 to dismiss this arbitration on the ground that there is no subject matter jurisdiction and that the matter should be heard in circuit court before a jury.

62. The basis for this motion is that the contracts presented to Defendants were extremely complex documents which were not only contradictory, unconscionable, and fully reserve the right for the Plaintiff to unilaterally proceed with separate legal claims and remedies regardless of arbitration proceedings. Moreover, the contracts were pressed upon Defendants in a hurried manner and incorporated legal issues that the Defendants, who are lay people, could not possibly comprehend. For example, the entire Federal Rules of Civil Procedure which are covered in a year of law school, were incorporated. Despite the underlying policy of consumer arbitration as being a quick, inexpensive, and simple resolution of

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claims, this arbitration agreement allowed Plaintiff to seek attorneys' fees for merely contesting arbitration.

There being no meeting of the minds and the documents being unconscionable, this arbitration should be dismissed.

I certify under Rule 11 of the Federal Rules of Civil Procedure that no consultation is required before filing this Motion.

WHEREFORE, having fully answered the Complaint and presented their Motion to Dismiss, Defendants pray that Plaintiff's claims be dismissed, for costs and attorney's fees.

COUNTERCLAIMS

JURY TRIAL REQUESTED

Defendants [hereinafter "Counterclaim Plaintiffs"] counter-claim against Benson as follows:

I. OVERVIEW

This consumer case involves a classic "Yo-Yo Deal." See Exhibit A (F.T.C. Bulletin). A Yo-Yo Deal, recognized as an improper sales tactic throughout the industry, occurs where an automobile dealer sells a vehicle to a customer on credit. The customer is told by the dealer's manager that her credit has been approved. After signing several contracts, the customer is sent on her way.

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The next day the auto dealer calls the buyer. The auto dealer informs the customer that she must return the vehicle, or otherwise she must pay more for it. If she does not comply, the car will be repossessed.

Carlee Simmons is a Web Consultant Strategist, and Donald Simmons is an Assistant Professor in the Art Department at Middle Georgia State University, residing in Bibb County, Georgia. In this case, Carlee Simmons, who had an 833 ("Excellent") credit score, was approved for a loan by Benson's manager on the spot, Counterclaim Plaintiffs have made a substantial down payment, have given Benson their SAAB as a trade in, stood ready to repay the financed amount, and sent on-time monthly loan checks to Hyundai Motor Finance as instructed by Benson.

II. JURISDICTION AND VENUE

Carlee and Donald Simmons, complaining of Benson Hyundai, LLC respectfully show unto the Arbitrator as follows:

1. Jurisdiction over this arbitration is contested. However, should the Arbitrator find that subject matter jurisdiction exists, Counterclaim Plaintiffs agree that personal jurisdiction exists over the parties. Venue is proper in Spartanburg County.

III. FACTS

2. The Counterclaim Plaintiffs, Donald and Carlee Simmons,

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are residents of Bibb County, Georgia.

3. Benson Hyundai, LLC [hereinafter "Benson" or the "Dealership"] is a motor vehicle dealer within the meaning of the South Carolina Motor Vehicle Dealers Act residing and doing business in Spartanburg County, South Carolina. At all times relevant and in connection with the transactions noted below, Tony Benson was its owner and president of Benson; Jeff Belsky was its general manager; Nate Burden was its New Car Manager; John Bandy was employed in Benson's Parts Department and attempted to pressure Carlee Simmons into relinquishing possession of Counterclaim Plaintiffs' vehicle; Robert Winecoff was a salesperson for Benson; Brian Perry was its Finance and Insurance Manager; and Daryl Turner was the involved salesman. Alexa Matos was Benson's salesperson. All of these persons acted within the course and scope of their agency for the Dealership and also were motor vehicle dealers within the meaning of the South Carolina Motor Vehicle Dealers Act at all times relevant.

4. On or about July 26, 2016, Counterclaim Plaintiffs went to the Dealership in hopes of purchasing a car. They had planned to start a family and needed a reliable car at a price they could afford. The Counterclaim Plaintiffs had done an internet search to find a Hyundai Veloster at a suitable price. Counterclaim

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Plaintiffs had previously called the Dealership and spoke to salesman, Robert Winecoff, who promised over the phone to match a price Counterclaim Plaintiffs had gotten elsewhere for the Hyundai.

5. Upon arrival, Counterclaim Plaintiffs agreed to go into the general sales manager's office to talk numbers for a potential purchase of the vehicle after being told that Benson Hyundai would start negotiations at around $19,600. Brian Perry, Finance and Insurance Manager, drafted a proposed contract with Counterclaim Plaintiffs showing the purchase price, down payment, and a loyal Hyundai buyer discount. A copy of this agreement is attached as Exhibit B.

6. Among the other numbers discussed was a special rebate of $3,750.00, which General Sales Manager Nathan Burden stated was only available to Counterclaim Plaintiffs "this night only."

7. In addition, Counterclaim Plaintiffs agreed to sell/trade in Donald Simmons' SAAB 9-2X for $3,500.00, which Benson has kept in its possession since that day. Counterclaim Plaintiffs allowed Benson to debit $1,000 from Plaintiffs' bank account and accepted a personal check for $2,800 as down payments. Those funds are still in Benson's possession also.

8. Donald Simmons told the Dealership that they wanted to finance the rest of the amount owed on the Hyundai. Benson effected

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credit inquiries on both Plaintiffs. Both Mr. and Mrs. Simmons' credit scores were good; however, Mrs. Simmons' 833 score was exceptional (anything from 750 and above is considered "excellent" and between 700 and 749 as "good") and higher than Mr. Simmons' score. When General Sales Manager Nate Burden learned of Carlee's excellent credit score and ran credit checks on the three credit bureaus, he told her on the spot he had all he needed and that her loan with Hyundai Motor Credit was approved.

9. Mr. Simmons had lived in South Carolina several years ago when foreign hackers accessed the South Carolina Department of Revenue's computer system. The hackers stole as many as 4.25 million tax records of individuals and businesses, and 387,000 credit card numbers. As a result, Mr. Simmons (a South Carolina resident at the time of the hacking incident) like many South Carolinians has frozen his Equifax credit from inquiries. Despite his Equifax credit being frozen, he is nonetheless able to easily "un-freeze" it.

10. That night at the dealership in the presence of the Finance and Insurance Manager Brian Perry and Carlee Simmons, Donald requested an immediate lift of the freeze to take place and to remain open for several days until the 30th of July so that the dealership could have free access to Donald's credit history. Thus,

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Benson was aware that Mr. Simmons' Equifax credit was unfrozen and available to Benson to access for three days from the 27th to the 30th. This is true despite Benson's representation that Carlee's loan was already approved.

11. However, the Dealership alleged that it was unable to access his credit even after Mr. Simmons' express request to the credit bureau that his credit block be lifted. This may either be because Benson neglected to access the credit or because Benson submitted it incorrectly by repeatedly misspelling Donald's Simmons' name as "DonalEd."

12. Carlee was asked to sign onto the deal, and she said that she would do so. Having been informed that Carlee's loan was already approved by Hyundai Motor Finance and that Counterclaim Plaintiffs were getting the best interest rate they possibly could, Counterclaim Plaintiffs began to sign the contracts. The Simmons were shown numerous documents by Benson's F&I Manager, Brian Perry, in a rushed way such as a buyer's order, financing agreement, and a two-page arbitration agreement in single-spaced, tiny font with technical terms. For example, the entire Federal Rules of Civil Procedure were adopted. The other arbitration rules would take an attorney an hour or more to comprehend. Neither of the Simmons are lawyers and did not have an attorney with them. Then, they were

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asked to sign a financing agreement with a second (different) arbitration agreement.

13. Counterclaim Plaintiffs were told by F&I Manager Brian Perry and sales person Daryl Turner that they would transfer Counterclaim Plaintiff's tags and title by mailing the paperwork to Georgia, process the sales documents, and pay Counterclaim Plaintiffs' ad valorem fees. The costs were deducted from Counterclaim Plaintiffs' down payment.

14. Counterclaim Plaintiffs were given the keys to their new Hyundai, congratulated on purchase of their car, and allowed to take their car home. Benson asked that Donald mail Benson the SAAB's title. Donald did this the next day, and Benson still has the car and title. Since this time, the Simmons' lives have been in turmoil.

15. Counterclaim Plaintiffs subsequently discovered that despite its retention of Counterclaim Plaintiffs' $1,000 down payment, $2,800 check, and Counterclaim Plaintiffs' SAAB, Benson failed to pay the ad valorum taxes due to the Macon-Bibb Georgia Tax Commission. Commissioner McCord of the Georgia Tax Commission contacted Benson regarding this failure to pay the taxes due the first week of January, 2017. The female to whom he spoke at Benson's dealership, "Robin Collins," promised the Commissioner

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that the title would be delivered by hand and in person to his office by the next week (the 2nd week of Jan. 2017). This was never done. Fines have been charged to Counterclaim Plaintiffs by the Tax Commission and are still accruing.

16. Counterclaim Plaintiffs were told that first night that their monthly payments would be $155.00, payable to "Hyundai Motor Finance." Following Benson's instructions, Counterclaim Plaintiffs have sent monthly checks to Benson in the amount of $155.00 payable to Hyundai Motor Finance since the night that their Hyundai was first purchased. Counterclaim Plaintiffs have never missed or been late for a payment. Counterclaim Plaintiffs also have kept the Hyundai insured.

IV. PRESSURE TO "RE-DO" THE SALE FOR MORE MONEY

17. The day after Counterclaim Plaintiffs purchased their Hyundai, Carlee was called by General Sales Manager Nathan Burden, was told that she needed to "redo" the contract, and that he was sending his boys down to meet Carlee and her husband in Macon. The Dealership's story changed depending upon whom they were telling it to. On this occasion, however, Burden says Carlee and Donald signed a contract worth more money when they were with him and that Benson gave Counterclaim Plaintiffs too many discounts. Burden sent her a cropped portion of a Buyer's Order. Burden told Carlee that

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Counterclaim Plaintiffs needed to come back and pay more money. Brian Ferry also called Carlee and left a voice mail.

18. Donald and Carlee met at home after work that day and called Nate Burden several times but only received a text in response.

19. Later that day, Nate Burden texted Carlee back only, and stated that he was sending someone to Macon in the morning to re-do the contract.

20. Early the next morning at approximately 7 A.M., Donald texted Nate Burden requesting he send Counterclaim Plaintiffs an email explaining exactly what he needed Counterclaim Plaintiffs to "redo" and explain what was wrong with the contract.

21. Burden called back, ignored Donald's earlier text requesting an explanation, and again stated that he was sending his boys to talk to Counterclaim Plaintiffs in Macon. Burden told Donald to "tear up" the contract, claiming that it was "no good." Donald told Burden that there was no need to send anyone until he explained why this needed to be redone and asked why he wanted Counterclaim Plaintiffs to tear up their contract.

22. Burden became irate and began cursing at Donald, using words such as "asshole" and "fucking" trying to pressure him. Donald pointed out that the Dealership wrote this contract and that

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everyone agreed to it. Donald said that the Dealership's own contract provided for no cooling-off period. Burden continued to curse. He also threatened that "if you don't redo it, I just won't approve your financing."

23. Later that evening at approximately 8:18 P.M., Brian Perry (F&I Manager) called Donald and asked Donald if he had his credit unlocked. Donald said yes and let him know that he already requested Equifax be unlocked up until the end of that week right at the dealership. Donald asked why Perry hasn't pulled it yet and pointed out that Perry had agreed to do this on the 27th. Brian Perry did not state why he didn't pull it on the 27th. Donald told Brian that after Nate's outburst and threat not to approve Plaintiffs, they need to stop calling Counterclaim Plaintiffs and harassing them and call Counterclaim Plaintiffs' attorney, Stanley Martin, if they need anything.

24. On Friday, July 29th, 2016, Counterclaim Plaintiffs' Georgia attorney, Stanley Martin, called Benson Hyundai and spoke to Nathan Burden. Mr. Martin let them know that he had looked at the contract and found it perfectly legitimate. He asked what the problem was and why Benson Hyundai would not put in writing what they want "redone." Burden was rude with Counterclaim Plaintiffs' attorney and threatened to repossess Counterclaim Plaintiffs' car.

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25. On August 11th, 2016, Carlee called Equifax. She was alerted that her account was being accessed by Hyundai Motor Finance over and over. The customer service representative said she had never seen anything like it and encouraged Carlee to lock her credit to protect her score from any further damage. The customer service representative said that Carlee's score had dropped significantly in the past week, about 50 points so far. Carlee placed a freeze, fraud alert, and monitoring system on her credit which costs her $20.00 every month. Equifax stated that her entire file was sent to the requesting party each time it was pulled and that she received a hard credit pull for each inquiry.

26. In the midst of Benson's threats and refusals to process the Counterclaim Plaintiffs' paperwork, on August 5th, 2016, Carlee was sent an email from corporate Hyundai congratulating her on her new Veloster purchase and asked to take their customer survey. The next day, two letters were received by Counterclaim Plaintiffs on letterhead, one for Donald and the other for Carlee, which appear to be credit denials from Hyundai Motor Finance regarding a recent application with Benson Hyundai. Carlee called Hyundai Motor Finance and was told that Hyundai did not know who Counterclaim Plaintiffs were and that there was not an application on file in either of their names. However there is a credit inquiry on

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Carlee's report.

27. On August 16, 2016, Donald's TransUnion Monitoring System received a hard inquiry from US BANK, an inquiry and bank of which he was unaware and had not authorized.

28. On August 18, 2016, Brian Perry (Finance & Insurance Manager) called Donald from number [redacted] and says, "Hey Buddy. I'm just calling because we need you to unlock your credit. We haven't pulled it yet." In fact, Donald hadn't locked his credit and suggested that Perry call his attorney. In fact, Donald's Equifax account had been open for three days at the start but not accessed by the Benson; TransUnion had been open the entire time and accessed by Benson.

29. To be more precise, Donald's credit account had been opened for Benson on the following days: Experian - July 28th; August 5th; Equifax: July 27th to July 30th; and TransUnion: July 27th to August 17, 2016 and December 25th, 2016 to January 22nd, 2017.

30. Toward the end of January, 2017, a salesperson, Alexa Matos, overwrote Carlee's name on her Hyundai BlueLink account VIN. Upon contacting BlueLink, Carlee was told that a salesperson named Alexa entered Matos' own personal credit card information and her own address, instead of the dealer's ID.

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31. On February 15th, 2017, Benson's employee and agent, who upon information and belief was Parts Department employee John Bandy, and possibly a second agent of the dealership, showed up on campus where Carlee works. Bandy appeared to be over 200 pounds and over six-feet tall, as opposed to Carlee who is four-feet, ten-inches tall and weighs 100 lbs. After remaining on the campus a significant part of the day, Bandy waited until Carlee was alone in her office. Benson knew she was represented by an attorney at the time.

32. Repossession occurs when an agent of the owner seizes a motor vehicle and tows it away. However, with no knowledge of the vehicle's whereabouts and no way to discover it, except to intimidate or otherwise force Carlee into revealing its location, Bandy attempted to do just that. Bandy situated himself between Carlee and the door and hovered above her. He stated that he was from Benson Hyundai and that "Tony" sent him. He said that he was going to take the car. This caused Carlee to be greatly frightened for her safety. Bandy never showed any identification or paperwork to Carlee and ran off when she threatened to call the police. She was frightened enough that she reported the matter to two law enforcement agencies. As a result of this chaotic series of events, Carlee's pre-existing medical condition was aggravated and

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caused her distress and anxiety for which she sought medical treatment.

FOR A FIRST CAUSE OF ACTION
(Breach of Written Contract)

33. The Counterclaim Plaintiffs restate all prior paragraphs as if fully stated herein.

34. Counterclaim Plaintiffs were instructed by Benson to make monthly payments to Hyundai Motor Finance as part of the financing agreement; Counterclaim Plaintiffs have made all payments to date and done so in a timely manner.

35. As part of the sale, Benson was to pay for taxes, tags, other incidentals, and to transfer title of the Hyundai to Counterclaim Plaintiffs. This they have not done.

36. Counterclaim Plaintiffs have offered and stood ready at all times to pay the balance of money owed for purchase of the Hyundai. Benson, however, requires a release. Meanwhile, Benson still keeps the Counterclaim Plaintiffs' down payments and the SAAB.

37. As a direct and proximate result of Benson's breaches of contract, Counterclaim Plaintiffs have lost use of their Hyundai, have incurred numerous fees, which are still increasing, from the State of Georgia for Benson's failure to process transfer of the

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Hyundai and pay the property taxes, and have lost possession of their SAAB and down payment.

38. The Counterclaim Plaintiffs pray for a judgment against Benson in an amount to be determined by the jury, for costs, and for such further relief as the Court and jury deem appropriate.

AND IN THE ALTERNATIVE,
FOR A SECOND CAUSE OF ACTION
(Breach of Oral Agreements)

39. The Counterclaim Plaintiffs reassert all prior paragraphs as if fully stated herein.

40. As part of the sales agreement, Counterclaim Plaintiffs agreed to pay, and Benson accepted, two down payments toward purchase of the Hyundai. Counterclaim Plaintiffs also agreed to transfer ownership and possession of Donald Simmons' SAAB to Benson as part of the down payment on the Hyundai. Counterclaim Plaintiffs and Benson signed documents transferring title of the SAAB to Benson. A sales contract (also known as a Buyer's Order) and a financing agreement also were signed. Counterclaim Plaintiffs were charged a fee in return for Benson processing the transfers of the two vehicles and payment of related expenses, taxes, and fees.

41. Benson has breached the written agreements; however Counterclaim Plaintiffs have performed their obligations and stand ready to pay their remaining obligations as they come due.

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42. As a direct and proximate result of Benson's breaches of contract, Counterclaim Plaintiffs have lost use of the Hyundai, have incurred numerous fees and tax penalties, which are still increasing, from the State of Georgia for Benson's failure to process transfer of the Hyundai, and have lost possession of their SAAB and down payment.

43. The Counterclaim Plaintiffs pray for a judgment against Benson in an amount to be determined by the jury, for costs, and for such further relief as the Court and jury deem appropriate.

FOR A THIRD CAUSE OF ACTION
(Negligence)

44. The Counterclaim Plaintiffs reassert all prior paragraphs as if fully stated herein.

45. Benson owes duties to Counterclaim Plaintiffs to use due care in selling automobiles and financing them in consumer transactions, preparation of documents, calculation of costs, fees, and other financial matters, to deal truthfully with its customers, and to monitor the staff so that they deal honestly and transparently with its customers.

46. Moreover, Counterclaim Plaintiffs are owed duties by Benson to use reasonable care in the investigation, including background investigations, hiring, training, monitoring, and

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supervision, of its employees.

47. Benson breached its duties to Counterclaim Plaintiffs in one or more of the following ways:

(A) In failing to investigate, do reasonable background checks on, to hire, train, monitor, and supervise its sales staff and employees;

(B) In being untruthful to Counterclaim Plaintiffs during its transactions with them;

(C) In cursing at Counterclaim Plaintiffs; threatening them; attempting to force Counterclaim Plaintiffs to tear up a valid contract or otherwise Benson would not approve their financing; and in attempting to pressure and intimidate Carlee Simmons into giving Benson the Hyundai she has paid for and owns;

(D) In attempting to mislead Counterclaim Plaintiffs; and

(E) In failing to run credit checks in a timely and proper manner when they were supposed to do so.

48. As a direct and proximate result of Benson's negligence and recklessness, the Counterclaim Plaintiffs have been without use of the Hyundai for a significant time, have continued to pay for insurance, are obligated to pay tax charges and penalties, have suffered stress, frustration, mental distress, embarrassment, and

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worry, have had Carlee's credit damaged; and have been set back in their plans to have a family.

49. The Counterclaim Plaintiffs are informed and believe they are entitled to actual and punitive damages in amounts to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION
(South Carolina Motor Vehicle Dealer's Act)

50. The Counterclaim Plaintiffs reassert all prior paragraphs as if fully stated herein.

51. Benson is an automobile dealership, and the Hyundai is a motor vehicle under the South Carolina Motor Vehicle Dealers Act, S.C. Code § 56-15-10 et seq.

52. The aforementioned acts and practices of Benson were unfair, deceptive, violate the public policy of South Carolina, and were done maliciously.

53. Benson acted wilfully and wantonly because it knew or should have known that its conduct was deceptive, unfair, and a violation of state and federal statutes.

54. As a direct and proximate result of Benson's aforementioned practices, Counterclaim Plaintiffs are left without use of a vehicle for which they have continued to make payments and insure, owe incidental payments and penalties for taxes, title

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transfer, and processing fees, have suffered impaired credit, have suffered stress and frustration, were required to hire attorneys, and are required to pay costs and expenses of litigation.

55. The Counterclaim Plaintiffs are informed and believe they are entitled to a verdict for actual and punitive damages in an amount to be determined by the jury, double their actual and punitive damages together with attorneys' fees not to exceed three time the Counterclaim Plaintiffs' actual damages, plus costs and disbursements of this action.

FOR A FIFTH CAUSE OF ACTION
(Unfair Trade Practices Act)

56. The Counterclaim Plaintiffs reassert all prior paragraphs as if fully stated herein.

57. The aforementioned acts and practices of Benson were unfair, deceptive, and violate the public policy of South Carolina.

58. The aforementioned acts and practices of Benson affect the public interest, may have occurred before upon information and belief, and are capable of repetition. Moreover, because Benson is still engaged in automotive sales and financing and also upon information and belief lack proper policies and procedures to avoid such wrongful acts in the future, there is not only a potential for repetition but actual repetition.

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59. Benson acted willfully and wantonly because it knew or should have known that its conduct was deceptive, unfair, and a violation of federal and state statutes.

60. As a direct and proximate result of Benson's aforementioned practices, the Counterclaim Plaintiffs are left without use of a vehicle for which they have continued to make payments and insure, owe incidental payments for taxes and penalties, title transfer, and processing fees, have suffered impaired credit, have suffered mental distress, stress and frustration, were required to hire attorneys, have had a reduction in the credit score of one or both, and are required to pay costs and expenses of litigation.

61. Counterclaim Plaintiffs are informed and believe they are entitled to three times their actual damages together with attorneys' fees, plus costs and disbursements.

FOR A SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

62. The Counterclaim Plaintiffs reassert all prior paragraphs as if fully stated herein.

63. Benson directly and through its agents made the aforementioned false and half-truth representations at a time when they had a pecuniary interest in the sale and financing.

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64. Benson owed a duty to the Counterclaim Plaintiffs to use due care to be truthful in making the representations but breached that duty. Had Counterclaim Plaintiffs known that Benson would go back on its word, they would never have dealt with Benson.

65. The Counterclaim Plaintiffs justifiably relied on Benson's representations because the Counterclaim Plaintiffs had limited knowledge and access to information about the inner workings of the automobile and auto-finance businesses while at the same time, Benson's employees had far superior knowledge of the same.

66. As a direct and proximate result of Benson's aforementioned practices, the Counterclaim Plaintiffs are left without a vehicle for which they have continued to make payments and insure, owe incidental payments for taxes and penalties, title transfer, and processing fees, have suffered impaired credit, have suffered stress and frustration, were required to hire attorneys, have had a reduction in the credit score of one or both, and are required to pay costs and expenses of litigation.

67. The Counterclaim Plaintiffs are informed and believe they are entitled to actual damages and punitive damages in an amount to be determined by the jury, plus costs and expenses.

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WHEREFORE, the Counterclaim Plaintiffs pray for judgment against Benson as follows:

1. For actual damages, costs, and fees including attorneys' fees under the First Cause of Action for breach of written contract or, in the alternative, for actual damages, costs, and fees under the Second Cause of Action for breach of oral contract, in amounts to be decided by the Arbitrator;

2. For actual and punitive damages under the Third Cause of Action for negligence in an amount to be decided by the Arbitrator;

3. For double their actual and punitive damages together with attorneys' fees not to exceed three time the Plaintiffs' actual damages in an amount to be determined by the jury, plus costs and disbursements of this action, under the Fourth Cause of Action arising under the South Carolina Motor Vehicle Dealers Act;

4. For three times their actual damages in an amount to be determined by the jury, together with attorneys' fees in an amount to be determined by the Court on the Fifth Cause of Action under the Unfair Trade Practices Act;

5. For actual and punitive damages in an amount to be determined by the jury on the Sixth Cause of Action for negligent misrepresentation;

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6. For prejudgment interest on all causes of action where applicable; and

7. For such other and further relief as the Court and jury deem just and proper.

GRIMBALL & CABANISS, L.L.C.

By: _____

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473 SAVANNAH HIGHWAY
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(843) 722-0311
(843) 722-1374 fax
warren.moise@gmail.com
ATTORNEYS FOR THE
COUNTERCLAIM PLAINTIFFS
DONALD AND CARLEE SIMMONS

Charleston, South Carolina

Dated: June 12, 2017

Exhibit A

Ex. C

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FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC Charges Los Angeles-Based Sage Auto Group With Using Deceptive and Unfair Sales and Financing Tactics

FOR RELEASE

September 29, 2016

TAGS: deceptive/misleading conduct | Automobiles | Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing

The Federal Trade Commission has charged nine Los Angeles-area auto dealerships and their owners with using a wide range of deceptive and unfair sales and financing practices. The FTC's action filed in the U.S. District Court for the Central District of California seeks to end these practices and return money to consumers.

This is the FTC's first action against an auto dealer for "yo-yo" financing tactics: using deception or other unlawful pressure tactics to coerce consumers who have signed contracts and driven off the dealership lots into accepting a different deal. The FTC also alleges that the defendants packed extra, unauthorized charges for "add-ons," or aftermarket products and services, into car deals financed by consumers.

"The car-buying process is a two-way street," said Jessica Rich, Director of the FTC's Bureau of Consumer Protection. "The FTC expects dealers to honor their contractual obligations, and will pursue those who use yo-yo financing tactics and pack unwanted costly add-ons onto consumers' contracts."

According to the FTC's complaint, the defendants entice consumers, particularly financially distressed and non-English speaking consumers, into their dealerships with print, internet, radio and television ads that make an array of misleading claims, including that vehicles are generally available for the advertised terms and that consumers can buy vehicles for low prices, finance with low monthly payments, or make low down payments. Other allegedly misleading claims include that consumers can finance the purchase of vehicles – when in fact they are lease offers – and that the defendants will pay off consumers' trade-in vehicles, despite the fact that consumers ultimately are responsible for paying off any amount owed on the trade-in.

The FTC also alleges that the defendants use phony online reviews to tout their dealerships and discredit negative reviews that highlighted their unlawful practices. They and their employees or agents allegedly post positive, five-star online reviews that purport to be from objective or independent reviewers without disclosing their relationship to the dealerships.

In addition to the deceptive advertising and marketing allegations, the FTC has charged that several financing tactics of the defendants are deceptive and unfair. As part of the sales and financing process, the defendants offer add-ons such as extended warranties, guaranteed auto protection (GAP), and maintenance or service plans. The FTC alleges the defendants have violated the FTC Act by charging some consumers for add-ons without their consent or falsely claiming the products were required or were free.

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And according to the complaint, in some instances after the consumers have signed contracts, the defendants falsely represent that consumers are required to sign a new contract with different terms. In other instances, the defendants tell consumers who have completed finance contracts that the contracts are cancelled and falsely represent that the defendants are permitted to keep consumers' down payments or trade-ins. When consumers request compliance with the terms of the contract or refuse the defendants' demands, the defendants, in some instances, have falsely represented that consumers will be liable for legal action, including lawsuits, repossession, or criminal arrest for a stolen vehicle.

The FTC's complaint also charges the defendants with violating the Truth In Lending Act and Regulation Z, and the Consumer Leasing Act and Regulation M, for failing to clearly disclose required credit information and lease information in their advertising.

The defendants are Universal City Nissan, Inc., also d/b/a Universal Nissan; Sage Downtown, Inc., also d/b/a Kia of Downtown Los Angeles; Glendale Nissan/Infiniti, Inc., also d/b/a Glendale Infiniti and Glendale Nissan; Valencia Holding Co., LLC, also d/b/a Mercedes-Benz of Valencia; West Covina Auto Group, LLC, also d/b/a West Covina Toyota and West Covina Toyota/Scion; West Covina Nissan, LLC; Covina MJL, LLC, also d/b/a Sage Covina Chevrolet; Sage North Hollywood, LLC, also d/b/a Sage Pre-Owned; and Sage Vermont, LLC, also d/b/a Sage Hyundai.

Also charged are Joseph Schrage, a/k/a Joseph Sage; Leonard Schrage, a/k/a Leonard Sage; and Michael Schrage, a/k/a Michael Sage; Sage Holding Company Inc.; and Sage Management Company Inc..

The Commission vote authorizing the filing of the complaint against the Sage Auto Group defendants was 2-1, with Commissioner Ohlhausen dissenting.

NOTE: The Commission files a complaint when it has "reason to believe" that the law has been or is being violated and it appears to the Commission that a proceeding is in the public interest. The case will be decided by the court.

To learn more, read *Are Car Ads Taking You For a Ride?*, *Buying A New Car*, and *Buying A Used Car*.

The Federal Trade Commission works to promote competition, and protect and educate consumers. You can learn more about consumer topics and file a consumer complaint online or by calling 1-877-FTC-HELP (382-4357). Like the FTC on Facebook, follow us on Twitter, read our blogs and subscribe to press releases for the latest FTC news and resources.

PRESS RELEASE REFERENCE:
Los Angeles-Based Sage Auto Group Will Pay $3.6 Million to Settle FTC Charges

Contact Information

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ftc.gov

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EXHIBIT B

Ex. C

BENSON

NISSAN KIA HYUNDAI

P. O. Box 8669
Spartanburg, South Carolina 29305
Nissan: (864) 585-3611
Kia: (864) 699-9090
Hyundai: (864) 641-0029

DEAL # 8136

BIRTHDAY INFORMATION
BUYER:
CO-BUYER [redacted]
ANNIVERSARY

E-MAIL ****
1) DRIVER LIC#
2) DRIVER LIC#
South Carolina and North Carolina require names and addresses on deal to match names and addresses on driver licenses

RETAIL BUYER'S ORDER

CUST. NO. 10637
DATE 07/26/2016
WORK PHONE [redacted]
HOME PHONE
SS # ☐☐☐-☐☐-☐☐☐☐
SS # ☐☐☐-☐☐-☐☐☐☐

THE UNDERSIGNED PURCHASER CARLEE ROBIN SIMMONS OR DONALD LAWRENCE SIMMONS
ADDRESS [redacted] ZIP 31201

Hereby agrees to purchase from Benson Cadillac-Nissan, Inc., hereinafter referred to as Seller, subject to all terms, conditions and agreements contained herein, the following: [X] NEW ☐ USED [X] DEMONSTRATOR

YEAR	MAKE	MODEL	TYPE	CYL.	SERIAL #
2016	HYUNDAI	VELOSTER	TURBO A	4	KMHTC6AE5GU275969

COLOR	STOCK #	MILEAGE	COUNTY	INSPECTION #	SALESMAN'S NAME
ELITE WH	H60666	5	BIBB		ROBERT M WINECOFF

LIST PRICE OR MSRP		$ 19600	00
ADDED EQUIPMENT:			
TOTAL SALES PRICE		19600	00
TRADE IN ALLOWANCE		3500	00
DIFFERENCE		16100	00
SUBTOTAL		16100	00
S.C. SALES TAX	324 / 824A	931	00
LICENSE TITLE & REGIST.	608	36	00
CLOSING FEE	605C	225.00 ~~$899~~	00
SECURE ETCH	905E	~~$299~~	00
RESISTALL	905K	299	00
DENT REPAIR	905T		N/A
LIFE & A&H	807 / 809		N/A
GAP INSURANCE	807G / 809G		N/A
SERVICE PROGRAM	444 / 465		N/A
ROAD HAZARD	444R / 455R		N/A
MAINTENANCE	444G		N/A
SUB-TOTAL		17593	00
AMOUNT OWING ON TRADE-IN	300B		N/A
TOTAL AMOUNT DUE		17593	00
DEPOSIT WITH ORDER Rec#	220A		N/A
CASH ON DELIVERY Rec#	220A	3800	00
FACTORY REBATE	220	3750	00
UNPAID BALANCE DUE		$ 10043	00

CLOSING FEE

This fee includes complete cosmetic detail materials, administrative services, notary services, courier service, fuel, hazardous waste removal such as oil filters, oil, antifreeze, tires. This charge represents costs and/or profit to the seller/dealer for items such as inspecting, cleaning and adjusting new and used vehicles and preparing documents related to the sale. This fee does not represent any payment for mechanical services which have been reimbursed to the dealer by the manufacturer.

[X] This vehicle delivered subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

Carlee Robin Simmons
Purchaser's Signature

☐ I agree to pay any difference in Ben payoff.

Purchaser's Signature

REMARKS

CONTRACTUAL DISCLOSURE STATEMENT

"The information you see on the window form (Buyer's Guide) for this vehicle is part of the contact. Information on the window form overrides any contlary provision in the contract of sale."

LICENSE TAG INFORMATION: ACV:

PURCHASE NEW TAG [X]
1) DL#
2) DL#
TRANSFER ☐
TAG #
EXP. DATE
VALIDATION #

INSURANCE INFORMATION

POLICY # PHONE #
COMPANY CINCIATTI EFFECTIVE DATES
AGENT VERIFIED BY

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	TYPE	COLOR
2006	SAAB	9-2X	2006 SAAB	GRAY

CYL.	SERIAL #	STATE	COUNTY	LIC. #	MILEAGE
4	JF14GG616464H050029				123635

1ST LIEN 2ND LIEN

NAME ON TITLE:
LIENHOLDER:
ADDRESS:
AMT. (15 DAYS):
GOOD THRU:
ACCT. NO.:
VERIFIED BY:
QUOTED BY:
PHONE NO.:

As part of the purchase price, the Purchaser does hereby grant, bargain, sell and convey the above described automobile to Seller. Purchaser warrants title to and possession of said automobile to be in him, and that same is free from encumbrances, and all debts, except the pay-off amounts stated above. Purchaser further warrants his good right to sell and deliver the above described automobile with clear title - no salvage title.

DISCLAIMER OF WARRANTIES

NEW VEHICLE. All warranties on this new vehicle are those offered by the Manufacturer. The Seller hereby expressly disclaims all warranties either express or implied including any implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, and the Seller neither assumes nor authorizes any person to assume for it any liability in connection with the sale of the vehicle. This disclaimer by the Seller in no way affects the terms of the Manufacturer's warranty. Buyer shall not be entitled to recover from the Selling Dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.

Purchaser hereby acknowledges that he has read and understands the above and that Seller has made available to him prior to the purchase the factory warranty which Purchaser understands constitutes all of the warranties with respect to the sale of the vehicle.

USED VEHICLES. In the event that the vehicle being purchased is a used vehicle, Purchaser hereby acknowledges that the above disclaimer will also apply to said used vehicle. EXCEPT AS MAYBE EXPRESSED COMPLETELY IN WRITING BY THE SELLER ON SEPARATE INSTRUMENT DELIVERED TO THE PURCHASER, ALL USED VEHICLES ARE SOLD "AS IS - WITH NO WARRANTY." Purchaser hereby acknowledged that Seller has made available to him and Purchaser has read any limited warranty delivered to him by separate instrument and said limited warranty constitutes all of the warranties with respect to the sale of the used vehicle and that any implied warranty that may not be waived by laws limited to the duration of said limited warranty. Purchaser understands that any new or remaining Manufacturer's warranties on used vehicles are not the responsibility of Seller.

ADDITIONAL TERMS AND CONDITIONS

This Order shall not become binding upon either the Purchaser or the Seller until the vehicle described above is physically delivered and Purchaser has received the Disclosure required under Federal Law, if applicable. In the case of a credit sale, the Seller shall not be obligated to sell until a finance source approves this Order and agrees to purchase a retail instalment contact between the Purchaser and the Seller based on this Order.

As a part of the New Car Pre-Delivery Procedures or Used Car Reconditioning of the Seller all body repairs in an amount not exceeding three hundred dollars ($300.00) have been made prior to the delivery of the described automobile. Purchaser waives notice concerning said repairs and accepts the automobile as delivered. Any body repairs made by the Seller exceeding $300.00 have been set out herein or in a separate disclosure statement if said repairs were made by the Seller or were made known to and said repairs are hereby accepted and approved by Purchaser.

The trade-in allowance shown in the Order is that amount that the Seller agrees to allow at the time the Purchaser accepts delivery and completes the Order. In the event of any disagreement over the value of the car traded in, the Seller will not be liable for any more than the wholesale market value as determined by the loan value of the automobile as shown in the Black Book less the estimated cost of reconditioning same.

It is agreed and understood that the legal title to the described automobile does not pass to Purchaser until the entire purchase price is paid in full and also until the check given by the Purchaser for all or part of the payment for said automobile clears the bank on which it is drawn.

The Purchaser agrees that all provisions stated hereon are part of this Order and that this Order supersedes any prior agreement and is the complete and exclusive agreement on the subject matters covered by this Order. Further Purchaser and Seller agree that no person is authorized to make any representations beyond those expressed in this Order. Verbal promises by salesman are not valid and any promises or understandings not herein specified in writing are hereby expressly waived by the Purchaser.

The purchaser warrants that he is of majority age and further warrants that all statements made by him are true and correct, and that the Seller may accept them as being true representations of existing facts.

Purchaser has read all the provisions of this Order including the Disclaimer of Warranties, Purchaser acknowledges that he has received a true copy of this Order and that the Order has been completely filled in and signed.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Purchaser's Signature Carlee Robin Simmons ACCEPTED BY

THIS ORDER NOT VALID UNLESS ACCEPTED BY AN AUTHORIZED MANAGER OF THE COMPANY.

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EXHIBIT C

Ex. C

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

Buyer Name and Address (Including County and Zip Code)	Co-Buyer Name and Address (Including County and Zip Code)	Seller-Creditor (Name and Address)
[redacted] CO: 31BB	DONALD LAWRENCE SIMMONS [redacted] CO: 31BB	BENSON HYUNDAI 2550 REIDVILLE RD SPARTANBURG SC 29301

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 Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New/Used	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2016	HYUNDAI VELOSTER	KMHTC6AE5GU281969	Personal, family, or household unless otherwise indicated below. ☐ business ☒ agriculture ☐ N/A

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of $ 11050.00.
3.09 %	$ 985.96	$ 10043.00	$ 11028.96	$ 22078.96

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
72	153.18	Monthly beginning 09/09/2016
N/A	N/A	N/A

Or As Follows: N/A

Late Charge. If a payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late, with a minimum charge of $7.20. The charge will not exceed $15.00. If you bought the vehicle primarily for personal, family, or household use, we may charge the maximum and minimum late charge dollar amounts as allowed by S.C. Code Ann. 37-1-108 of the South Carolina Consumer Protection Code.

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

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

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

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including $ 300.00 sales tax and $ 225.00 closing fee)		$ 20424.00 (1)
2 Total Downpayment =		
Trade-in 2006 SAAB 9-2X (Year) (Make) (Model)		
Gross Trade-In Allowance	$ 3500.00	
Less Pay Off Made By Seller	$ N/A	
Equals Net Trade In	$ 3500.00	
+ Cash	$ 3800.00	
+ Other REBATES	$ 3750.00	
(If total downpayment is negative, enter "0" and see 4I below)	$ 11050.00 (2)	
3 Unpaid Balance of Cash Price (1 minus 2)	$ 9374.00 (3)	
4 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):		
A Cost of Optional Credit Insurance Paid to Insurance Company or Companies.		
Life $ N/A		
Disability $ N/A	$ N/A	
B Vendor's Single Interest Insurance Paid to Insurance Company	$ N/A	
C Other Optional Insurance Paid to Insurance Company or Companies	$ N/A	
D Optional Gap Contract	$ N/A	
E Official Fees Paid to Government Agencies		
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
F Government Taxes Not Included in Cash Price	$ N/A	
G Government License and/or Registration Fees LIC=20.00	$ 20.00	
H Government Certificate of Title Fees	$ 18.00	
I Other Charges (Seller must identify who is paid and describe purpose)		
to N/A for Prior Credit or Lease Balance	$ N/A	
to GA DEPT OF REV for GA TAVT	$ 631.00	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
	$ 669.00	

Insurance. You may buy the physical damage insurance the law requires (we may) 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 we are 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 $ N/A

Credit Disability $ N/A

Insurance Company Name N/A N/A

Home Office Address N/A 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 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 N/A Term

Premium $ N/A

Insurance Company Name N/A N/A

Home Office Address N/A N/A

☐ N/A Type of Insurance N/A Term

Premium $ N/A

Insurance Company Name N/A N/A

Home Office Address N/A N/A

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

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

X N/A Buyer Signature N/A Date

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

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

X N/A Buyer Signature N/A Date

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

Returned Check Charge: You agree to pay a charge of

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Ex. C

B	Vendor's Single Interest Insurance Paid to Insurance Company	$	N/A
C	Other Optional Insurance Paid to Insurance Company or Companies	$	N/A
D	Optional Gap Contract	$	N/A
E	Official Fees Paid to Government Agencies		
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
F	Government Taxes Not Included in Cash Price	$	N/A
G	Government License and/or Registration Fees LIC=20.00	$	20.00
H	Government Certificate of Title Fees	$	10.00
I	Other Charges (Seller must identify who is paid and describe purpose)		
	to N/A for Prior Credit or Lease Balance	$	N/A
	to GA DEPT OF REV for GA TAVT	$	651.00
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	to N/A for N/A	$	N/A
	Total Other Charges and Amounts Paid to Others on Your Behalf	$	669.00 (4)
5	Amount Financed (3 + 4)	$	10043.00 (6)

Insurance Company Name N/A

Home Office Address N/A
N/A

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

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

X N/A — Buyer Signature — N/A Date

X N/A — Co-Buyer Signature — N/A Date

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

X N/A — Buyer Signature — N/A Date

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

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 N/A, Year N/A. SELLER'S INITIALS N/A

Agreement to Arbitrate: By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.
Buyer Signs X Carla Robin Simmons — Co-Buyer Signs X Donald Lamar Simmons

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

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

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

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

I want to buy a gap contract.

Buyer Signs X N/A

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 Carla Robin Simmons Co-Buyer Signs X Donald Lamar Simmons
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 provision on the reverse side before signing below. You confirm that you received a completely filled in copy when you signed it.

Buyer Signs X Carla Robin Simmons Date 07/26/16 Co-Buyer Signs X Donald Lamar Simmons Date 07/26/16

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

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

Seller signs HENSON HYUNDAI Date 07/26/16 X Title

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

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

HENSON HYUNDAI
Seller By Title

FORM NO. 553-SC-ARB (rev. 7/08) U.S. PATENT NO. 6643632
©2011 The Reynolds and Reynolds Company TO ORDER: www.reyrey.com; 1-800-541-0742; fax 1-800-311-5255
THIS FORM MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO ITS LEGAL USE OR FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

CUSTOMER/TRUTH IN LENDING COPY

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 computed 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.

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

c. 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.

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 PROVISION
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 Provision, 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 Provision 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. You may choose the American Arbitration Association, 1633 Broadway, 10th Floor, New York, New York 10019 (www.adr.org), or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the 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 and the applicable statute of limitations. This arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor 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 pay you filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of $5000, unless the law or the rules of the chosen arbitration organization require us to pay more. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. 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 Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et. seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

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, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual injunctive relief. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, 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 Provision shall be unenforceable.

EX. C
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ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

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 (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.
   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 computed 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 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 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.

Ex. D

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072
ELECTRONICALLY FILED - 2017 Jun 14 12:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)
Case No. 2017-CP-42-

Donald and Carlee Simmons)
)
Plaintiffs,)
) **S U M M O N S**
v.)
)
Benson Hyundai, LLC)
)
Defendant.)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to respond to the Complaint in this action, a copy of which is herewith served upon you and to appear and defend by serving a copy of your Answer or other responsive pleading on the subscriber at his office, 473 Savannah Highway, P. O. Box 816, Charleston, South Carolina 29402, within thirty days after the service hereof, exclusive of the date of such service, and if you fail to respond to the Complaint within the time aforesaid, the Plaintiffs will apply to the court for judgment by default for the relief demanded in the Plaintiffs' Complaint.

GRIMBALL & CABANISS, L.L.C.

By: _____

E. WARREN MOÏSE
473 SAVANNAH HIGHWAY
CHARLESTON, SC 29407
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Charleston, South Carolina
Date: June 14, 2017

Ex. D

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Case No. 2017-CP-42-
Donald and Carlee Simmons	)	
	)	
Plaintiffs,	)	
	)	C O M P L A I N T
v.	)	
	)	Jury Trial Demanded
Benson Hyundai, LLC	)	
	)	
Defendant.	)	

The Plaintiffs complain of the Defendant as follows:

I. OVERVIEW

This consumer case involves a classic "Yo-Yo Deal." See Exhibit A (F.T.C. Bulletin). A Yo-Yo Deal, recognized as an improper sales tactic throughout the industry, occurs where an automobile dealer sells a vehicle to a customer on credit. The customer is told by the dealer's manager that her credit has been approved. After signing several contracts, the customer is sent on her way.

The next day the auto dealer calls the buyer. The auto dealer informs the customer that she must return the vehicle, or otherwise she must pay more for it. If she does not comply, the car will be repossessed.

Carlee Simmons is a Web Consultant Strategist, and Donald Simmons is an Assistant Professor in the Art Department at Middle

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Georgia State University, residing in Bibb County, Georgia. In this case, Carlee Simmons, who had an 833 ("Excellent") credit score, was approved for a loan by Benson's manager on the spot, Plaintiffs have made a substantial down payment, have given Benson their SAAB as a trade in, stood ready to repay the financed amount, and sent on-time monthly loan checks to Hyundai Motor Finance as instructed by Benson.

II. JURISDICTION AND VENUE

The Court has subject matter and personal jurisdiction over the case and parties. Venue is proper in Spartanburg County.

III. FACTS

2. The Plaintiffs, Donald and Carlee Simmons, are residents of Bibb County, Georgia.

3. Benson Hyundai, LLC [hereinafter "Benson" or the "Dealership"] is a motor vehicle dealer within the meaning of the South Carolina Motor Vehicle Dealers Act residing and doing business in Spartanburg County, South Carolina. At all times relevant and in connection with the transactions noted below, Tony Benson was owner and president of Benson; Jeff Belsky was its general manager; Nate Burden was its New Car Manager; upon information and belief John Bandy was employed in Benson's Parts Department; Robert Winecoff was a salesperson for Benson; Brian

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Perry was its Finance and Insurance Manager; Daryl Turner was also a salesperson as was Alexa Matos. All of these persons acted within the course and scope of their agency for the Dealership and also were motor vehicle dealers within the meaning of the South Carolina Motor Vehicle Dealers Act at all times relevant.

4. On or about July 26, 2016, Plaintiffs went to the Dealership in hopes of purchasing a car. They had planned to start a family and needed a reliable car at a price they could afford. The Plaintiffs had done an internet search to find a Hyundai Veloster at a suitable price. Plaintiffs had previously called the Dealership and spoke to salesman, Robert Winecoff, who promised over the phone to match a price Plaintiffs had gotten elsewhere for the Hyundai.

5. Upon arrival, Plaintiffs agreed to go into the general sales manager's office to talk numbers for a potential purchase of the vehicle after being told that Benson Hyundai would start negotiations at around $19,600. Brian Perry, Finance and Insurance Manager, drafted a proposed contract with Plaintiffs showing the purchase price, down payment, and a loyal Hyundai buyer discount. A copy of this agreement is attached as Exhibit B.

6. Among the other numbers discussed was a special rebate of $3,750.00, which General Sales Manager Nathan Burden stated was

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only available to Plaintiffs "this night only."

7. In addition, Plaintiffs agreed to sell/trade in Donald Simmons' SAAB 9-2X for $3,500.00, which Benson has kept in its possession since that day. Plaintiffs allowed Benson to debit $1,000 from Plaintiffs' bank account and accepted a personal check for $2,800 as down payments. Those funds are still in Benson's possession also.

8. Donald Simmons told the Dealership that they wanted to finance the rest of the amount owed on the Hyundai. Benson effected credit inquiries on both Plaintiffs. Both Mr. and Mrs. Simmons' credit scores were good; however, Mrs. Simmons' 833 score was exceptional (anything from 750 and above is considered "excellent" and between 700 and 749 as "good") and higher than Mr. Simmons' score. When General Sales Manager Nate Burden learned of Carlee's excellent credit score and ran credit checks on the three credit bureaus, he told her on the spot he had all he needed and that her loan with Hyundai Motor Credit was approved.

9. Mr. Simmons had lived in South Carolina several years ago when foreign hackers accessed the South Carolina Department of Revenue's computer system. The hackers stole as many as 4.25 million tax records of individuals and businesses, and 387,000 credit card numbers. As a result, Mr. Simmons (a South Carolina

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resident at the time of the hacking incident) like many South Carolinians has frozen his Equifax credit from inquiries. Despite his Equifax credit being frozen, he is nonetheless able to easily "un-freeze" it.

10. That night at the Dealership in the presence of the Finance and Insurance Manager Brian Perry and Carlee Simmons, Donald requested an immediate lift of the freeze to take place and to remain open for several days until the 30th of July so that the Dealership could have free access to Donald's credit history. Thus, Benson was aware that Mr. Simmons' Equifax credit was unfrozen and available to Benson to access for three days from the 27th to the 30th. This is true despite Benson's representation that Carlee's loan was already approved.

11. However, the Dealership alleged that it was unable to access his credit even after Mr. Simmons' express request to the credit bureau that his credit block be lifted. This may either be because Benson neglected to access the credit or because Benson submitted it incorrectly by repeatedly misspelling Donald's Simmons' name as "DonalEd."

12. Carlee was asked to sign onto the deal, and she said that she would do so. Having been informed that Carlee's loan was already approved by Hyundai Motor Finance and that Plaintiffs were

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getting the best interest rate they possibly could, Plaintiffs began to sign the contracts. The Simmons were shown numerous documents by Benson's Finance & Insurance Manager, Brian Perry, in a rushed way such as a buyer's order, financing agreement, and a two-page arbitration agreement in single-spaced, tiny font with technical terms. For example, as to the Arbitration Agreement, the entire Federal Rules of Civil Procedure were adopted into it. In addition, the other arbitration rules would take an attorney an hour or more to comprehend. Neither of the Simmons are lawyers and did not have an attorney with them. Then, they were asked to sign a financing agreement with a second (different) arbitration agreement.

13. Plaintiffs were told by Finance & Insurance Manager Brian Perry and sales person Daryl Turner that they would transfer the Simmons' tags and title by mailing the paperwork to Georgia, process the sales documents, and pay Plaintiffs' ad valorem fees. The costs were deducted from Plaintiffs' down payment.

14. Plaintiffs were given the keys to their new Hyundai, congratulated on purchase of their car, and allowed to take their car home. Benson asked that Donald mail Benson the SAAB's title. Donald did this the next day, and Benson still has the car and title. Since this time, the Simmons' lives have been in turmoil.

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15. Plaintiffs subsequently discovered that despite its retention of Plaintiffs' $1,000 down payment, $2,800 check, and Plaintiffs' SAAB, Benson failed to pay the ad valorum taxes due to the Macon-Bibb Georgia Tax Commission. Commissioner McCord of the Georgia Tax Commission contacted Benson regarding this failure to pay the taxes due the first week of January, 2017. The female to whom he spoke at Benson's Dealership, "Robin Collins," promised the Commissioner that the title would be delivered by hand and in person to his office by the next week (the second week of January 2017). This was never done. Fines have been charged to Plaintiffs by the Tax Commission and are still accruing.

16. Plaintiffs were told that first night that their monthly payments would be $155.00, payable to "Hyundai Motor Finance." Following Benson's instructions, Plaintiffs have sent monthly checks to Benson in the amount of $155.00 payable to Hyundai Motor Finance since the night that their Hyundai was first purchased. Plaintiffs have never missed or been late for a payment. Plaintiffs also have kept the Hyundai insured.

IV. PRESSURE TO "RE-DO" THE SALE FOR MORE MONEY

17. The day after Plaintiffs purchased their Hyundai, Carlee was called by General Sales Manager Nathan Burden, was told that she needed to "re-do" the contract, and that he was sending his

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boys down to meet Carlee and her husband in Macon. The Dealership's story changed depending upon whom its employees were telling it to. On this occasion, however, Burden says Carlee and Donald signed a contract worth more money when they were with him and that Benson gave Plaintiffs too many discounts. Burden sent her a cropped portion of a Buyer's Order. Burden told Carlee that Plaintiffs needed to come back and pay more money. Brian Ferry also called Carlee and left a voice mail.

18. Donald and Carlee met at home after work that day and called Nate Burden several times but only received a text in response.

19. Later that day, Nate Burden texted Carlee back only, and stated that he was sending someone to Macon in the morning to re-do the contract.

20. Early the next morning at approximately 7 A.M., Donald texted Nate Burden requesting he send Plaintiffs an email explaining exactly what he needed Plaintiffs to "re-do" and explain what was wrong with the contract.

21. Burden called back, ignored Donald's earlier text requesting an explanation, and again stated that he was sending his boys to talk to Plaintiffs in Macon. Burden told Donald to "tear up" the contract, claiming that it was "no good." Donald told

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Burden that there was no need to send anyone until he explained why this needed to be redone and asked why he wanted Plaintiffs to tear up their contract.

22. Burden became irate and began cursing at Donald, using words such as "asshole" and "fucking" in an effort to pressure him. Donald pointed out that the Dealership wrote this contract and that everyone agreed to it. Donald said that the Dealership's own contract provided for no cooling-off period. Burden continued to curse. He also threatened that "if you don't re-do it, I just won't approve your financing."

23. Later that evening at approximately 8:18 P.M., Brian Perry (Finance & Insurance Manager) called Donald and asked Donald if he had his credit unlocked. Donald said yes and let him know that he already requested Equifax be unlocked up until the end of that week right at the Dealership. Donald asked why Perry hadn't accessed his credit yet and pointed out that Perry had agreed to do this on the 27th. Brian Perry did not state why he didn't access it on the 27th. Donald told Brian that after Nate's outburst and threat not to approve Plaintiffs' loan, they need to stop calling Plaintiffs and harassing them and call Plaintiffs' attorney, Stanley Martin, if they need anything.

24. On Friday, July 29th, 2016, Plaintiffs' Georgia attorney,

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Stanley Martin, called Benson Hyundai and spoke to Nathan Burden. Mr. Martin let them know that he had looked at the contract and found it perfectly legitimate. He asked what the problem was and why Benson Hyundai would not put in writing what they want "redone." Burden was rude with Plaintiffs' attorney and threatened to repossess Plaintiffs' car.

25. On August 11th, 2016, Carlee called Equifax. She was alerted that her account was being accessed by Hyundai Motor Finance over and over. The customer service representative said she had never seen anything like it and encouraged Carlee to lock her credit to protect her score from any further damage. The customer service representative said that Carlee's score had dropped significantly in the past week, about 50 points so far. Carlee placed a freeze, fraud alert, and monitoring system on her credit which costs her $20.00 every month. Equifax stated that her entire file was sent to the requesting party each time it was pulled and that she received a hard credit pull for each inquiry.

26. In the midst of Benson's threats and refusals to process the Plaintiffs' paperwork, on August 5th, 2016, Carlee was sent an email from corporate Hyundai congratulating her on her new Veloster purchase and asked to take their customer survey. The next day, two letters were received by Plaintiffs on letterhead, one for Donald

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and the other for Carlee, which appear to be credit denials from Hyundai Motor Finance regarding a recent application with Benson Hyundai. Carlee called Hyundai Motor Finance and was told that Hyundai did not know who Plaintiffs were and that there was not an application on file in either of their names. However there is a credit inquiry on Carlee's report.

27. On August 16, 2016, Donald's TransUnion Monitoring System received a hard inquiry from US BANK, an inquiry and bank of which he was unaware and had not authorized.

28. On August 18, 2016, Brian Perry (Finance & Insurance Manager) called Donald from number 843.318.4159 and said, "Hey Buddy. I'm just calling because we need you to unlock your credit. We haven't pulled it yet." In fact, Donald hadn't locked his credit and suggested that Perry call his attorney. Donald's Equifax account had been open for three days at the start but not accessed by the Benson; TransUnion had been open the entire time and accessed by Benson.

29. To be more precise, Donald's credit account had been opened for Benson on the following days: Experian – July 28th; August 5th; Equifax: July 27th to July 30th; and TransUnion: July 27th to August 17, 2016 and December 25th, 2016 to January 22nd, 2017.

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30. Toward the end of January, 2017, a salesperson, Alexa Matos, overwrote Carlee's name on her Hyundai BlueLink account VIN. Upon contacting BlueLink, Carlee was told that a salesperson named Alexa entered Matos' own personal credit card information and her own address, instead of the dealer's ID.

31. On February 15th, 2017, Benson's employee and agent, who upon information and belief was Parts Department employee John Bandy, and possibly a second agent of the Dealership, showed up on campus where Carlee works. Bandy appeared to be over 200 pounds and over six-feet tall, as opposed to Carlee who is four-feet, ten-inches tall and weighs 100 lbs. After remaining on the campus a significant part of the day, Bandy waited until Carlee was alone in her office. Benson knew she was represented by an attorney at the time.

32. Repossession occurs when an agent of the owner seizes a motor vehicle and tows it away. However, with no knowledge of the vehicle's whereabouts and no way to discover it, except to intimidate or otherwise force Carlee into revealing its location, Bandy attempted to do just that: Bandy situated himself between Carlee and the door and hovered above her. He stated that he was from Benson Hyundai and that "Tony" sent him. He said that he was going to take the car. This caused Carlee to be greatly frightened

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for her safety. Bandy never showed any identification or paperwork to Carlee and ran off when she threatened to call the police. She was frightened enough that she reported the matter to two law enforcement agencies. As a result of this chaotic series of events, Carlee's pre-existing medical condition was aggravated and caused her distress and anxiety for which she sought medical treatment.

FOR A FIRST CAUSE OF ACTION
(Breach of Written Contract)

33. The Plaintiffs restate all prior paragraphs as if fully stated herein.

34. Plaintiffs were instructed by Benson to make monthly payments to Hyundai Motor Finance as part of the financing agreement; Plaintiffs have made all payments to date and done so in a timely manner.

35. As part of the sale, Benson was to pay for taxes, tags, other incidentals, and to transfer title of the Hyundai to Plaintiffs. This they have not done.

36. Plaintiffs have offered and stood ready at all times to pay the balance of money owed for purchase of the Hyundai. Benson, however, requires a liability release. Meanwhile, Benson still keeps the Plaintiffs' down payments and the SAAB.

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37. As a direct and proximate result of Benson's breaches of contract, Plaintiffs have lost use of their Hyundai, have incurred numerous fees, which are still increasing, from the State of Georgia for Benson's failure to process transfer of the Hyundai and pay the property taxes, and have lost possession of their SAAB and down payment.

38. The Plaintiffs pray for a judgment against Benson in an amount of actual damages to be determined by the jury, for costs, and for such further relief as the Court and jury deem appropriate.

AND IN THE ALTERNATIVE,
FOR A SECOND CAUSE OF ACTION
(Breach of Oral Agreements)

39. The Plaintiffs reassert all prior paragraphs as if fully stated herein.

40. As part of the sales agreement for the Hyundai Veloster, Plaintiffs agreed to pay, and Benson accepted, two down payments toward purchase of the Hyundai. Plaintiffs also agreed to transfer ownership and possession of Donald Simmons' SAAB to Benson as part of the down payment on the Hyundai. Plaintiffs and Benson signed documents transferring title of the SAAB to Benson. A sales contract (also known as a Buyer's Order) and a financing agreement also were signed. Plaintiffs were charged a fee in return for Benson processing the transfers of the two vehicles and payment of

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related expenses, taxes, and fees.

41. Benson has breached the written agreements; however Plaintiffs have performed their obligations and stand ready to pay their remaining obligations as they come due. Should the Court find that the written agreements are not valid because they are contracts of adhesion, unconscionable or another reason, then Plaintiffs submit that oral contracts exist for the sale of the Veloster for $19,600 less the discounts and down payments stated above.

42. As a direct and proximate result of Benson's breaches of contract, Plaintiffs have lost use of the Hyundai, have incurred numerous fees and tax penalties, which are still increasing, from the State of Georgia for Benson's failure to process transfer of the Hyundai, and have lost possession of their SAAB and down payment.

43. The Plaintiffs pray for a judgment against Benson in an amount to be determined by the jury, for costs, and for such further relief as the Court and jury deem appropriate.

FOR A THIRD CAUSE OF ACTION
(Negligence)

44. The Plaintiffs reassert all prior paragraphs as if fully stated herein.

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45. Benson owes duties to Plaintiffs to use due care in selling automobiles and financing them in consumer transactions, preparation of documents, calculation of costs, fees, and other financial matters, to deal truthfully with its customers, and to monitor the staff so that they deal honestly and transparently with its customers.

46. Moreover, Plaintiffs are owed duties by Benson to use reasonable care in the investigation, including background investigations, hiring, training, monitoring, and supervision, of its employees.

47. Benson breached its duties to Plaintiffs in one or more of the following ways:

(A) In failing to investigate, do reasonable background checks on, to hire, train, monitor, and supervise its sales staff and employees;

(B) In being untruthful to Plaintiffs during its transactions with them;

(C) In cursing at Plaintiff; threatening them; attempting to force Plaintiff to tear up a valid contract or otherwise Benson would not approve their financing; and in attempting to pressure and intimidate Carlee Simmons into giving Benson the Hyundai she has paid for and owns;

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(D) In attempting to mislead Plaintiffs; and

(E) In failing to run credit checks in a timely and proper manner when they were supposed to do so.

48. As a direct and proximate result of Benson's negligence and recklessness, the Plaintiffs have been without use of the Hyundai for a significant time, have continued to pay for insurance, are obligated to pay tax charges and penalties, have suffered stress, frustration, mental distress, embarrassment, and worry, have had Carlee's credit damaged; and have been set back in their plans to have a family.

49. The Plaintiffs are informed and believe they are entitled to actual and punitive damages in amounts to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION
(South Carolina Motor Vehicle Dealer's Act)

50. The Plaintiffs reassert all prior paragraphs as if fully stated herein.

51. Benson is an automobile Dealership, and the Hyundai is a motor vehicle under the South Carolina Motor Vehicle Dealers Act, S.C. Code § 56-15-10 et seq.

52. The aforementioned acts and practices of Benson were unfair, deceptive, violate the public policy of South Carolina, and

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were done maliciously.

53. Benson acted wilfully and wantonly because it knew or should have known that its conduct was deceptive, unfair, and a violation of state and federal statutes.

54. As a direct and proximate result of Benson's aforementioned practices, Plaintiffs are left without use of a vehicle for which they have continued to make payments and insure, owe incidental payments and penalties for taxes, title transfer, and processing fees, have suffered impaired credit, have suffered stress and frustration, were required to hire attorneys, and are required to pay costs and expenses of litigation.

55. The Plaintiffs are informed and believe they are entitled to a verdict for actual and punitive damages in an amount to be determined by the jury, double their actual and punitive damages together with attorneys' fees not to exceed three time the Plaintiffs' actual damages, plus costs and disbursements of this action.

FOR A FIFTH CAUSE OF ACTION
(Unfair Trade Practices Act)

56. The Plaintiffs reassert all prior paragraphs as if fully stated herein.

57. The aforementioned acts and practices of Benson were

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unfair, deceptive, and violate the public policy of South Carolina.

58. The aforementioned acts and practices of Benson affect the public interest, may have occurred before upon information and belief, and are capable of repetition. Moreover, because Benson is still engaged in automotive sales and financing and also upon information and belief lack proper policies and procedures to avoid such wrongful acts in the future, there is not only a potential for repetition but actual repetition.

59. Benson acted willfully and wantonly because it knew or should have known that its conduct was deceptive, unfair, and a violation of federal and state statutes.

60. As a direct and proximate result of Benson's aforementioned practices, the Plaintiffs are left without use of a vehicle for which they have continued to make payments and insure, owe incidental payments for taxes and penalties, title transfer, and processing fees, have suffered impaired credit, have suffered mental distress, stress and frustration, were required to hire attorneys, have had a reduction in the credit score of one or both, and are required to pay costs and expenses of litigation.

61. Plaintiffs are informed and believe they are entitled to three times their actual damages together with attorneys' fees, plus costs and disbursements.

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FOR A SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

62. The Plaintiffs reassert all prior paragraphs as if fully stated herein.

63. Benson directly and through its agents made the aforementioned false and half-truth representations at a time when they had a pecuniary interest in the sale and financing.

64. Benson owed a duty to the Plaintiffs to use due care to be truthful in making the representations but breached that duty. Had Plaintiffs known that Benson would go back on its word, they would never have dealt with Benson.

65. The Plaintiffs justifiably relied on Benson's representations because the Plaintiffs had limited knowledge and access to information about the inner workings of the automobile and auto-finance businesses while at the same time, Benson's employees had far superior knowledge of the same.

66. As a direct and proximate result of Benson's aforementioned practices, the Plaintiffs are left without a vehicle for which they have continued to make payments and insure, owe incidental payments for taxes and penalties, title transfer, and processing fees, have suffered impaired credit, have suffered stress and frustration, were required to hire attorneys, have had

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a reduction in the credit score of one or both, and are required to pay costs and expenses of litigation.

67. The Plaintiffs are informed and believe they are entitled to actual damages and punitive damages in an amount to be determined by the jury, plus costs and expenses.

WHEREFORE, the Plaintiffs pray for judgment against Benson as follows:

1. For actual damages, costs, and fees under the First Cause of Action for breach of written contract in an amount to be determined by the jury and Court or, in the alternative,

2. For actual damages, costs, and fees under the Second Cause of Action for breach of oral contract, in amounts to be decided by the jury and Court.

3. For actual and punitive damages under the Third Cause of Action for negligence in an amount to be decided by the jury and Court;

4. For double their actual and punitive damages together with attorneys' fees not to exceed three time the Plaintiffs' actual damages in an amount to be determined by the jury and Court, plus costs and disbursements of this action, under the Fourth Cause of Action arising under the South Carolina Motor Vehicle Dealers Act;

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5. For three times their actual damages in an amount to be determined by the jury, together with attorneys' fees in an amount to be determined by the Court on the Fifth Cause of Action under the Unfair Trade Practices Act;

6. For actual and punitive damages in an amount to be determined by the jury on the Sixth Cause of Action for negligent misrepresentation;

7. For prejudgment interest on all causes of action where applicable; and

8. For such other and further relief as the jury and Court deem just and proper.

GRIMBALL & CABANISS, L.L.C.

By: _____

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DONALD AND CARLEE SIMMONS

Charleston, South Carolina

Dated: June 14, 2017

Exhibit A

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FTC Charges Los Angeles-Based Sage Auto Group With Using Deceptive and Unfair Sales and Financing Tactics

FOR RELEASE

September 29, 2016

TAGS: deceptive/misleading conduct | Automobiles | Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing

The Federal Trade Commission has charged nine Los Angeles-area auto dealerships and their owners with using a wide range of deceptive and unfair sales and financing practices. The FTC's action filed in the U.S. District Court for the Central District of California seeks to end these practices and return money to consumers.

This is the FTC's first action against an auto dealer for "yo-yo" financing tactics: using deception or other unlawful pressure tactics to coerce consumers who have signed contracts and driven off the dealership lots into accepting a different deal. The FTC also alleges that the defendants packed extra, unauthorized charges for "add-ons," or aftermarket products and services, into car deals financed by consumers.

"The car-buying process is a two-way street," said Jessica Rich, Director of the FTC's Bureau of Consumer Protection. "The FTC expects dealers to honor their contractual obligations, and will pursue those who use yo-yo financing tactics and pack unwanted costly add-ons onto consumers' contracts."

According to the FTC's complaint, the defendants entice consumers, particularly financially distressed and non-English speaking consumers, into their dealerships with print, internet, radio and television ads that make an array of misleading claims, including that vehicles are generally available for the advertised terms and that consumers can buy vehicles for low prices, finance with low monthly payments, or make low down payments. Other allegedly misleading claims include that consumers can finance the purchase of vehicles – when in fact they are lease offers – and that the defendants will pay off consumers' trade-in vehicles, despite the fact that consumers ultimately are responsible for paying off any amount owed on the trade-in.

The FTC also alleges that the defendants use phony online reviews to tout their dealerships and discredit negative reviews that highlighted their unlawful practices. They and their employees or agents allegedly post positive, five-star online reviews that purport to be from objective or independent reviewers without disclosing their relationship to the dealerships.

In addition to the deceptive advertising and marketing allegations, the FTC has charged that several financing tactics of the defendants are deceptive and unfair. As part of the sales and financing process, the defendants offer add-ons such as extended warranties, guaranteed auto protection (GAP), and maintenance or service plans. The FTC alleges the defendants have violated the FTC Act by charging some consumers for add-ons without their consent or falsely claiming the products were required or were free.

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And according to the complaint, in some instances after the consumers have signed contracts, the defendants falsely represent that consumers are required to sign a new contract with different terms. In other instances, the defendants tell consumers who have completed finance contracts that the contracts are cancelled and falsely represent that the defendants are permitted to keep consumers' down payments or trade-ins. When consumers request compliance with the terms of the contract or refuse the defendants' demands, the defendants, in some instances, have falsely represented that consumers will be liable for legal action, including lawsuits, repossession, or criminal arrest for a stolen vehicle.

The FTC's complaint also charges the defendants with violating the Truth In Lending Act and Regulation Z, and the Consumer Leasing Act and Regulation M, for failing to clearly disclose required credit information and lease information in their advertising.

The defendants are Universal City Nissan, Inc., also d/b/a Universal Nissan; Sage Downtown, Inc., also d/b/a Kia of Downtown Los Angeles; Glendale Nissan/Infiniti, Inc., also d/b/a Glendale Infiniti and Glendale Nissan; Valencia Holding Co., LLC, also d/b/a Mercedes-Benz of Valencia; West Covina Auto Group, LLC, also d/b/a West Covina Toyota and West Covina Toyota/Scion; West Covina Nissan, LLC; Covina MJL, LLC, also d/b/a Sage Covina Chevrolet; Sage North Hollywood, LLC, also d/b/a Sage Pre-Owned; and Sage Vermont, LLC, also d/b/a Sage Hyundai.

Also charged are Joseph Schrage, a/k/a Joseph Sage; Leonard Schrage, a/k/a Leonard Sage; and Michael Schrage, a/k/a Michael Sage; Sage Holding Company Inc.; and Sage Management Company Inc..

The Commission vote authorizing the filing of the complaint against the Sage Auto Group defendants was 2-1, with Commissioner Ohlhausen dissenting.

NOTE: The Commission files a complaint when it has "reason to believe" that the law has been or is being violated and it appears to the Commission that a proceeding is in the public interest. The case will be decided by the court.

To learn more, read *Are Car Ads Taking You For a Ride?*, *Buying A New Car*, and *Buying A Used Car*.

The Federal Trade Commission works to promote competition, and protect and educate consumers. You can learn more about consumer topics and file a consumer complaint online or by calling [redacted]. Like the FTC on Facebook, follow us on Twitter, read our blogs and subscribe to press releases for the latest FTC news and resources.

PRESS RELEASE REFERENCE:
Los Angeles-Based Sage Auto Group Will Pay $3.6 Million to Settle FTC Charges

Contact Information

MEDIA CONTACT:
Frank Dorman
Office of Public Affairs
[redacted]

STAFF CONTACT:
Thomas Widor
Bureau of Consumer Protection
[redacted]

Daniel Dwyer
Bureau of Consumer Protection
[redacted]

Ex. D

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EX. D

BENSON

NISSAN KIA HYUNDAI

P. O. Box 8669
Spartanburg, South Carolina 29305
Nissan: (864) 585-3611
Kia: (864) 699-9090
Hyundai: (864) 541-0029

DEAL# 8136

BIRTHDAY INFORMATION
BUYER [redacted]
CO-BUYER [redacted]
ANNIVERSARY

E-MAIL ****
1) DRIVER LIC#
2) DRIVER LIC#
South Carolina and North Carolina require names and addresses on deal to match names and addresses on driver licenses

RETAIL BUYER'S ORDER

CUST. NO. 10637
DATE 07/26/2016
WORK PHONE [redacted]
HOME PHONE
SS # □□□-□□-□□□□
SS # □□□-□□-□□□□

THE UNDERSIGNED PURCHASER CARLEE ROBIN SIMMONS OR DONALD LAWRENCE SIMMONS
ADDRESS [redacted] ZIP [redacted]

Hereby agrees to purchase from Benson Cadillac-Nisson, Inc.: hereinafter referred to as Seller, subject to all terms, conditions and agreements contained herein, the following: [X] NEW [ ] USED [ ] DEMONSTRATOR

YEAR	MAKE	MODEL	TYPE	CYL	SERIAL #
2016	HYUNDAI	VELOSTER	TURBO	4	KMHTC6AE5GU295969

COLOR	STOCK #	MILEAGE	COUNTY	INSPECTION #	SALESMAN'S NAME
ELITE WH	H80666	5	BIBB		ROBERT H WINECOFF

LIST PRICE OR MSRP		$ 19600	00
ADDED EQUIPMENT:			
TOTAL SALES PRICE		19600	00
TRADE IN ALLOWANCE		3500	00
DIFFERENCE		16100	00
SUB TOTAL		16100	00
S.C. SALES TAX	324 / 324A	931	00
LICENSE TITLE & REGIST.	908	36	00
CLOSING FEE	905C	225.00 $899	00
SECURE ETCH	905E	XXX $209	XX 00
RESISTALL	905K	299	00
DENT REPAIR	905T		N/A
LIFE & A&H	807 / 809		N/A
GAP INSURANCE	807G / 809G		N/A
SERVICE PROGRAM	444 / 455		N/A
ROAD HAZARD	444R / 455R		N/A
MAINTENANCE	444G		N/A
SUB-TOTAL		17593	00
AMOUNT OWING ON TRADE-IN	300B		N/A
TOTAL AMOUNT DUE		17593	00
DEPOSIT WITH ORDER Rec#	220A		N/A
CASH ON DELIVERY Rec#	220A	3800	00
FACTORY REBATE	220	3750	00
UNPAID BALANCE DUE		$ 10043	00

CLOSING FEE

This fee includes complete cosmetic detail materials, administrative services, notary services, courier service, fuel, hazardous waste removal such as oil filters, oil, antifreeze, tires. This charge represents costs and/or profit to the seller/dealer for items such as inspecting, cleaning and adjusting new and used vehicles and preparing documents related to the sale. This fee does not represent any payment for mechanical services which have been reimbursed to the dealer by the manufacturer.

[XX] This vehicle delivered subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

Carlee Robin Simmons
Purchaser's Signature

[ ] I agree to pay any difference in lien payoff.

Purchaser's Signature

REMARKS

CONTRACTUAL DISCLOSURE STATEMENT

"The information you see on the window form (Buyer's Guide) for this vehicle is part of the contact. Information on the window form overriders any contrary provision in the contract of sale."

LICENSE TAG INFORMATION: ACV:

PURCHASE NEW TAG [X] TRANSFER [ ]
1) DL# TAG #
2) DL# EXP. DATE
VALIDATION #

INSURANCE INFORMATION

POLICY # PHONE #
COMPANY CINCIATTI EFFECTIVE DATES
AGENT VERIFIED BY

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	TYPE	COLOR
2006	SAAB	9-3X	2006 SAAB	GRAY

CYL.	SERIAL #	STATE	COUNTY	LIC. #	MILEAGE
4	JF14GG61646H050029				123635

1ST LIEN 2ND LIEN

NAME ON TITLE:
LIENHOLDER:
ADDRESS:
AMT. (15 DAYS):
GOOD THRU:
ACCT. NO.:
VERIFIED BY:
QUOTED BY:
PHONE NO.:

As part of the purchase price, the Purchaser does hereby grant, bargain, sell and convey the above described automobile to Seller. Purchaser warrants title to and possession of said automobile to be in him, and that same is free from encumbrances, and all debts, except the payoff amounts stated above. Purchaser further warrants his good right to sell and deliver the above described automobile with clear title - no salvage title.

DISCLAIMER OF WARRANTIES

NEW VEHICLE. All warranties on this new vehicle are those offered by the Manufacturer. The Seller hereby expressly disclaims all warranties either express or implied including any implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, and the Seller neither assumes nor authorizes any person to assume for it any liability in connection with the sale of the vehicle. This disclaimer by the Seller in no way affects the terms of the Manufacturer's warranty. Buyer shall not be entitled to recover from the Selling Dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.

Purchaser hereby acknowledges that he has read and understands the above and that Seller has made available to him prior to the purchase the factory warranty which Purchaser understands constitutes all of the warranties with respect to the sale of this vehicle.

USED VEHICLES: In the event that the vehicle being purchased is a used vehicle, Purchaser hereby acknowledges that the above disclaimer will also apply to said used vehicle, EXCEPT AS MAY BE EXPRESSED COMPLETELY IN WRITING BY THE SELLER ON SEPARATE INSTRUMENT DELIVERED TO THE PURCHASER. ALL USED VEHICLES ARE SOLD "AS IS - WITH NO WARRANTY." Purchaser hereby acknowledges that Seller has made available to him and Purchaser has read any limited warranty delivered to him by separate instrument and said limited warranty constitutes all of the warranties with respect to the sale of this used vehicle and that any implied warranty that may not be waived by law is limited to the duration of said limited warranty. Purchaser understands that any new or remaining Manufacturer's warranties on used vehicles are not the responsibility of Seller.

ADDITIONAL TERMS AND CONDITIONS

This Order shall not become binding upon either the Purchaser or the Seller until the vehicle described above is physically delivered and Purchaser has received the Disclosure required under Federal Law, if applicable. In the case of a credit sale, the Seller shall not be obligated to sell until a finance source approves this Order and agrees to purchase a retail instalment contract between the Purchaser and the Seller based on this Order.

As a part of the New Car Pre-Delivery Procedures or Used Car Reconditioning of the Seller all body repairs in an amount not exceeding three hundred dollars ($300.00) have been made prior to the delivery of the described automobile. Purchaser makes notice concerning said repairs and accepts the automobile as delivered. Any body repairs made by the Seller exceeding $300.00 have been set out herein or in a separate disclosure statement if said repairs were made by the Seller or were made known to and said repairs are hereby accepted and approved by Purchaser.

The trade-in allowance shown in the Order is that amount that the Seller agrees to allow at the time the Purchaser accepts delivery and completes the Order. In the event of any disagreement over the value of the car traded in, the Seller's Gen Manager shall be liable for any more than the wholesale market value as determined by the loan value of the automobile as shown in the Black Book less the estimated cost of reconditioning.

It is agreed and understood that the legal title to the described automobile does not pass to Purchaser until the entire purchase price is paid in full and also until the check given by the Purchaser for all or part of the payment for said automobile clears the bank on which it is drawn.

The Purchaser agrees that all provisions stated hereon are part of this Order and that this Order supersedes any prior agreement and is the complete and entire agreement on the subject matters covered by this Order. Further Purchaser and Seller agree that no persons authorized to make any representations beyond those expressed in this Order. Verbal promises by salesman are not valid and any promises or understandings not herein specified in writing are hereby expressly waived by the Purchaser.

The purchaser warrants that he is of majority age and further warrants that all statements made by him are true and correct, and that the Seller may accept the same as being true representations of existing facts.

Purchaser has read all the provisions of this Order including the Disclaimer of Warranties. Purchaser acknowledges that he has received a true copy of this Order and that the Order has been completely filled in and signed.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Purchaser's Signature Carlee Robin Simmons ACCEPTED BY [redacted]

THIS ORDER NOT VALID UNLESS ACCEPTED BY AN AUTHORIZED MANAGER OF THE COMPANY.

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12 XII 1011 Ex. D

Buyer Name and Address (Including County and Zip Code)	Co-Buyer Name and Address (Including County and Zip Code)	Seller-Creditor (Name and Address)
CARLEE ROBIN SIMMONS [redacted]	DONALD LAWRENCE SIMMONS [redacted]	BENSON HYUNDAI [redacted]

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 Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New/Used	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2016	HYUNDAI VELOSTER	KNHTC6AE5GU281959	Personal, family, or household unless otherwise indicated below. ☐ business ☐ agricultural ☐ N/A

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you:	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of $ 11050.00
3.09 %	$ 935.96	$ 19043.60	$ 21028.96	$ 32078.96

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
72	153.18	Monthly beginning 09/09/2016
N/A	N/A	N/A

Or As Follows: N/A

Late Charge. If a payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late, with a minimum charge of $7.20. The charge will not exceed $18.00 if you bought the vehicle primarily for personal, family, or household use. We may charge the maximum and minimum late charge dollar amounts as allowed by S.C. Code Ann. 37-1-109 of the South Carolina Consumer Protection Code.
Prepayment. If you pay off all your debt early, you will not have to pay a penalty.
Security Interest. You are giving a security interest in the vehicle being purchased.
Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including $ 300.00 sales tax and $ 225.00 closing fee) $ 20424.00 (1)

2 Total Downpayment =
Trade-In 2006 (Year) SAAB (Make) 9-2X (Model)

Gross Trade-In Allowance		$ 3500.00
Less Pay Off Made By Seller		$ N/A
Equals Net Trade In		$ 3500.00
+ Cash		$ 3800.00
+ Other REBATES		$ 3750.00
(If total downpayment is negative, enter "0" and see 4) below)		$ 11050.00 (2)
3 Unpaid Balance of Cash Price (1 minus 2)		$ 9374.00 (3)
4 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):		
A Cost of Optional Credit Insurance Paid to Insurance Company or Companies.		
Life	$ N/A	
Disability	$ N/A	$ N/A
B Vendor's Single Interest Insurance Paid to Insurance Company		$ N/A
C Other Optional Insurance Paid to Insurance Company or Companies		$ N/A
D Optional Gap Contract		$ N/A
E Official Fees Paid to Government Agencies		
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
F Government Taxes Not Included in Cash Price		$ N/A
G Government License and/or Registration Fees LIC-20.00		$ 20.00
H Government Certificate of Title Fees		$ 18.00
I Other Charges (Seller must identify who is paid and describe purpose)		
to N/A for Prior Credit or Lease Balance		$ N/A
to GA DEPT OF REV for GA TAVT		$ 631.00
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
		$ 669.00 (4)

Insurance. You may buy the physical damage insurance this contract requires (coverage) 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 credit insurance to obtain credit unless we are indicating Vendor's Single Interest Insurance is required is checked below. If any insurance is checked below, policies or certificates for the insurance companies will describe the terms and conditions.

Check the insurance you want and sign below.

Optional Credit Insurance

☐ Credit Life: ☐ Buyer ☐ Co-Buyer ☐ Both
☐ Credit Disability: ☐ Buyer ☐ Co-Buyer ☐ Both
Premium:
Credit Life $ N/A
Credit Disability $ N/A
Insurance Company Name N/A
N/A
Home Office Address N/A
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 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 because of credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

Other Optional Insurance

☐ N/A (Type of Insurance) N/A (Term)
Premium $ N/A
Insurance Company Name N/A
N/A
Home Office Address N/A
N/A
☐ N/A (Type of Insurance) N/A (Term)
Premium $ N/A
Insurance Company Name N/A
N/A
Home Office Address N/A
N/A

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

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

X N/A (Buyer Signature) N/A (Date)

X N/A (Co-Buyer Signature) N/A (Date)

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

X N/A (Buyer Signature) N/A (Date)

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

Returned Check Charge: You agree to pay a charge of

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Ex. D

B Vendor's Single Interest Insurance Paid to Insurance Company		$ N/A
C Other Optional Insurance Paid to Insurance Company or Companies		$ N/A
D Optional Gap Contract		$ N/A
E Official Fees Paid to Government Agencies		
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
F Government Taxes Not Included in Cash Price		$ N/A
G Government License and/or Registration Fees		
LIC=20.00		$ 20.00
H Government Certificate of Title Fees		$ 10.00
I Other Charges (Seller must identify who is paid and describe purpose)		
to N/A	for Prior Credit or Lease Balance	$ N/A
to GA DEPT OF REV	for GA TAVT	$ 631.00
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
Total Other Charges and Amounts Paid to Others on Your Behalf		$ 669.00 (4)
5 Amount Financed (3 + 4)		$ 10043.00 (5)

N/A

Home Office Address N/A
N/A

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

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

X N/A — N/A
Buyer Signature — Date

X N/A — N/A
Co-Buyer Signature — Date

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

X N/A — N/A
Buyer Signature — Date

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

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 N/A Year N/A SELLER'S INITIALS N/A

Agreement to Arbitrate: By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.
Buyer Signs X Carlos Robin Simmons Co-Buyer Signs X David Lewis Jones

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

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

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 chose to buy a gap contract, the charge is shown in Item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

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

I want to buy a gap contract.

Buyer Signs X N/A

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 Carlos Robin Simmons Co-Buyer Signs X David Lewis Jones

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 provision on the reverse side, before signing below. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X Carlos Robin Simmons Date 07/26/16 Co-Buyer Signs X David Lewis Jones Date 07/26/16

Co-Buyer 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. This other owner agrees to the security interest in the vehicle given to us in this contract.

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

Seller signs BENSON HYUNDAI Date 07/26/16 By X Title

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

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

BENSON HYUNDAI
Seller By Title

LAW FORM NO. 553-SC-ARB
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CUSTOMER/TRUTH IN LENDING COPY

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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 computed 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.

c. 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.
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.

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 PROVISION
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 Provision, 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 Provision 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. You may choose the American Arbitration Association, 1633 Broadway, 10th Floor, New York, New York 10019 (www.adr.org), or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the 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 and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor 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 pay your filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of $5000, unless the law or the rules of the chosen arbitration organization require us to pay more. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. 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 Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

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, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual injunctive relief. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, 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 Provision shall be unenforceable.

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ELECTRONICALLY FILED - 2017 Jun 14 12:52 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

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 (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.

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 computed 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 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 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.

Ex. E

ELECTRONICALLY FILED - 2017 Aug 09 11:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

From: Brad Martin
Sent: Monday, July 31, 2017 9:13 AM
To: Warren Moise
Cc: Ann Marie Howell; Peggy McComb
Subject: FW: Summons and Complaint

Warren, the service date was the 10th, not the 19th. Sorry for the confusion. Brad

---

From: Brad Martin
Sent: Saturday, July 29, 2017 2:30 PM
To: 'Warren Moise' [redacted]
Cc: Ann Marie Howell [redacted] Peggy McComb [redacted]
Subject: RE: Summons and Complaint

Good afternoon Warren,

My clients accepted service of a Summons and Complaint on July 19,2017 covering the same issues raised in the previously filed Arbitration in which you answered and counterclaimed. You also asked for the arbitration to be dismissed. Therefore, you are aware of and have a copy of the arbitration agreement.

Paragraph 9 of the Benson Arbitration Policies and Procedures requires Benson to give you written notice of the Arbitration Agreement and to ask you to voluntarily stay or dismiss the suit within 10 calendar days from the service of this notice if the suit involves a dispute which is subject to arbitration.

Benson has reviewed your Complaint, and respectfully submits the dispute is subject to the arbitration agreement. Therefore, please accept this email as meeting the requirements of putting you on notice of the existence of the arbitration agreement and the requirement of written notice contained in paragraph 9 of the arbitration agreement signed by your clients on July 26,2016. If not, please let me know and I will send you a letter Monday making the same request and sending another copy of the arbitration agreement.

Finally, please let me know by August 8th if you will voluntarily stay or dismiss your lawsuit. Thanks in advance for your cooperation, Brad

ELECTRONICALLY FILED - 2017 Sep 20 2:30 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF SPARTANBURG	**FOR THE 7TH JUDICIAL CIRCUIT**
Donald and Carlee Simmons, Plaintiffs, vs. Benson Hyundai, LLC, Defendant.	C.A. No. 2017-CP-42-02072 **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO STAY AND COMPEL ARBITRATION**

INTRODUCTION

This is a case where an out-of-state couple came to purchase a Veloster from Benson Hyundai. After selecting the vehicle they wished to purchase, they requested Benson to see if they could get approved for a loan.

The couple had blocked their credit at the time of the purchase. Benson was able to see the actual credit score of Mrs. Simmons, which was good. Armed with this fact and that Hyundai Financing had previously financed this couple on a previous vehicle, Benson allowed the couple to drive the Veloster home to Macon, Georgia. The Simmons agreed in writing that they would return the car if financing was not approved.

The Simmons also signed a document entitled "Benson Arbitration Policies and Procedures" (Agreement), which stated, in italicized, capital letters on a 11 x 17 sheet of paper:

> *I AGREE TO ARBITRATE ANY DISPUTES AND UNDERSTAND THAT I AM GIVING UP MY RIGHT TO A JURY AND TO PARTICIPATE IN A CLASS OR GROUP ACTION.*

The Agreement then outlines the Policies and Procedures governing the agreed upon arbitration. Defendants signed again just below the language:

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I AGREE THAT THE FOLLOWING RULES GOVERN ANY ARBITRATION BETWEEN THE PARTIES.

Benson was unable to obtain financing through Hyundai Financing and therefore, the Simmons were obligated to return the car. Not only have they failed to do this, but they have hidden the car for over a year. The Simmons refused to keep their word to return the car and now have refused to keep their word to have this dispute decided in arbitration rather than in court.

ARGUMENT

I. The Parties Entered Into an Arbitration Agreement, Therefore, this Court Lacks Jurisdiction Over the Matter

The parties contractually agreed that any dispute arising out of the conditional purchase of the Veloster from Benson would be subject to the Federal Arbitration Act. Plaintiffs signed the Arbitration Agreement, thereby agreeing to arbitrate "any claim or dispute" between them. Plaintiffs' Complaint alleges six causes of action against Benson that all arise out of the conditional purchase of the Veloster.

The U.S. Supreme Court recognized lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes as benefits of private dispute resolution. *See AT&T Mobility, supra* 563 U.S. at 348, 131 S.Ct. at 556. The "principal purpose" of the FAA is to "ensure[e] that private arbitration agreements are enforced according to their terms." *AT&T Mobility v. Concepcion*, 563 U.S. 333, 343, 131 S.Ct. 1740, 1748 (2011). To the extent any state law prohibits the agreement between the parties; it is preempted by the FAA. *AT&T Mobility, supra.*

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There is no dispute that Plaintiffs signed a stand-alone document entitled "Arbitration Agreement" which stated, in pertinent part:[1]

> DISPUTES SUBJECT TO ARBITRATION. Disputes subject to arbitration are any claim or dispute, whether in contract, tort, statute or otherwise (*including the interpretation and scope of this Arbitration Agreement, and the arbitrability of the claim or dispute*), between Customer and Benson or our employees, agents, successors, or assigns, which arise out of or relate to Customer's credit application, purchase or condition of this vehicle. Customer's purchase or financing contract or any resulting transaction or relationship. Also, subject to arbitration are disputes involving any person or entity whose liability or right of recovery derives from a Dispute that is covered by this Agreement.
>
> (Ex. A, ¶3)

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

II. The Law Strongly Favors Arbitration

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

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[1] The Arbitration Agreement should be construed together with the Retail Buyer's Order. "The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the Court will consider and construe them together." *Harris v. Ideal Solutions, Inc.*, 385 S.C. 74, 79 (S.C. Ct. App. 2009). The subsequently signed Arbitration Agreement should be treated as a modification of the previously signed documents. See *U.S. Bank Trustee Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009) (stating a contract can be modified by another contract that includes a meeting of the minds on essential terms). The Arbitration Agreement was the last document signed by the parties. (See the Affidavit of Brian Perry) The Retail Installment Sales Contract also contains an arbitration agreement and allows for that contract to be modified in writing by the parties. The Arbitration Agreement modifies that contract, therefore there are no contradictory arbitration provisions.

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

III. The Plaintiffs' Causes of Action are Subject to the Arbitration Agreement

Both federal and South Carolina state law are clear that if there is any interpretation of an arbitration clause that covers a dispute, then arbitration must be ordered. Unless a court can say with positive assurance that the clause is not susceptible to an interpretation that covers the dispute, arbitration is required. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001). Anyone challenging the enforceability of an arbitration agreement bears the burden of proving the provision is unenforceable. *Green Tree Fin. Corp. – Ala. v. Randolph*, 531 U.S. 79, 91 (2000).

Courts view arbitration as "a matter of contract, and the range of issues that can be arbitrated is restricted by the terms of the agreement." *Palmetto Homes, Inc. v. Bradley*, 357 S.C. 485, 492, 593 S.E.2d 480, 484 (Ct.App.2004). The arbitration provision explained that it was a method of resolving any dispute without filing a lawsuit in court. It also said the agreement was subject to the Federal Arbitration Act ("FAA") (9 U.S.C. § 1 *et seq.*). The car involved is a 2016 Hyundai Veloster manufactured in a state other than South Carolina and sold

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in South Carolina. Therefore, this transaction involves interstate commerce. Furthermore, Plaintiffs reside and work in Georgia.

The Arbitration Agreement states that it applies to:

> DISPUTES SUBJECT TO ARBITRATION. Disputes subject to arbitration are any claim or dispute, whether in contract, tort, statute or otherwise (*including the interpretation and scope of this Arbitration Agreement, and the arbitrability of the claim or dispute*), between Customer and Benson or our employees, agents, successors, or assigns, which arise out of or relate to Customer's credit application, purchase or condition of this vehicle. Customer's purchase or financing contract or any resulting transaction or relationship. Also, subject to arbitration are disputes involving any person or entity whose liability or right of recovery derives from a Dispute that is covered by this Agreement.

(Ex. A, ¶3)

The claims asserted by Plaintiffs are expressly and impliedly covered by the terms of the Arbitration Agreement.

To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *Hinson v. Jusco Co.*, 868 F. Supp. 145 (D.S.C. 1994). Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct.App.1999); *S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 564, 437 S.E.2d 22, 25 (1993); *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 632, 611 S.E.2d 305, 307 (Ct.App.2005).

The Complaint alleges six causes of action (Breach of a Written Contract, Breach of Oral Agreements, Negligence, Violation of the South Carolina Motor Vehicle Dealer's Act, Violation of the South Carolina Unfair Trade Practices Act, and Negligent Misrepresentation) against Benson Hyundai that all arise out of Plaintiffs' conditional agreements for the purchase of the

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Veloster. Therefore, this Court should uphold the liberal federal policy favoring arbitration and compel arbitration.

IV. The Arbitration Agreement is Not Unconscionable

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

A. Plaintiffs had a Meaningful Choice

Plaintiffs had a meaningful choice. Both Mr. and Mrs. Simmons are employed by Middle Georgia State University. (Ex. B) Mrs. Simmons is a Web Content Strategist and Mr. Simmons is an Assistant Professor. (Ex. C) Both Mr. and Mrs. Simmons possessed the business judgment necessary to make them aware of the implications of the Agreement.

Plaintiffs reviewed and voluntarily signed the stand-alone Arbitration Agreement, indicating that they were in agreement to arbitrate. A person who can read is bound to read an agreement before signing it. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360 (S.C. 2001).

[2] Courts should not refuse to enforce a contract on grounds of unconscionability, even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract. See *Gladden v. Boykin*, 402 S.C. 140, 145, 739 SE2d 882, 884 (S.C. Mar. 27, 2013).

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The arbitration clause is conspicuous and there is no evidence that Plaintiffs did not have ample time to review the Arbitration Agreement. (Ex. A) The Agreement is printed on paper measuring 11x17, allowing all type on the page to be clearly readable. The Agreement states:

ARBITRATION POLICIES AND PROCEDURES

> Benson's Policies and Procedures are intended to provide the exclusive means of resolving all Disputes, as defined below, which may arise between an individual and Benson. In consideration for their mutual promises, both parties, by entering into the Agreement, give up their right to trial by court or by jury.

Arbitration Agreement (Exhibit A)

Plaintiffs had a meaningful choice. They could have refused to enter into the Agreement with Benson and were free to purchase a car from another dealership. Plaintiffs clearly had a meaningful choice in entering into the agreement and the Court should find it enforceable. They are bound by law to read the Agreement, and are bound to keep their word and arbitrate the dispute.

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

Because Plaintiffs cannot show a lack of meaningful choice, the Court does not need to address the issue of oppressive terms, as both are needed to find a contract provision unconscionable. Even if this Court were to find a lack of meaningful choice, there are no "terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Simpson v. MSA Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007).[3]

[3] There is no evidence in the record that the agreement in the present case is an adhesion contract. To establish that a contract is one of adhesion, a party must demonstrate both that the terms are non-negotiable *and* that the contracting party is unwilling to waive enforcement in order to deal. *See Wingard v. Exxon Co.*, 819 F. Supp. 497, 503 (D.S.C. 1992); *see also Lackey*, 330 S.C. at 394.Even if this Court were to find the arbitration agreement was a contract of adhesion, it would not be unconscionable *per se. See Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 498 S.E.2d 898 (Ct. App. 1998).

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

The incorporation and reference to applicable rules and procedures does not make the Agreement unconscionable.

> There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate.

Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 476, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989). Objections to the nature of arbitral proceedings are generally for the arbitrator to decide. Only after arbitration may a party then raise a challenge to the procedures if they meet the narrow grounds set out in 9 U.S.C. § 10 for vacating an arbitral award. *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 941 (4th Cir. S.C. Apr. 8, 1999).

CONCLUSION

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

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

s/Bradford N. Martin

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Laura W. H. Teer, Esq. (SC Bar No. 16698)
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ATTORNEYS FOR BENSON HYUNDAI

September 20, 2017

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BENSON
ARBITRATION POLICIES AND PROCEDURES

Benson's Policies and Procedures are intended to provide the exclusive means of resolving all Disputes, as defined below, which may arise between an individual and Benson. In consideration for their mutual promises, both parties, by entering into the Agreement, give up their right to trial by court or by jury. This Agreement evidences a "transaction involving commerce"under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 and is subject to the FAA. In the event that it is determined that the FAA does not apply, then the Agreement shall be enforced by the South Carolina Arbitration Act.

Description of Vehicle: 2016 HYUNDAI VELOSTER Customer: Buyer CARLEE ROBIN SIMMONS

Co-Buyer DONALD LAWRENCE SIMMONS

1. *PARTIES.* For purposes of the Policies and Procedures, the term "Benson" shall include Benson Cadillac-Nissan, Benson Chrysler, Benson Ford, as well as any other affiliated entity, parent or subsidiary, their successors and assigns and all of their owners, shareholders, managers and agents. "Customer" shall include the Buyer and Co-Buyer listed above.
2. *DISPUTES SUBJECT TO ARBITRATION.* Disputes subject to arbitration are any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Agreement, and the arbitrability of the claim or dispute), between Customer and Benson or our employees, agents, successors or assigns, which arise out of or relate to Customer's credit application, purchase or condition of this vehicle, Customer's purchase or financing contract or any resulting transaction or relationship. Also subject to arbitration are disputes involving any person or entity whose liability or right of recovery derives from a Dispute that is covered by this Agreement (e.g. partner, agent, subsidiary or parent corporation, affiliate, shareholder, successor or assign of a party).
3. *DISPUTES THAT MAY BE ADDRESSED OUTSIDE OF ARBITRATION.* If the Claim or Dispute is within the jurisdiction of the small claims court in the State, either Benson or Customer may take the dispute to small claims court rather than to arbitration. Also, this Agreement to arbitrate does not limit the rights of Benson or Customer, whether before, during, or after the pendency of any arbitration proceeding, to exercise self-help remedies such as set-off, repossession, and the like. This Agreement to arbitrate does not limit Benson or Customer, whether before or during the pendency of any arbitration proceeding to bring an action individually to obtain provisional or ancillary remedies or injunctive relief (other than a stay of arbitration) to protect the rights or property of the party seeking such relief. However, the arbitrator(s) shall have the power to vacate and/or stay any such proceedings or orders granting provisional or ancillary remedies or injunctive relief, upon application by Benson or Customer. The taking by either Customer or Benson of any of the self-help remedies or by filing any action in court or before an administrative agency, including but not limited to the actions described in the preceding sentence, shall not be deemed to be a waiver of the right to elect BINDING ARBITRATION of any Claim upon the filing of a counter claim or the like by either Benson or Customer in response to any such action.
4. *AGREEMENT NOT TO PARTICIPATE IN CLASS OR GROUP ACTION.* Because all of the above disputes are subject to arbitration, you agree that there will be no right to participate as a class or group representative or class or group member of any class or group claim you may have against Benson, including any right to class or group arbitration or any consolidation of individual arbitrations.
5. *AUTHORITY OF THE ARBITRATOR.*
   a. Action by either party for a temporary restraining order or other preliminary injunctive relief may be pursued in a court of competent jurisdiction pending resolution of the underlying dispute in arbitration.
   b. Resolution of Disputes shall be based solely upon the law governing the claims and defenses asserted. The Arbitrator shall have the authority of a trial court judge sitting without a jury, but may not add to, modify, invalidate or ignore any provision of the Agreement or the Policies and Procedures, nor may the Arbitrator invoke any basis (such as "just cause" or seniority") other than controlling law. The Arbitrator shall be a former federal judge or federal magistrate judge, a former judge of a state court of general jurisdiction or state appellate court or an experienced attorney, selected as provided under the Policies and Procedures.

I AGREE TO ARBITRATE ANY DISPUTES AND UNDERSTAND THAT I AM GIVING UP MY RIGHT TO A JURY AND TO PARTICIPATE IN A CLASS OR GROUP ACTION.

07/26/16 — Date — Carlee Robin Simmons — Buyer

07/26/16 — Date — Donald Lawrence Simmons — Co-Buyer

07/26/16 — Date — Dealer/Benson

I AGREE THAT THE FOLLOWING RULES GOVERN ANY ARBITRATION BETWEEN THE PARTIES.

07/26/16 — Date — Carlee Robin Simmons — Buyer

07/26/16 — Date — Donald Lawrence Simmons — Co-Buyer

07/26/16

EXHIBIT A 172

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07/26/16
Date

Dealer/Benson

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07/26/16
Date

Buyer

07/26/16
Date

Co-Buyer

07/26/16
Date

Dealer/Benson

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

7. *FINALITY OF ARBITRATOR'S DECISION.* The award of the Arbitrator may be changed or altered by the Arbitrator upon application of a party as allowed by the arbitration code governing the enforcement of the Agreement. Otherwise, the award of the Arbitrator shall be final and binding unless, within thirty (30) days of service of the Arbitrator's decision, either party serves notice of appeal to a second Arbitrator who shall, as far as practicable, proceed according to the law and procedures applicable to appellate review by a United States Court of Appeals of a civil judgment following a non-jury decision by a judge. The result of the appeal and any further proceedings pursuant to the appeal shall then constitute the final award, which may be enforced by a court as provided by law.

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

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

10. *REQUEST FOR ARBITRATION.*

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

1. To initiate arbitration, the Claimant must submit a written "Request for Arbitration" ("RFA") by hand delivery or certified mail with return receipt to the Arbitration Administrator who shall be Tony Benson or his designee, and serve a copy of the RFA on the party or parties against whom the claim is brought (Respondents) by having it hand-delivered to each Respondent or by certified mail with return receipt.

2. An RFA form may be obtained from the Arbitration Administrator. The party requesting arbitration must identify persons having knowledge regarding the Dispute, the issue(s) to be arbitrated, the legal rights upon which the claims are founded (if known), the facts relevant to the Dispute, and the remedies sought. All related claims must be asserted in the same arbitration and failure to assert such a claim shall constitute a full release of the Respondent.

3. A filing fee in the amount of $250 made payable to Benson must be deposited with the Arbitration Administrator. The filing fee will be applied against the cost of the arbitration and any unused portion shall be returned. If the filing fee is not deposited as required, the Arbitration Administrator shall immediately so notify the delinquent claimant by certified mail or hand delivery. If the Claimant does not make the required deposit within five (5) days of receipt of the notification, the RFA shall be void, the same as if it had never been filed. When the Claimant asserts financial inability to pay the filing fee, the Arbitrator shall determine whether to waive this requirement using the same standard applied by federal courts.

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

11. *RESPONSE, OTHER CLAIMS AND AMENDMENTS.*

a. When a Response is Due. Within thirty (30) calendar days of a Respondent's receipt of the RFA, Respondent shall serve a response on all parties and provide a copy to the Arbitration Administrator.

b. Contents of the Response. The Response shall be on the form supplied by the Arbitration Administrator. The Response shall identify additional issues to be arbitrated, persons having knowledge regarding the Dispute, legal defenses which will be relied upon (if known), and facts relevant to the Dispute.

c. Counter-RFA. If the Respondent has a Dispute with the Claimant which has not been identified in the RFA but arises out of the same factual circumstances as the RFA, the Respondent must assert the Dispute as a Counter-RFA, with failure to do so constituting a full release of the Claimant.

d. Reply to the Counter-RFA. Within ten (10) calendar days from the service of the Counter-RFA, the Claimant shall serve a Response. The Reply shall conform to the content requirements of a Response.

e. Adding and Changing Disputes. At any time prior to the Initial Conference, any party may amend, add, or withdraw a Dispute as of right. Thereafter, no Dispute or Claim may be added except by motion to the Arbitrator, upon showing that manifest injustice would result from failure to permit the amendment and that the party did not have notice of the facts and circumstances relating to such Dispute or Claim at the time of the Initial Conference.

f. Additional RFAs. The Respondent to the Initial RFA may serve other non-parties who are subject to the Arbitration Agreement with an RFA if that person may be liable, in whole or in part, for the damages alleged in the initial RFA or Response. An "additional" RFA is treated the same as an initial RFA with regard to the receiving party.

g. Unavailable Non-Parties. Where a non-party who is alleged by either party to be jointly or partly responsible for injuries or damages claimed or who is named to show a Claim is not subject to the Arbitration

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of the appeal and any further proceedings pursuant to the appeal shall then constitute the final award, which may be enforced by a court as provided by law.

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g. Unavailable Non-Parties. Where a non-party who is alleged by either party to be jointly or partly responsible for injuries alleged, or who is alleged to share a Claim, is not subject to the Arbitration Agreement or is otherwise unavailable, the arbitration shall proceed notwithstanding the absence of said party and the Arbitrator shall fashion an award which is fair and equitable to all parties, given the absence of the non-party. In order to protect a party against multiple or inconsistent judgments, the Arbitrator may, in the interest of justice, require a party to proceed with a claim against a non-party to a final resolution or waive any such Claim prior to proceeding with the arbitration.

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

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

14. *SELECTION OF AN ARBITRATOR.*

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

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

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

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

d. Disqualification or Other Disability.

1. Challenge to Qualifications. Any party, upon learning of a reason that would disqualify the Arbitrator from deciding the Dispute, may request that the Arbitrator recuse herself or himself. The Arbitrator shall rule upon the request applying the standards a judge would use in deciding a motion to recuse in South Carolina.

2. Inability to Serve. In the event that an Arbitrator should resign, die, withdraw, or otherwise be unable to perform as an Arbitrator, the process for selecting an Arbitrator shall be repeated.

15. *SCOPE OF ARBITRAL AUTHORITY*

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

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

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

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

17. *REQUIRED CONFERENCES*

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

b. Final Pre-Arbitration Conference. Prior to the arbitration hearing, the Arbitrator shall conduct a final conference to address and determine, at a minimum, the issues to be arbitrated, the form of the award, evidentiary issues, dispositive motions, location, and time, and date, for the arbitration and any other issues relating to the subject matter or conduct of the arbitration.

18. *DISCOVERY*

a. Arbitrator's Authority to Order Discovery. The Arbitrator shall have the authority to order and enforce such discovery, by way of deposition, interrogatory, document production, independent medical examination, or otherwise (collectively referred to as "Information Requests"), as the Arbitrator considers necessary to a full and fair exploration of the issues in Dispute.

b. Discovery Requests. Any party may conduct discovery after the Arbitrator is selected. Discovery need not be filed with the Arbitrator unless necessary for the resolution of any motion. Unless a greater time is allowed by the requesting party, Information Requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. The form and content of the request for discovery and responses thereto, shall be the same as required by Rules 26, 30, 32, 33, 34, and 35 of the Federal Rules of Civil Procedure.

c. Limitations Upon Discovery. The discovery taken by each party shall be limited as set forth below, except that the parties may agree to modify these limitations, and absent an agreement, the Arbitrator may upon motion by a party which demonstrates a compelling need for additional discovery, expand these discovery limitations.

1. Depositions. The number of depositions to be taken by each party shall not exceed five (5).

2. Interrogatories. The number of written interrogatories requested by a party at any one time or cumulatively shall not exceed thirty (30). Each subdivision of an interrogatory shall be construed as a separate interrogatory.

3. Document Requests. The number of requests for documents by a party at any one time or cumulatively including by subpoena addressed to a party or the party's agent, shall not exceed thirty (30).

d. Compelling Discovery. Upon written motion to the Arbitrator by a party whose information is unsatisfied, the matter will be resolved by the Arbitrator pursuant to this section and 18. g., below. Any request for resolution by the Arbitrator must be accompanied by a statement that the parties have attempted in good faith but failed to resolve their discovery dispute, and must explain what good faith efforts were made. Upon request, the Arbitrator shall issue subpoenas to compel the attendance and testimony of a witness and/or the production of documents. A party shall respond to a motion to compel within fourteen (14) days.

e. Discovery of Experts. A party may through Information Requests require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. A party may also depose the expert. Unless manifest injustice would result, the Arbitrator shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this Rule.

f. Supplementation of Discovery. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

1. A party is under a duty to seasonably supplement the response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert is expected to testify and the substance of the expert testimony.

2. A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which (a) the party knows that the response was incorrect when made, or (b) the party knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment, or (c) a duty to supplement responses may be imposed by order of the Arbitrator, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

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

1. The Arbitrator should order production where the discovery request seeks evidence which is relevant or reasonably calculated to lead to the discovery of admissible evidence;

2. The Arbitrator should refuse to order production of Information Requests which are unreasonably cumulative, burdensome, or duplicative, or which exceed the discovery limits set forth in 18. c.;

3. The Arbitrator should refuse to order production of requests that seek documents which are prepared in anticipation of arbitration or litigation by or for a party or by or for that party's attorney, consultant, surety, indemnitor, insurer, or agent unless the requesting party shows that it has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Arbitrator shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the arbitration or litigation;

4. The Arbitrator may make any ruling to protect any party to the arbitration from unreasonable discovery requests and may issue any other discovery order which justice requires;

5. The Arbitrator should look to the terms of Rules 26, 30, 32, 33, 34, 35 and 37 of the Federal Rules of Civil Procedure and federal cases interpreting those Rules for guidance in resolving discovery disputes; and

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a separate interrogatory.

3. Document Requests. The number of requests for documents by a party at any one time or cumulatively including by subpoena addressed to a party or the party's agent, shall not exceed thirty (30).

d. Compelling Discovery. Upon written motion to the Arbitrator by a party whose information is unsatisfied, the matter will be resolved by the Arbitrator pursuant to this section and 18. g., below. Any request for resolution by the Arbitrator must be accompanied by a statement that the parties have attempted in good faith but failed to resolve their discovery dispute, and must explain what good faith efforts were made. Upon request, the Arbitrator shall issue subpoenas to compel the attendance and testimony of a witness and/or the production of documents. A party shall respond to a motion to compel within fourteen (14) days.

e. Discovery of Experts. A party may through Information Requests require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. A party may also depose the expert. Unless manifest injustice would result, the Arbitrator shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this Rule.

f. Supplementation of Discovery. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

1. A party is under a duty to seasonably supplement the response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert is expected to testify and the substance of the expert testimony.

2. A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which (a) the party knows that the response was incorrect when made, or (b) the party knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment, or (c) a duty to supplement responses may be imposed by order of the Arbitrator, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

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

1. The Arbitrator should order production where the discovery request seeks evidence which is relevant or reasonably calculated to lead to the discovery of admissible evidence;

2. The Arbitrator should refuse to order production of Information Requests which are unreasonably cumulative, burdensome, or duplicative, or which exceed the discovery limits set forth in 18. c.;

3. The Arbitrator should refuse to order production of requests that seek documents which are prepared in anticipation of arbitration or litigation by or for a party or by or for that party's attorney, consultant, surety, indemnitor, insurer, or agent unless the requesting party shows that it has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Arbitrator shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the arbitration or litigation;

4. The Arbitrator may make any ruling to protect any party to the arbitration from unreasonable discovery requests and may issue any other discovery order which justice requires;

5. The Arbitrator should look to the terms of Rules 26, 30, 32, 33, 34, 35 and 37 of the Federal Rules of Civil Procedure and federal cases interpreting those Rules for guidance in resolving discovery disputes; and

6. The Arbitrator may assess the Arbitrator's costs and/or award reasonable attorneys' fees and costs incurred in hearing and resolving any discovery dispute against the losing party to such discovery dispute, if the losing party's position was not substantially justified.

h. Time Limitations for Discovery. Because it is the parties' intent that these procedures be expedited to the greatest extent possible, all requests for discovery must be initiated such that discovery can be completed no more than ninety (90) calendar days after the date of the Initial Conference.

19. *SUMMARY JUDGMENT*

a. Time Requirements. A party may, at any time after the expiration of thirty (30) calendar days from the Initial Conference, move for summary judgment upon all or any part of a disputed claim. A party must file a response or opposition to a motion for summary judgment within thirty (30) days of service of the motion. Any reply must be served within fifteen (15) days of service of the response.

b. Standard. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Arbitrator may permit affidavits to be supplemented or opposed by depositions, answers to Information Requests, or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue for the hearing. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. Summary Judgment is appropriate if the pleadings, depositions, and answers to information requests, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A party opposing summary judgment does not raise genuine issues of material fact by contradicting that party's own prior sworn statement unless said party explains to the satisfaction of the Arbitrator the reason for the subsequent change and shows that the subsequent changed testimony or statement is more likely true than the former testimony or statement which the party would contradict. In construing and applying this section, the Arbitrator should look to Rule 56 of the Federal Rules of Civil Procedure.

20. *ARBITRATION HEARING*

a. Hearing Requirement-Waiver of Hearing. A hearing shall be held to resolve a Dispute which is not decided by dismissal or summary judgment, unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings, documentary evidence, and briefs submitted. The Arbitrator shall determine the time and date of the hearing which shall be held no later than one hundred eighty (180) days following the selection of the Arbitrator. Notice of the hearing date shall be given at least thirty (30) calendar days prior to the hearing.

b. Failure to Appear. The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement.

c. Attendance at Hearings. The Arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The Arbitrator shall exclude any persons whose presence is not necessary to the resolution of the Dispute. All parties, including a corporate representative, shall have the right to be present during the proceedings.

d. Burden of Proof. The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their Dispute had been brought in court.

e. Evidence. The Arbitrator shall determine the materiality and relevance of any evidence proffered and shall be bound by rules governing the admissibility of evidence contained in the Federal Rules of Evidence.

f. Record of Proceedings. A verbatim record of all arbitration hearings may be kept by stenographic reporter or tape recording. If a party or parties to a Dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless a non-requesting party subsequently requests a copy of the transcript in which case the total costs of transcription (including duplicate copies, court reporter's fee and Arbitrator's copy) shall be borne equally by all parties having access to the transcript.

g. Oaths of the Witnesses. All testimony shall be under oath or affirmation administered by the Arbitrator.

h. Confidentiality of Hearings. The Arbitrator shall maintain the confidentiality of the hearings and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.

i. Post-Hearing Briefs. At any party's election, or at the discretion of the Arbitrator, the parties may submit post-hearing briefs to the Arbitrator, and the record shall not be deemed to be closed until the last day on which briefs could be timely submitted; provided, however, that no such briefs shall contain or refer to evidence not adduced at the hearing.

j. Privileged Communications. The Arbitrator shall have the immunity of a judicial officer from civil liability, when acting in the capacity of an Arbitrator, which immunity supplements any other

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h. Time Limitations for Discovery. Because it is the parties' intent that these procedures be expedited to the greatest extent possible, discovery can be completed no more than ninety (90) calendar days after the date of the Initial Conference.

19. *SUMMARY JUDGMENT*

a. Time Requirements. A party may, at any time after the expiration of thirty (30) calendar days from the Initial Conference, move for summary judgment upon all or any part of a disputed claim. A party must file a response or opposition to a motion for summary judgment within thirty (30) days of service of the motion. Any reply must be served within fifteen (15) days of service of the response.

b. Standard. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Arbitrator may permit affidavits to be supplemented or opposed by depositions, answers to Information Requests, or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue for the hearing. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. Summary Judgment is appropriate if the pleadings, depositions, and answers to information requests, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A party opposing summary judgment does not raise genuine issues of material fact by contradicting that party's own prior sworn statement unless said party explains to the satisfaction of the Arbitrator the reason for the subsequent change and shows that the subsequent changed testimony or statement is more likely true than the former testimony or statement which the party would contradict. In construing and applying this section, the Arbitrator should look to Rule 56 of the Federal Rules of Civil Procedure.

20. *ARBITRATION HEARING*

a. Hearing Requirement-Waiver of Hearing. A hearing shall be held to resolve a Dispute which is not decided by dismissal or summary judgment, unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings, documentary evidence, and briefs submitted. The Arbitrator shall determine the time and date of the hearing which shall be held no later than one hundred eighty (180) days following the selection of the Arbitrator. Notice of the hearing date shall be given at least thirty (30) calendar days prior to the hearing.

b. Failure to Appear. The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement.

c. Attendance at Hearings. The Arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The Arbitrator shall exclude any persons whose presence is not necessary to the resolution of the Dispute. All parties, including a corporate representative, shall have the right to be present during the proceedings.

d. Burden of Proof. The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their Dispute had been brought in court.

e. Evidence. The Arbitrator shall determine the materiality and relevance of any evidence proffered and shall be bound by rules governing the admissibility of evidence contained in the Federal Rules of Evidence.

f. Record of Proceedings. A verbatim record of all arbitration hearings may be kept by stenographic reporter or tape recording. If a party or parties to a Dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless a non-requesting party subsequently requests a copy of the transcript in which case the total costs of transcription (including duplicate copies, court reporter's fee and Arbitrator's copy) shall be borne equally by all parties having access to the transcript.

g. Oaths of the Witnesses. All testimony shall be under oath or affirmation administered by the Arbitrator.

h. Confidentiality of Hearings. The Arbitrator shall maintain the confidentiality of the hearings and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.

i. Post-Hearing Briefs. At any party's election, or at the discretion of the Arbitrator, the parties may submit post-hearing briefs to the Arbitrator, and the record shall not be deemed to be closed until the last day on which briefs could be timely submitted; provided, however, that no such briefs shall contain or refer to evidence not adduced at the hearing.

j. Privileged Communications. The Arbitrator shall have the immunity of a judicial officer from civil liability, when acting in the capacity of an Arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or in connection with the arbitration proceedings are privileged in accordance with state law applicable to judicial proceedings.

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

22. *COSTS AND FEES*

a. Filing Fee. Upon the filing of an RFA, the party so filing shall pay a filing fee of $250.00 made payable to Benson. The filing fee shall be applied to administrative costs and Arbitrator's fees and expenses.

b. Expense of Arbitration. Except as otherwise provided in this paragraph, the Arbitrator's fees and expenses, together with the other expenses, not including attorneys' fees, incurred in the conduct of the arbitration, shall be paid by Benson.

c. Costs and Attorneys' Fees. The prevailing party shall be awarded costs of the Arbitration, including the filing fee, subpoena service fees and witness fees, deposition and hearing transcription costs and similar expenses, but not including expert fees unless the expert testimony was necessary to establishing or refuting liability. In cases where a party asserts any claim, position or defense that is not substantially justified by the law or facts, the Arbitrator shall award to the opposing party that party's reasonable attorneys' fees incurred as a result of that party's defending any such claim, position or defense.

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

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

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

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

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Ex. B

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HYUNDAI

HYUNDAI MOTOR FINANCE COMPANY CREDIT APPLICATION

☑ RETAIL ☑ BALLOON ☑ LEASE

☐ Individual Credit-Applying for credit in your name and are relying on income or assets and not the income or assets of another person as the basis for repayment of the credit request.

☑ Joint Credit-Applying for joint credit with another person. Relationship to applicant: ☑ spousal ☑ non-spousal

☐ Individual Credit Relying on Other Income-Applying for credit in your own name but relying on income for alimony, child support, and seperate maintenance or on income or assets of another person for the repayment of credit requested.

NOTE: If married, the spouse is not required to be the JOINT applicant.

DEALER NAME & NUMBER: CONTACT NAME

APPLICANT INFORMATION

LAST	FIRST	MIDDLE INT
SIMMONS	CARLEE	R

DATE OF BIRTH	SSN	HOME PHONE NUMBER
[redacted]	[redacted]	[redacted]

STREET ADDRESS	CITY	STATE	ZIP
[redacted]	MACON	GA	31201

HOW LONG AT THIS ADDRESS	MORTGAGE OR RENT PAYMENT	RESIDENTIAL STATUS:
2 YRS 0 MOS	$.00	☐OWN ☐LIVES WITH PARENTS ☐RENT ☐OTHER

PREVIOUS ADDRESS (IF LESS THAN 2 YEARS AT PRESENT ADDRESS) YRS MOS

EMPLOYER	EMPLOYER PHONE NUMBER
middle state university	(478) 471-5731

JOB TITLE /OCCUPATION 2 YRS 0 MOS

GROSS MONTHLY SALARY	EMPLOYERS ADDRESS
2,900.00	

PREVIOUS EMPLOYER NAME ADDRESS, PHONE NUMBER & LENGTH OF EMPLOYMENT (IF LESS THAN 2 YEARS WITH PRESENT EMPLOYER)
Yrs. Mos.

JOINT APPLICANT INFORMATION

LAST	FIRST	MIDDLE INT
SIMMONS	DONALD	L

DATE OF BIRTH	SSN	HOME PHONE NUMBER
[redacted]	[redacted]	[redacted]

STREET ADDRESS	CITY	STATE	ZIP
[redacted]	MACON	GA	31201

HOW LONG AT THIS ADDRESS	MORTGAGE OR RENT PAYMENT	RESIDENTIAL STATUS:
1 YRS 0 MOS	$.	☐OWN ☐LIVES WITH PARENTS ☐RENT ☐OTHER

PREVIOUS ADDRESS (IF LESS THAN 2 YEARS AT PRESENT ADDRESS) [redacted] GAFFNEY, SC 29340 2YRS 0 MOS

EMPLOYER	EMPLOYER PHONE NUMBER
MIDDLE GEORGIA STATE UNIVERSITY	(478) 471-3564

JOB TITLE /OCCUPATION 2 YRS 0 MOS

GROSS MONTHLY SALARY	EMPLOYERS ADDRESS
4,162.00	

PREVIOUS EMPLOYER NAME ADDRESS, PHONE NUMBER & LENGTH OF EMPLOYMENT (IF LESS THAN 2 YEARS WITH PRESENT EMPLOYER)
0 YRS MOS

ALIMONY, CHILD SUPPORT OR SEPERATE MAINTENANCE INCOMES DO NOT HAVE TO BE REVEALED UNLESS THE

OTHER INCOME NOTE APPLICANT WISHES TO HAVE SUCH SOURCES CONSIDERED AS A BASIS FOR REPAYMENT OF THE REQUESTED

APPLICANT SOURCE OF OTHER INCOME	(A) AMOUNT MONTHLY$	JOINT APPLICANT SOURCE OF OTHER INCOME	(B) AMOUNT MONTHLY$	TOTAL OTHER $ MONTHLY INC.(A&B)

INDICATE RELATIONSHIP OR OWNERSHIP OF ACCOUNT BY X ING THE APPROPRIATE LETTER A-APPLICANT B-JOINT APPLICANT AND J-JOINT

NEAREST RELATIVE NAME AND ADDRESS	A	B	J	RELATIVE'S PHONE NO.
NEAREST RELATIVE NAME AND ADDRESS	A	B	J	RELATIVE'S PHONE NO.
PERSONAL FRIEND NAME AND ADDRESS	A	B	J	FRIEND'S PHONE NO.
PERSONAL FRIEND NAME AND ADDRESS	A	B	J	FRIEND'S PHONE NO.

Email: Email:

EACH OF THE UNDERSIGNED APPLICANTS: (1) MAKES THE ABOVE REPRESENTATIONS, WHICH ARE CERTIFIED CORRECT, FOR THE PURPOSE OF SECURING CREDIT (2) AUTHORIZE HYUNDAI MOTOR FINANCE COMPANY (HYUNDAI) TO GATHER ANY CREDIT AND EMPLOYMENT HISTORY IT CONSIDERS NECESSARY AND APPROPRIATE IN EVALUATING THIS APPLICATION AND ANY CREDIT EXTENDED TO THE APPLICANT, INCLUDING OBTAINING PERIODIC CREDIT REPORTS FROM ONE OR MORE CONSUMER REPORTING AGENCIES, AND ALSO TO REPORT INFORMATION CONCERNING ITS CREDIT EXPERIENCE WITH THE APPLICANT TO OTHER;(3) AUTHORIZES HYUNDAI, IN IT'S DISCRETION, TO FORWARD THIS APPLICATION TO THE OTHER POTENTIAL FINANCING SOURCES WHO MAY WISH TO EXTEND THE REQUESTED CREDIT TO THE APPLICANT AND AUTHORIZES SUCH FINANCING SOURCES TO GATHER AND REPORT THE INFORMATION DESCRIBED IN SUBPART(2); AND (4) UNDERSTANDS THAT HYUNDAI WILL RETAIN THIS APPLICATION WHETHER OR NOT IT'S APPROVED, AND THAT IT IS APPLICANT'S RESPONSIBILITY TO NOTIFY HYUNDAI OF ANY CHANGES OF NAME, ADDRESS OR EMPLOYMENT, UPON REQUEST, THE APPLICANT WILL BE INFORMED WHETHER A CONSUMER CREDIT REPORT WAS REQUESTED AND THE NAME AND ADDRESS OF THE AGENCY FURNISHING THE REPORT. (SEE REVERSE FOR LEGAL NOTICES.)

APPLICANT
SIGNATURE X _____ DATE _____

JOINT APPLICANT
SIGNATURE X _____ DATE _____

	YEAR	MAKE	MODEL	MILEAGE
NEW USED DEMO	2016	Hyundai	Veloster	5
TRADE-IN	2006	Saab	9-2X	123635

AMOUNT $	OWED $	PAYMENT $	FINANCED WITH

CASH PRICE: INCL. TAX, TITLE, REG, AND FEES	$ 26,691.00
DOWN PAYMENT: CASH / NET TRADE:	$ 3,800
REBATE:	$ 3,750.00
UNPAID BALANCE OR CAP COST:	$

INVOICE OR MSRP	TERM	APR OR FACTOR	PMT
27,920.00	72.00		263.70

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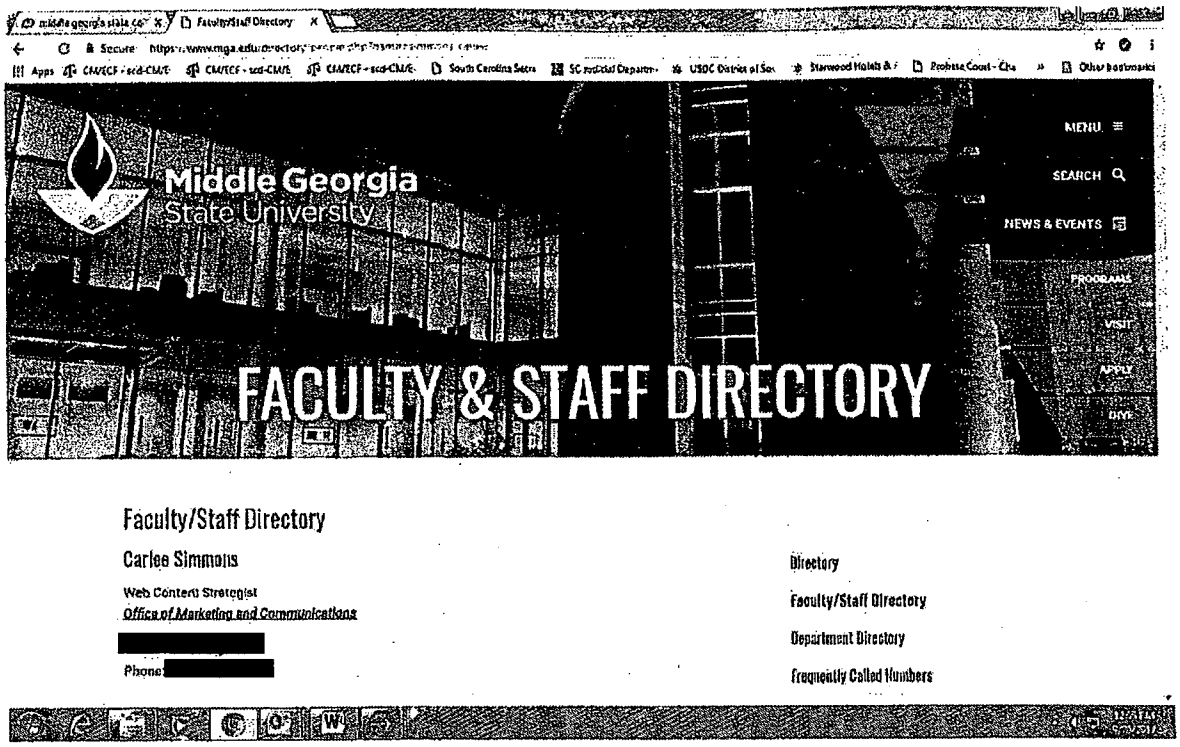

Faculty/Staff Directory

Carlee Simmons

Web Content Strategist
Office of Marketing and Communications
[redacted]
Phone [redacted]

Directory
Faculty/Staff Directory
Department Directory
Frequently Called Numbers

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Faculty/Staff Directory

Lee Simmons - M.F.A.

Assistant Professor
Media, Culture, and the Arts

[redacted]
Phone: [redacted]

Directory
Faculty/Staff Directory
Department Directory
Frequently Called Numbers

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE 7TH JUDICIAL CIRCUIT
Donald and Carlee Simmons,	)	C.A. No. 2017-CP-42-02072
Plaintiffs,	)	
vs.	)	AFFIDAVIT OF BRIAN PERRY
Benson Hyundai, LLC,	)	
Defendant.	)	

1. My name is Brian Perry. I am a Finance and Insurance Manager at Benson Hyundai.

2. I met with Donald Simmons and Carlee Simmons to review the documents related to the sale and financing of the Veloster. I reviewed all documents with them. They indicated that they understood all the paperwork.

3. Plaintiffs also signed an Arbitration Agreement. (Exhibit A)

4. I signed the same Arbitration Agreement on behalf of Benson Cadillac Hyundai.

5. The Arbitration Agreement is signed by the customer after the Buyer's Order and Retail Installment Contract.

6. Mr. and Mrs. Simmons had the opportunity to read the Arbitration Agreement prior to signing and to have the agreement explained to them if they did not understand the document. If Mr. or Mrs. Simmons had indicated they needed more time to read the document, I would have given it to them. Mrs. Simmons took approximately 40 minutes to read the documents at the end of the deal.

7. The Arbitration Agreement is a stand-alone document with a bold title stating: "BENSON ARBITRATION POLICIES AND PROCEDURES." Plaintiffs signed immediately below the following statement:

I AGREE TO ARBITRATE ANY DISPUTES AND UNDERSTAND THAT I AM GIVING UP MY RIGHT TO A JURY AND TO PARTICIPATE IN A CLASS OR GROUP ACTION.
(Exhibit A).

8. Benson Hyundai had no evidence that Plaintiffs lacked the business judgment to understand the Arbitration Agreement. Plaintiffs indicated they were employed with Georgia Middle State University. Their work experience and level of intelligence indicated that they could understand the purpose of the Arbitration Agreement and the fact it would affect their right to a jury trial.

9. Benson Hyundai did not hide the purpose of the Arbitration Agreement from the Plaintiffs.

10. Both parties have the right under the Arbitration Agreement to choose arbitration. Both parties have the right under the Agreement to self-help remedies. (Exhibit A).

THE AFFIANT FURTHER SAYETH NOT.

Brian Perry

AFFIRMED THIS
20 day of September 2017.

Notary Public for South Carolina
My Commission Expires: January 17, 2027

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BENSON
ARBITRATION POLICIES AND PROCEDURES

Benson's Policies and Procedures are intended to provide the exclusive means of resolving all Disputes, as defined below, which may arise between an individual and Benson. In consideration for their mutual promises, both parties, by entering into the Agreement, give up their right to trial by court or by jury. This Agreement evidences a "transaction involving commerce" under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 and is subject to the FAA. In the event that it is determined that the FAA does not apply, then the Agreement shall be enforced by the South Carolina Arbitration Act.

Description of Vehicle: 2016 HYUNDAI VELOSTER Customer Buyer CARLEE ROBIN SIMMONS

Co-Buyer DONALD LAWRENCE SIMMONS

1. *PARTIES.* For purposes of the Policies and Procedures, the term "Benson" shall include Benson Cadillac-Nissan, Benson Chrysler, Benson Ford, as well as any other affiliated entity, parent or subsidiary, their successors and assigns and all of their owners, shareholders, managers and agents. "Customer" shall include the Buyer and Co-Buyer listed above.
2. *DISPUTES SUBJECT TO ARBITRATION.* Disputes subject to arbitration are any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Agreement, and the arbitrability of the claim or dispute), between Customer and Benson or our employees, agents, successors or assigns, which arise out of or relate to Customer's credit application, purchase or condition of this vehicle, Customer's purchase or financing contract or any resulting transaction or relationship. Also subject to arbitration are disputes involving any person or entity whose liability or right of recovery derives from a Dispute that is covered by this Agreement (e.g. partner, agent, subsidiary or parent corporation, affiliate, shareholder, successor or assign of a party).
3. *DISPUTES THAT MAY BE ADDRESSED OUTSIDE OF ARBITRATION.* If the Claim or Dispute is within the jurisdiction of the small claims court in the State, either Benson or Customer may take the dispute to small claims court rather than to arbitration. Also, this Agreement to arbitrate does not limit the rights of Benson or Customer, whether before, during, or after the pendency of any arbitration proceeding, to exercise self-help remedies such as set-off, repossession, and the like. This Agreement to arbitrate does not limit Benson or Customer, whether before or during the pendency of any arbitration proceeding to bring an action individually to obtain provisional or ancillary remedies or injunctive relief (other than a stay of arbitration) to protect the rights or property of the party seeking such relief. However, the arbitrator(s) shall have the power to vacate and/or stay any such proceedings or orders granting provisional or ancillary remedies or injunctive relief, upon application by Benson or Customer. The taking by either Customer or Benson of any of the self-help remedies or by filing any action in court or before an administrative agency, including but not limited to the actions described in the preceding sentence, shall not be deemed to be a waiver of the right to elect BINDING ARBITRATION of any Claim upon the filing of a counter claim or the like by either Benson or Customer in response to any such action.
4. *AGREEMENT NOT TO PARTICIPATE IN CLASS OR GROUP ACTION.* Because all of the above disputes are subject to arbitration, you agree that there will be no right to participate as a class or group representative or class or group member of any class or group claim you may have against Benson, including any right to class or group arbitration or any consolidation of individual arbitrations.
5. *AUTHORITY OF THE ARBITRATOR.*
   a. Action by either party for a temporary restraining order or other preliminary injunctive relief may be pursued in a court of competent jurisdiction pending resolution of the underlying dispute in arbitration.
   b. Resolution of Disputes shall be based solely upon the law governing the claims and defenses asserted. The Arbitrator shall have the authority of a trial court judge sitting without a jury, but may not add to, modify, invalidate or ignore any provision of the Agreement or the Policies and Procedures, nor may the Arbitrator invoke any basis (such as "just cause" or seniority") other than controlling law. The Arbitrator shall be a former federal judge or federal magistrate judge, a former judge of a state court of general jurisdiction or state appellate court or an experienced attorney, selected as provided under the Policies and Procedures.

I AGREE TO ARBITRATE ANY DISPUTES AND UNDERSTAND THAT I AM GIVING UP MY RIGHT TO A JURY AND TO PARTICIPATE IN A CLASS OR GROUP ACTION.

07/26/16	Carlee Robin Simmons
Date	Buyer
07/26/16	Donald Lawrence Simmons
Date	Co-Buyer
07/26/16	
Date	Dealer/Benson

I AGREE THAT THE FOLLOWING RULES GOVERN ANY ARBITRATION BETWEEN THE PARTIES.

07/26/16	Carlee Robin Simmons
Date	Buyer
07/26/16	Donald Lawrence Simmons
Date	Co-Buyer
07/26/16	

EXHIBIT A

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07/26/16
Date

Dealer: Benson

I AGREE THAT THE FOLLOWING RULES GOVERN ANY ARBITRATION BETWEEN THE PARTIES.

07/26/16
Date

Buyer

07/26/16
Date

Co-Buyer

07/26/16
Date

Dealer: Benson

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

7. *FINALITY OF ARBITRATOR'S DECISION.* The award of the Arbitrator may be changed or altered by the Arbitrator upon application of a party as allowed by the arbitration code governing the enforcement of the Agreement. Otherwise, the award of the Arbitrator shall be final and binding unless, within thirty (30) days of service of the Arbitrator's decision, either party serves notice of appeal to a second Arbitrator who shall, as far as practicable, proceed according to the law and procedures applicable to appellate review by a United States Court of Appeals of a civil judgment following a non-jury decision by a judge. The result of the appeal and any further proceedings pursuant to the appeal shall then constitute the final award, which may be enforced by a court as provided by law.

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

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

10. *REQUEST FOR ARBITRATION.*

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

1. To initiate arbitration, the Claimant must submit a written "Request for Arbitration" ("RFA") by hand delivery or certified mail with return receipt to the Arbitration Administrator who shall be Tony Benson or his designee, and serve a copy of the RFA on the party or parties against whom the claim is brought (Respondents) by having it hand-delivered to each Respondent or by certified mail with return receipt.

2. An RFA form may be obtained from the Arbitration Administrator. The party requesting arbitration must identify persons having knowledge regarding the Dispute, the issue(s) to be arbitrated, the legal rights upon which the claims are founded (if known), the facts relevant to the Dispute, and the remedies sought. All related claims must be asserted in the same arbitration and failure to assert such a claim shall constitute a full release of the Respondent.

3. A filing fee in the amount of $250 made payable to Benson must be deposited with the Arbitration Administrator. The filing fee will be applied against the cost of the arbitration and any unused portion shall be returned. If the filing fee is not deposited as required, the Arbitration Administrator shall immediately so notify the delinquent claimant by certified mail or hand delivery. If the Claimant does not make the required deposit within five (5) days of receipt of the notification, the RFA shall be void, the same as if it had never been filed. When the Claimant asserts financial inability to pay the filing fee, the Arbitrator shall determine whether to waive this requirement using the same standard applied by federal courts.

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

11. *RESPONSE, OTHER CLAIMS AND AMENDMENTS.*

a. When a Response is Due. Within thirty (30) calendar days of a Respondent's receipt of the RFA, Respondent shall serve a response on all parties and provide a copy to the Arbitration Administrator.

b. Contents of the Response. The Response shall be on the form supplied by the Arbitration Administrator. The Response shall identify additional issues to be arbitrated, persons having knowledge regarding the Dispute, legal defenses which will be relied upon (if known), and facts relevant to the Dispute.

c. Counter-RFA. If the Respondent has a Dispute with the Claimant which has not been identified in the RFA but arises out of the same factual circumstances as the RFA, the Respondent must assert the Dispute as a Counter-RFA, with failure to do so constituting a full release of the Claimant.

d. Reply to the Counter-RFA. Within ten (10) calendar days from the service of the Counter-RFA, the Claimant shall serve a Response. The Reply shall conform to the content requirements of a Response.

e. Adding and Changing Disputes. At any time prior to the Initial Conference, any party may amend, add, or withdraw a Dispute as of right. Thereafter, no Dispute or Claim may be added except by motion to the Arbitrator, upon showing that manifest injustice would result from failure to permit the amendment and that the party did not have notice of the facts and circumstances relating to such Dispute or Claim at the time of the Initial Conference.

f. Additional RFAs. The Respondent to the Initial RFA may serve other non-parties who are subject to the Arbitration Agreement with an RFA if that person may be liable, in whole or in part, for the damages alleged in the initial RFA or Response. An "ad[illegible] RFA [illegible] with respect to the receiving party.

g. Unavailable Non-Parties. Where a non-party who is alleged by either party to be jointly or partly responsible for injuries or damages claimed to give a Claim is not subject to the Arbitration

Ex. A

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of the appeal and any further proceedings pursuant to the appeal shall then constitute the final award, which may be enforced by a court as provided by law.

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

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

10. *REQUEST FOR ARBITRATION.*

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

1. To initiate arbitration, the Claimant must submit a written "Request for Arbitration" ("RFA") by hand delivery or certified mail with return receipt to the Arbitration Administrator who shall be Tony Benson or his designee, and serve a copy of the RFA on the party or parties against whom the claim is brought (Respondents) by having it hand-delivered to each Respondent or by certified mail with return receipt.

2. An RFA form may be obtained from the Arbitration Administrator. The party requesting arbitration must identify persons having knowledge regarding the Dispute, the issue(s) to be arbitrated, the legal rights upon which the claims are founded (if known), the facts relevant to the Dispute, and the remedies sought. All related claims must be asserted in the same arbitration and failure to assert such a claim shall constitute a full release of the Respondent.

3. A filing fee in the amount of $250 made payable to Benson must be deposited with the Arbitration Administrator. The filing fee will be applied against the cost of the arbitration and any unused portion shall be returned. If the filing fee is not deposited as required, the Arbitration Administrator shall immediately so notify the delinquent claimant by certified mail or hand delivery. If the Claimant does not make the required deposit within five (5) days of receipt of the notification, the RFA shall be void, the same as if it had never been filed. When the Claimant asserts financial inability to pay the filing fee, the Arbitrator shall determine whether to waive this requirement using the same standard applied by federal courts.

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

11. *RESPONSE, OTHER CLAIMS AND AMENDMENTS.*

a. When a Response is Due. Within thirty (30) calendar days of a Respondent's receipt of the RFA, Respondent shall serve a response on all parties and provide a copy to the Arbitration Administrator.

b. Contents of the Response. The Response shall be on the form supplied by the Arbitration Administrator. The Response shall identify additional issues to be arbitrated, persons having knowledge regarding the Dispute, legal defenses which will be relied upon (if known), and facts relevant to the Dispute.

c. Counter-RFA. If the Respondent has a Dispute with the Claimant which has not been identified in the RFA but arises out of the same factual circumstances as the RFA, the Respondent must assert the Dispute as a Counter-RFA, with failure to do so constituting a full release of the Claimant.

d. Reply to the Counter-RFA. Within ten (10) calendar days from the service of the Counter-RFA, the Claimant shall serve a Response. The Reply shall conform to the content requirements of a Response.

e. Adding and Changing Disputes. At any time prior to the Initial Conference, any party may amend, add, or withdraw a Dispute as of right. Thereafter, no Dispute or Claim may be added except by motion to the Arbitrator, upon showing that manifest injustice would result from failure to permit the amendment and that the party did not have notice of the facts and circumstances relating to such Dispute or Claim at the time of the Initial Conference.

f. Additional RFAs. The Respondent to the Initial RFA may serve other non-parties who are subject to the Arbitration Agreement with an RFA if that person may be liable, in whole or in part, for the damages alleged in the initial RFA or Response. An "additional" RFA is treated the same as an initial RFA with regard to the receiving party.

g. Unavailable Non-Parties. Where a non-party who is alleged by either party to be jointly or partly responsible for injuries alleged, or who is alleged to share a Claim, is not subject to the Arbitration Agreement or is otherwise unavailable, the arbitration shall proceed notwithstanding the absence of said party and the Arbitrator shall fashion an award which is fair and equitable to all parties, given the absence of the non-party. In order to protect a party against multiple or inconsistent judgments, the Arbitrator may, in the interest of justice, require a party to proceed with a claim against a non-party to a final resolution or waive any such Claim prior to proceeding with the arbitration.

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

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

14. *SELECTION OF AN ARBITRATOR.*

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

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

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

Ex. A

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

d. Disqualification or Other Disability.

1. Challenge to Qualifications. Any party, upon learning of a reason that would disqualify the Arbitrator from deciding the Dispute, may request that the Arbitrator recuse herself or himself. The Arbitrator shall rule upon the request applying the standards a judge would use in deciding a motion to recuse in South Carolina.

2. Inability to Serve. In the event that an Arbitrator should resign, die, withdraw, or otherwise be unable to perform as an Arbitrator, the process for selecting an Arbitrator shall be repeated.

15. *SCOPE OF ARBITRAL AUTHORITY*

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

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

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

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

17. *REQUIRED CONFERENCES*

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

b. Final Pre-Arbitration Conference. Prior to the arbitration hearing, the Arbitrator shall conduct a final conference to address and determine, at a minimum, the issues to be arbitrated, the form of the award, evidentiary issues, dispositive motions, location, and time, and date, for the arbitration and any other issues relating to the subject matter or conduct of the arbitration.

18. *DISCOVERY*

a. Arbitrator's Authority to Order Discovery. The Arbitrator shall have the authority to order and enforce such discovery, by way of deposition, interrogatory, document production, independent medical examination, or otherwise (collectively referred to as "Information Requests"), as the Arbitrator considers necessary to a full and fair exploration of the issues in Dispute.

b. Discovery Requests. Any party may conduct discovery after the Arbitrator is selected. Discovery need not be filed with the Arbitrator unless necessary for the resolution of any motion. Unless a greater time is allowed by the requesting party, Information Requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. The form and content of the request for discovery and responses thereto, shall be the same as required by Rules 26, 30, 32, 33, 34, and 35 of the Federal Rules of Civil Procedure.

c. Limitations Upon Discovery. The discovery taken by each party shall be limited as set forth below, except that the parties may agree to modify these limitations, and absent an agreement, the Arbitrator may upon motion by a party which demonstrates a compelling need for additional discovery, expand these discovery limitations.

1. Depositions. The number of depositions to be taken by each party shall not exceed five (5).

2. Interrogatories. The number of written interrogatories requested by a party at any one time or cumulatively shall not exceed thirty (30). Each subdivision of an interrogatory shall be construed as a separate interrogatory.

3. Document Requests. The number of requests for documents by a party at any one time or cumulatively including by subpoena addressed to a party or the party's agent, shall not exceed thirty (30).

d. Compelling Discovery. Upon written motion to the Arbitrator by a party whose information is unsatisfied, the matter will be resolved by the Arbitrator pursuant to this section and 18. g., below. Any request for resolution by the Arbitrator must be accompanied by a statement that the parties have attempted in good faith but failed to resolve their discovery dispute, and must explain what good faith efforts were made. Upon request, the Arbitrator shall issue subpoenas to compel the attendance and testimony of a witness and/or the production of documents. A party shall respond to a motion to compel within fourteen (14) days.

e. Discovery of Experts. A party may through Information Requests require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. A party may also depose the expert. Unless manifest injustice would result, the Arbitrator shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this Rule.

f. Supplementation of Discovery. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

1. A party is under a duty to seasonably supplement the response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert is expected to testify and the substance of the expert testimony.

2. A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which (a) the party knows that the response was incorrect when made, or (b) the party knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment, or (c) a duty to supplement responses may be imposed by order of the Arbitrator, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

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

1. The Arbitrator should order production where the discovery request seeks evidence which is relevant or reasonably calculated to lead to the discovery of admissible evidence;

2. The Arbitrator should refuse to order production of Information Requests which are unreasonably cumulative, burdensome, or duplicative, or which exceed the discovery limits set forth in 18. c.;

3. The Arbitrator should refuse to order production of requests that seek documents which are prepared in anticipation of arbitration or litigation by or for a party or by or for that party's attorney, consultant, surety, indemnitor, insurer, or agent unless the requesting party shows that it has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Arbitrator shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the arbitration or litigation;

4. The Arbitrator may make any ruling to protect any party to the arbitration from unreasonable discovery requests and may issue any other discovery order which justice requires;

5. The Arbitrator should look to the terms of Rules 26, 30, 32, 33, 34, 35 and 37 of the Federal Rules of Civil Procedure and federal cases interpreting those Rules for guidance in resolving discovery disputes; and

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a separate interrogatory.

3. Document Requests. The number of requests for documents by a party at any one time or cumulatively including by subpoena addressed to a party or the party's agent, shall not exceed thirty (30).

d. Compelling Discovery. Upon written motion to the Arbitrator by a party whose information is unsatisfied, the matter will be resolved by the Arbitrator pursuant to this section and 18. g., below. Any request for resolution by the Arbitrator must be accompanied by a statement that the parties have attempted in good faith but failed to resolve their discovery dispute, and must explain what good faith efforts were made. Upon request, the Arbitrator shall issue subpoenas to compel the attendance and testimony of a witness and/or the production of documents. A party shall respond to a motion to compel within fourteen (14) days.

e. Discovery of Experts. A party may through Information Requests require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. A party may also depose the expert. Unless manifest injustice would result, the Arbitrator shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this Rule.

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2. A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which (a) the party knows that the response was incorrect when made, or (b) the party knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment, or (c) a duty to supplement responses may be imposed by order of the Arbitrator, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

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1. The Arbitrator should order production where the discovery request seeks evidence which is relevant or reasonably calculated to lead to the discovery of admissible evidence;

2. The Arbitrator should refuse to order production of Information Requests which are unreasonably cumulative, burdensome, or duplicative, or which exceed the discovery limits set forth in 18. c.;

3. The Arbitrator should refuse to order production of requests that seek documents which are prepared in anticipation of arbitration or litigation by or for a party or by or for that party's attorney, consultant, surety, indemnitor, insurer, or agent unless the requesting party shows that it has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Arbitrator shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the arbitration or litigation;

4. The Arbitrator may make any ruling to protect any party to the arbitration from unreasonable discovery requests and may issue any other discovery order which justice requires;

5. The Arbitrator should look to the terms of Rules 26, 30, 32, 33, 34, 35 and 37 of the Federal Rules of Civil Procedure and federal cases interpreting those Rules for guidance in resolving discovery disputes; and

6. The Arbitrator may assess the Arbitrator's costs and/or award reasonable attorneys' fees and costs incurred in hearing and resolving any discovery dispute against the losing party to such discovery dispute, if the losing party's position was not substantially justified.

h. Time Limitations for Discovery. Because it is the parties' intent that these procedures be expedited to the greatest extent possible, all requests for discovery must be initiated such that discovery can be completed no more than ninety (90) calendar days after the date of the Initial Conference.

19. *SUMMARY JUDGMENT*

a. Time Requirements. A party may, at any time after the expiration of thirty (30) calendar days from the Initial Conference, move for summary judgment upon all or any part of a disputed claim. A party must file a response or opposition to a motion for summary judgment within thirty (30) days of service of the motion. Any reply must be served within fifteen (15) days of service of the response.

b. Standard. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Arbitrator may permit affidavits to be supplemented or opposed by depositions, answers to Information Requests, or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue for the hearing. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. Summary Judgment is appropriate if the pleadings, depositions, and answers to information requests, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A party opposing summary judgment does not raise genuine issues of material fact by contradicting that party's own prior sworn statement unless said party explains to the satisfaction of the Arbitrator the reason for the subsequent change and shows that the subsequent changed testimony or statement is more likely true than the former testimony or statement which the party would contradict. In construing and applying this section, the Arbitrator should look to Rule 56 of the Federal Rules of Civil Procedure.

20. *ARBITRATION HEARING*

a. Hearing Requirement-Waiver of Hearing. A hearing shall be held to resolve a Dispute which is not decided by dismissal or summary judgment, unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings, documentary evidence, and briefs submitted. The Arbitrator shall determine the time and date of the hearing which shall be held no later than one hundred eighty (180) days following the selection of the Arbitrator. Notice of the hearing date shall be given at least thirty (30) calendar days prior to the hearing.

b. Failure to Appear. The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement.

c. Attendance at Hearings. The Arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The Arbitrator shall exclude any persons whose presence is not necessary to the resolution of the Dispute. All parties, including a corporate representative, shall have the right to be present during the proceedings.

d. Burden of Proof. The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their Dispute had been brought in court.

e. Evidence. The Arbitrator shall determine the materiality and relevance of any evidence proffered and shall be bound by rules governing the admissibility of evidence contained in the Federal Rules of Evidence.

f. Record of Proceedings. A verbatim record of all arbitration hearings may be kept by stenographic reporter or tape recording. If a party or parties to a Dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless a non-requesting party subsequently requests a copy of the transcript in which case the total costs of transcription (including duplicate copies, court reporter's fee and Arbitrator's copy) shall be borne equally by all parties having access to the transcript.

g. Oaths of the Witnesses. All testimony shall be under oath or affirmation administered by the Arbitrator.

h. Confidentiality of Hearings. The Arbitrator shall maintain the confidentiality of the hearings and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.

i. Post-Hearing Briefs. At any party's election, or at the discretion of the Arbitrator, the parties may submit post-hearing briefs to the Arbitrator, and the record shall not be deemed to be closed until the last day on which briefs could be timely submitted; provided, however, that no such briefs shall contain or refer to evidence not adduced at the hearing.

j. Privileged Communications. The Arbitrator shall have the immunity of a judicial officer from civil liability, when acting in the capacity of an Arbitrator, which immunity supplements any other

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h. Time Limitations for Discovery. Because it is the parties' intent that these procedures be expedited to the greatest possible [illegible] can be completed no more than ninety (90) calendar days after the date of the Initial Conference.

19. *SUMMARY JUDGMENT*

a. Time Requirements. A party may, at any time after the expiration of thirty (30) calendar days from the Initial Conference, move for summary judgment upon all or any part of a disputed claim. A party must file a response or opposition to a motion for summary judgment within thirty (30) days of service of the motion. Any reply must be served within fifteen (15) days of service of the response.

b. Standard. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Arbitrator may permit affidavits to be supplemented or opposed by depositions, answers to Information Requests, or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue for the hearing. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. Summary Judgment is appropriate if the pleadings, depositions, and answers to information requests, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A party opposing summary judgment does not raise genuine issues of material fact by contradicting that party's own prior sworn statement unless said party explains to the satisfaction of the Arbitrator the reason for the subsequent change and shows that the subsequent changed testimony or statement is more likely true than the former testimony or statement which the party would contradict. In construing and applying this section, the Arbitrator should look to Rule 56 of the Federal Rules of Civil Procedure.

20. *ARBITRATION HEARING*

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b. Failure to Appear. The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement.

c. Attendance at Hearings. The Arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The Arbitrator shall exclude any persons whose presence is not necessary to the resolution of the Dispute. All parties, including a corporate representative, shall have the right to be present during the proceedings.

d. Burden of Proof. The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their Dispute had been brought in court.

e. Evidence. The Arbitrator shall determine the materiality and relevance of any evidence proffered and shall be bound by rules governing the admissibility of evidence contained in the Federal Rules of Evidence.

f. Record of Proceedings. A verbatim record of all arbitration hearings may be kept by stenographic reporter or tape recording. If a party or parties to a Dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless a non-requesting party subsequently requests a copy of the transcript in which case the total costs of transcription (including duplicate copies, court reporter's fee and Arbitrator's copy) shall be borne equally by all parties having access to the transcript.

g. Oaths of the Witnesses. All testimony shall be under oath or affirmation administered by the Arbitrator.

h. Confidentiality of Hearings. The Arbitrator shall maintain the confidentiality of the hearings and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.

i. Post-Hearing Briefs. At any party's election, or at the discretion of the Arbitrator, the parties may submit post-hearing briefs to the Arbitrator, and the record shall not be deemed to be closed until the last day on which briefs could be timely submitted; provided, however, that no such briefs shall contain or refer to evidence not adduced at the hearing.

j. Privileged Communications. The Arbitrator shall have the immunity of a judicial officer from civil liability, when acting in the capacity of an Arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or in connection with the arbitration proceedings are privileged in accordance with state law applicable to judicial proceedings.

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

22. *COSTS AND FEES*

a. Filing Fee. Upon the filing of an RFA, the party so filing shall pay a filing fee of $250.00 made payable to Benson. The filing fee shall be applied to administrative costs and Arbitrator's fees and expenses.

b. Expense of Arbitration. Except as otherwise provided in this paragraph, the Arbitrator's fees and expenses, together with the other expenses, not including attorneys' fees, incurred in the conduct of the arbitration, shall be paid by Benson.

c. Costs and Attorneys' Fees. The prevailing party shall be awarded costs of the Arbitration, including the filing fee, subpoena service fees and witness fees, deposition and hearing transcription costs and similar expenses, but not including expert fees unless the expert testimony was necessary to establishing or refuting liability. In cases where a party asserts any claim, position or defense that is not substantially justified by the law or facts, the Arbitrator shall award to the opposing party that party's reasonable attorneys' fees incurred as a result of that party's defending any such claim, position or defense.

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

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

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

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

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Case No. 2017-CP-42-02072
	)	
Donald and Carlee Simmons	)	
	)	
Plaintiffs,	)	
	)	**Memorandum and Exhibits in Opposition to Defendant's Motion to Stay and Compel Arbitration**
v.	)	
	)	
Benson Hyundai, LLC	)	
	)	
Defendant.	)	
	)	
	)	

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The Plaintiffs submit the following Memorandum opposing dismissal of the case to arbitration:

I. INTRODUCTION

Defendant's Motion to to Stay and Compel Arbitration should be denied for the following reasons:

- There was no meeting of the minds, because the various arbitration clauses, rules, and agreements (apparently drafted by different companies at different times) materially

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contradicted one another. To reconcile the documents, the Court will have to write a contract for the parties. Thus, only an oral agreement was reached to purchase the vehicle, with which Benson failed to comply.

- ❑ Even if a meeting of the minds occurred, the contracts were nonetheless illusory because the Dealer was allowed under the Special Delivery Agreement to affirm or reject the sale, unless it could assign the contract on "terms satisfactory to Seller." Thus, only an oral agreement was reached to purchase the vehicle, with which Benson failed to comply.
- ❑ The written agreements were an unconscionable attempt to perpetrate a yo-yo deal.

II. FACTS OF THIS SALE

On or about July 26, 2016, Plaintiffs went to Benson Hyundai, LLC ("the Dealership" or "Benson") in hopes of purchasing a car. They planned to have a baby and needed a reliable car at an affordable price. However, before driving to Benson, Plaintiffs had done research to find a Hyundai Veloster at a suitable price. Plaintiffs then called Benson and spoke to salesman Robert Winecoff. Winecoff promised over the phone to match the price Plaintiffs had gotten elsewhere for a Veloster.

Plaintiffs met Winecoff at the dealership, and a credit check was done in Nathan Burden's office with Darryl Turner present. Mrs. Simmons' 833 score was exceptional (anything from 750 and above is considered "excellent" in the credit industry; between 700 and 749

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is considered "good") and higher than Mr. Simmons' score. Mr. Simmons had a prior bankruptcy, which was disclosed to the Dealership. Even so, his credit would be designated as "good."

Plaintiffs then were taken into the office of Brian Perry, Finance and Insurance Manager, late that night. who presented numerous contracts in a hurried fashion without giving Plaintiffs time to read them closely and without explaining them. During contract negotiations, Benson's manager Nate Burden pressured them to sign, saying a substantial rebate would be available that night only. However, the Retail Buyer's Order (Exhibit A) drafted by Defendant and signed at the Dealership the night of the sale reflected the agreed-upon Manufacturer's Suggested Retail Price of $19,600. After discounts, trade-in, and other credits and deductions, only $10,043 remained to be financed.

Plaintiffs could understand the dollar figures in the documents, but not being lawyers, Plaintiffs did not understand many of the material legal aspects, for example, what exactly were the Federal Rules of Civil Procedure or the AAA Consumer Arbitration Rules.

A substantial down payment was made by the Simmonses: In addition to a trade-in of Mr. Simmons' Saab, Benson debited $1,000 directly from Plaintiffs' bank account. A personal check for $2,800 was written to Benson. Those funds and the Saab are still in Benson's possession.

Future payments via a bank check made out to Hyundai Motor Finance were sent directly to Benson. This they have done every

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month since July of 2016, their first payment being August, 2017.

The next morning, Plaintiffs were contacted by the Dealership, told to tear up the contracts, and informed that the contracts (drafted by dealership managers experienced in financing auto sales) were invalid. On a later call, the manager became irate, began cursing at Mr. Simmons, called as "a**hole" and used words like "f**king" in an effort to pressure him. A repo man was later sent who confronted Mrs. Simmons while she was alone in her office at work.

The Plaintiffs were texted or emailed a cropped version of a document entitled a "Worksheet" closely resembling the Retail Buyer's Order they had signed the previous night. (This is the document submitted by Benson as Exhibit A to its Motion.) The new document had significantly higher dollar figures, which Benson claimed Plaintiffs owed

III. YO-YO DEAL

The events occurring after the "sale" closely fit the classic pattern of what the South Carolina Supreme Court and the Federal Trade Commission describe as a "fundamentally unfair" "yo-yo deal." *See* Exhibit B. The Supreme Court observed:

> "Yo-yo sales are unlawful in at least seven states and several other states have issued regulations and administrative interpretations to car dealers on the subject. Such transactions are fundamentally unfair because they give all of the power to the dealer, and

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none to the customer:

> On the one hand, once the customer drives the car off the lot, the consumer is locked into the sale. The dealer does not want the consumer to think about the deal overnight – it wants the deal closed on the spot while the consumer has just undergone hours of sales pressure. On the other hand, the dealer wants to retain its options when the consumer drives off the lot with the car. It does not want to be rushed into a hasty deal. It wants time for its personnel to review the profit margin, the consumer's credit rating, and the chances of selling the vehicle to someone else. It wants time to reflect on whether it can squeeze more out of the consumer or whether it is better off selling the vehicle to someone else.
>
> Usually, the dealer will want to hide the one-sided nature of the transaction. It does not want consumers to think that they can get out of a deal just because the dealer can. So the dealer will not disclose that the deal, from the dealer's point of view, is not final."

Singleton v. Stokes Motors, Inc., 358 S.C. 369, 380-81 (Sup. Ct. 2004).

IV. THE ARBITRATION DOCUMENTS

The four sets of arbitration documents are as follows:

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(A) Benson Arbitration Policies and Procedures

This is a lengthy, free-standing arbitration agreement in tiny font signed by the parties on the night of the sale. *See* Exhibit C. Benson's Arbitration Policies and Procedures contradict the other arbitration procedures and rules, as will be shown below.

(B) Sales/Financing/Arbitration Provision

This document is a combination sale and financing document signed by the parties on the night of the sale, which includes the Truth in Lending Act disclosures. *See* Exhibit D. On the last page is a new and different detailed Arbitration Provision.

(C) AAA Consumer Arbitration Rules

The AAA Consumer Arbitration Rules are incorporated into the arbitration by the Sales/Financing/Arbitration Provision. *See* Exhibit E.

(D) The Federal Rules of Civil Procedure

The entire Federal Rules of Civil Procedure are expressly incorporated into Benson's Arbitration Policies and Procedures. *See* Exhibit C.

V. ARGUMENT AND LAW: NO MEETING OF THE MINDS

(A) No meeting of the minds on arbitration occurred because the various arbitration clauses, rules, and agreements contradicted one another, requiring the Court to write an agreement for the parties. Thus, only an oral agreement was reached to purchase the vehicle, with which Benson failed to comply.

Benson's arbitration documents are on commercial forms, apparently were drafted by different authors with no consultation

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between them.[1] The result is a Frankenstein's monster of material contradictions, such that no meeting of the minds occurred to form a contract. Not only do the actual arbitration provisions/clauses on the faces of the Sales/Financing Agreement and Benson's Arbitration Policies and Procedures contradict one another, but they also adopt contradictory extrinsic rules.

The Florida Supreme Court in *Basulto v. Hialeah Auto.*, No. SC09-2358 (Fla. Sup. Ct. 2014) (Florida UTPA) addressed a similar scenario of contradictory documents:

> The [Trial] Court concludes as a matter of law that no valid agreement arbitrate exists in this case. This conclusion is based on the Court's finding of fact that the various jury waiver and arbitration clauses which [the buyers] were required to sign were conflicting in their essential provisions and, taken together, provided for three separate and distinct means of dispute resolution. One of the clauses at issue provided for jury waiver[2] and (presumably) trial in a court of law. Another provision required arbitration by a single arbitrator. Another provision required arbitration by a panel of three arbitrators. In addition the methods for selecting

[1] *Huffman v. Sticky Fingers*, 2005 WL 5168737 (S.C. Com. Pl.) (Trial Order) ("As the drafter of the contract, [Sticky Fingers] was in the best position to prevent confusion in the contract's construction and should be the party to suffer from its shortcomings. *See Williams v. Teran, Inc.*, 266 S.C. 55, 60, 221 S.E.2d 526, 529 (1976) (noting an ambiguity in an agreement must be resolved against its drafter); *Hooters of America v. Phillips*, 173 F.3d. 933, 938 (4th Cir. 1999) ("In determining whether a particular dispute can be compelled to arbitration, a Court conducts an inquiry into whether "a valid agreement to arbitrate exists between the parties.").

[2] Benson's Arbitration Policies and Procedures provides for a trial in small claims court. The Sales/Financing Arbitration provision does so also. AAA Consumer Rules do not allow a jury waiver.

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> arbitrators were conflicting as well as what law or procedure would govern the arbitration proceeding. Each of the competing dispute resolution provisions at issue contemplates the enforcement of a different remedy whose terms and conditions are irreconcilable with the terms and conditions of each of the other conflicting provisions. This Court accordingly concludes as a matter of law that there was no meeting of the minds with respect to the terms by which the [the dealership] intended the parties to be bound. There is accordingly no valid agreement for this Court to enforce.

Id. (emphasis added).

Similarly, in *Ragab v. Howard*,[3] the Tenth Circuit was confronted with a similar scenario under the FAA. In *Ragab*, the district judge refused to enforce multiple conflicting arbitration provisions citing contract law identical to that in South Carolina. The district court concluded that "the conflicting details in the multiple arbitration provisions indicate that there was no meeting of the minds with respect to arbitration."

The Tenth Circuit affirmed:

> "[t]he agreements contain conflicting arbitration provisions. Suffice it to say the conflicts involve (1) which rules will govern, (2) how the arbitrator will be selected, (3) the notice required to arbitrate, and (4) who would be entitled to attorneys' fees and on what showing."[4]

In support, the Tenth Circuit also cited *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, 838 F. Supp. 2d 967, 992 (C.D. Cal. 2012) and *Basulto*.

Even if a buyer is educated and reads well, conflicting

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[3] 841 F.3d 1134 (10th Cir. 2016).

[4] *Id.* F.3d at 1336.

provisions can prevent him or her from understanding the document's meaning. *See NAACP of Camden Cty. E. v. Foulke Mgmt. Corp.*, 24 A.3d 777, 794 (N.J. Super. Ct. App. Div. 2011) (cited in *Ragab*).

(B) Material contradictions between the arbitration provisions and rules

Benson's arbitration documents consist of four sets of rules:

(1) Benson Arbitration Policies and Procedures ("Benson's Rules") Exhibit C.
(2) Federal Rules of Civil Procedure (incorporated by Benson's Rules)
(3) Sales/Financing Arbitration Agreement (page four of the Sales/Financing Agreement. Exhibit D.
(4) AAA Consumer Arbitration Rules (adopted by the Sales/Financing Agreement). Exhibit E.

(C) Which disputes and parties are subject to arbitration?

All four arbitration provisions cover the parties and disputes subject to arbitration.

Using identical language, both Benson's Rules and the Sales/Financing Agreement specify the parties[5] and disputes that shall be controlled by the arbitration agreements. The Sales/Financing Arbitration Agreement (emphasis added) gives it broad, exclusive jurisdiction over the subject matter of the arbitration:

> "Any claim or dispute whether in contract, tort, statute, or otherwise [including arbitrability] between you and us or our employees, agents, successors, agents or assigns

[5] Regarding which "parties" are subject to arbitration, Benson Rule #1 claims on one hand that "Benson" shall include essentially every Benson business and their owners, as well as affiliated entities, parent businesses, subsidiaries, shareholders, and agents. On the other side, all customers and Co-Buyers are required to arbitrate. The Sales/Financing Arbitration Agreement (page four of the Sales/Financing Agreement) also uses extremely broad language about which parties are required to arbitration.

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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 agreement) shall, at your or our election be resolved by neutral, binding arbitration and not a court action."

However, Benson's Rules also provide exclusive jurisdiction over those disputes and parties subject to arbitration. Benson's Rule #2 (emphasis added) essentially uses identical language to the provisions in Benson's Sales/Financing Arbitration Agreement:

> "Any claim or dispute whether in contract, tort, statute, or otherwise [including arbitrability] between [you] and [us] or our employees, agents, successors, agents or assigns which arises out of your credit application, purchase, or condition of this vehicle, this contract, or any resulting transaction or relationship, (including such relationship with third parties who do not read this agreement), shall at your or our election be subject to neutral binding arbitration and not by a court."[6]

Both arbitration clauses state that if part of the arbitration provisions are unenforceable, the remainder of the arbitration provision is enforceable.

(D) Which rules control how the arbitration will be done?

The various arbitration provisions conflict as to which rules apply. According to the first sentence of Benson's Rules, Benson's Rules apply: "Benson's Policies and Procedures are intended to provide the exclusive means of resolving all disputes, as defined

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[6] Benson's Rules in its preamble also claim the same thing: "Benson's Policies and Procedures are intended to provide the exclusive means of resolving all Disputes, as defined below, which may arise between an individual and Benson." However, the Sales/Financing Arbitration Provision states that in any conflict between it and the arbitration organization's rules, the Sales/Financing Arbitration Provision controls.

below, which may arise between an individual and Benson."

However, Paragraph 6 of Benson's Rules (emphasis added) adopts the entire Federal Rules of Civil Procedure as providing the rules: "The Federal Rules of Civil Procedure shall govern all arbitration proceedings. All powers, rights, and obligations afforded arbitrators or the parties under the applicable federal or state arbitration code which conflict with any provision in Benson's Arbitration Policies and Procedures are expressly waived to the extent permitted by law."

The Sales/Financing Contract Arbitration Provision sets forth numerous rules itself, some of which conflict with Benson's Rules.

Also, the Sales/Financing Arbitration Provision incorporates the AAA Consumer Arbitration Rules which are supposed to control: "You may choose the American Arbitration Association to conduct the arbitration [but] any other organization [must be] subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website."

According to AAA Consumer Rule 1(a) (emphasis added), when parties have "provided for AAA's rules or AAA administration as part of their consumer agreement, they shall have been deemed to have agreed that the application of the AAA's rules . . . shall be an essential term of their consumer agreement." This, of course, conflicts with Benson's claim that Benson's Rules and the Federal Rules of Civil Procedure provide the arbitration rules. To make matters more confusing, the AAA has authority to dispense with its own Consumer Arbitration Rules. *See* AAA Rule 1(e).

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(E) Who administers the arbitration?

According to Benson's Rules, Benson itself administers the arbitration. However, pursuant to the Sales/Financing Arbitration Provision, the AAA administers the arbitration, unless Benson will consent to allow another organization to do so.[7]

Finally, according to AAA Consumer Rule 1(a) (emphasis added), when parties have "provided for AAA's . . . administration as part of their consumer agreement, they shall have been deemed to have agreed that the application of the AAA's . . .administration of the consumer arbitration shall be an essential term of their consumer agreement."

The Federal Rules of Civil Procedure are silent on this issue.

(F) How is arbitration initiated?

According to Benson's Rules, notice must be given to the Administrator "Tony Benson" on a form supplied by Tony Benson.

(G) What are the filing fees?

According to Benson's Rule 10, the customer must pay a $250 filing fee to Benson itself up front "to be applied against the cost of the arbitration" and any unused portion to be returned. Benson pays nothing up front, if it files for arbitration.

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[7] The case administrator is defined in the AAA Rules Glossary as follows:
The Case Administrator is the AAA's employee assigned to handle the administrative aspects of the case. He or she does not decide the case. He or she manages the case's administrative steps, such as exchanging documents, matching schedules, and setting up hearings. The Case Administrator is the parties' contact point for almost all aspects of the case outside of any hearings.

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The consumer must also submit a Request for Arbitration on a form supplied by Benson. The arbitration is void ("as if it had never been filed") if Benson is not paid the $250 five days after notice.

However, according to the AAA Consumer Rules adopted in the Sales/Financing Arbitration Provision, Benson should pay between $1,700 and $2,200 filing fees, and $1,500 per arbitrator. AAA Consumer Arbitration Rules at Page 33. Payments are billed regularly.

(H) Who pays costs and expenses and in what amounts?

According to Benson's Rules, Benson is liable for all of the consumers' costs, fees (other than attorneys' fees), and arbitration-related expenses. Benson's Rule 22(a)-(b),[8] a material benefit for the Plaintiffs.

However, under the Sales/Financing Arbitration Provision, Benson's liability for such expenses and costs are capped. "We will pay your filing, administrative, service or case management fee and your arbitrator or hearing fee up to $5,000." *Id.* (emphasis added).

Under the third set of rules (i.e., the AAA Consumer Rules), "[Benson] shall pay the arbitrator's compensation unless the consumer, post dispute, voluntarily elects to pay a portion of the arbitrator's compensation." AAA Consumer Rules at Page 33.

The Federal Rules of Civil Procedure do not address arbitration fees.

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[8] However, the consumer "shall" pay all costs, expenses, court fees, attorney's fees, etc. if Benson prevails.

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(I) Pre-arbitration review for due process of arbitration clause

Under the AAA Consumer Rules, Benson was required to submit its arbitration "clause" to the AAA for a review 30 days before using it in a contract with the consumer to ensure that the arbitration complies with due process. AAA Consumer Rule 12. AAA may decline to arbitrate if this preview of Benson's Rules is not complied with. A search of the AAA Consumer Clause Registry indicates Benson has not registered its arbitration clause for due-process compliance.[9] The point, however, is whether there was a meeting of the minds, and Plaintiffs assert that the conflicting positions show no meeting of the minds.

Benson's Rules do not require any similar gate-keeping procedure, nor does the Sales/Financing Arbitration Provision.

The Federal Rules of Civil Procedure do not address this matter.

(J) Frivolous claims

The Plaintiffs may be required to repay Benson for "frivolous" claims according to the Sales/Financing Arbitration Provision or otherwise under applicable law.

Benson's Rule 22(c) requires a party to pay attorneys' fees and costs if the other party takes a position, asserts a defense, or asserts a claim "not substantially justified by the law or the facts."

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[9]https://www.adr.org/simplefileandpay/faces/oracle/webcenter/portalapp/pages/clauseRegistry.jspx?_adf.ctrl-state=o1g7lro7z_13&_afrLoop=212958622968330&_afrWindowMode=0&_afrWindowId=o1g7lro7z_10#!

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(K) Appeals

The Sales/Financing Arbitration Provision states that appeals are governed by the FAA.

Benson's Rule 26 sets forth a different procedure in which an "appeal arbitrator" is chosen to hear the appeal, which necessarily involves increased costs and expenses. A second appeal may be taken to a court, but Benson's Rule 26 permits more limited grounds for appeal than the FAA.

The Federal Arbitration Act allows appeals directly to a court. 9 U.S. Code § 16 (2017).

AAA Consumer Rule 47 does not deal directly with appeals.

Appeals are not controlled by the Federal Rules of Civil Procedure but instead by the Federal Rules of Appellate Procedure.

(L) Discovery

Benson's Rule 18 provides for a discovery scheme, which conflicts with the AAA Consumer Rules, the Federal Rules of Civil Procedure, and the FAA.

For example, under Benson's Rules the arbitrator is given discretion to order pre-hearing depositions (which are critical to Plaintiffs in this case). However, pre-hearing depositions of third parties are typically not allowed by the FAA. *Comsat Corp. v. National Science Foundation*, 190 F.3d 269 (4th Cir. 1999) ("[W]e hold today that a federal court may not compel a third party to comply with an arbitrator's subpoena for prehearing discovery, absent a showing of special need or hardship."). *Accord Snyder v. Wilson*, Civil Action No. MJG-13-3595 (D. Md. 2014) (Memorandum and

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Order).

The ability to depose witnesses is material in this case. BlueLink, the customer service arm of Hyundai, dealt extensively with Plaintiff and has information of improprieties by Benson Hyundai. Plaintiffs cannot compel BlueLink's employees to submit to a pre-hearing deposition under the FAA nor anyone else.

The AAA Consumer Rules provide for no depositions.

The FRCP set forth a presumptive limit of 10 depositions. Benson's Rules limits parties to five depositions, but this is illusory as the FAA permits no prehearing depositions. The Rule 30(b)(6) depositions will likely require more deponents than that.

VI. ILLUSORY CONTRACTS

The contracts were illusory and thus unenforceable

If there is no contract, there is no valid arbitration agreement.[10] The contracts signed by Plaintiffs were illusory because although Plaintiffs thought they were bound, the contracts gave the dealership unrestricted discretion[11] to reject the purchase and the financing. *Accord Singleton v. Stokes Motors, Inc.*, 358 S.C. 369 (sup. Ct. 2004); *Cf. Poole v. Incentives Unlimited, Inc.*,

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[10] *Penn v. Ryans Family Steak Houses, Inc.*, 269 F.3d 753 (7th Cir. 2001) (citations omitted). *See also Floss v. Ryan's Family Steak Houses*, Inc., 211 F.3d 306, 315-16 (6th Cir. 2000) (finding arbitration clauses in illusory employment contracts unenforceable under Tennessee and Kentucky law).

[11] As for why dealers prefer one lender over another, it is a common practice in the auto industry that certain lenders permit a kickback to dealers known as a "dealer reserve." When lenders permit dealer reserves, this means that they will allow the dealer to mark up the interest rate, with the additional higher amount going into the dealer's pocket as profit.

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338 S.C. 271, 525 S.E.2d 898 (Ct. App. 2000) ("The promise of continued employment was illusory because even though Poole signed the covenant, Incentives retained the right to discharge her at any time.").

The Special Delivery Agreement, executed by the Plaintiffs (but not the Defendant), *see* Exhibit F, provides that "Seller will attempt to assign contract on terms satisfactory to Seller.[12] At Paragraph 2, it states that "[i]f seller does not receive approval from a financial source acceptable to Seller, Buyer agrees that upon notice, Buyer shall return the vehicle in good condition and without excess mileage and the sales transaction may be rescinded."[13]

There must be an agreement to arbitrate.[14] To decide if there is an agreement, courts resort to time-honored state contract-law principles.

In *Penn v. Ryans Family Steak Houses, Inc.*, 269 F.3d 753, 759 (7th Cir. 2001) (interpreting Indiana contact law essentially the same as in South Carolina), the Seventh Circuit refused to enforce an arbitration clause in an illusory contract, described as one which "by its terms makes performance entirely optional with the promisor." An illusory contract cannot form the basis for a valid

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[12] Special Delivery Agreement at Paragraph 1 (emphasis added).

[13] *Id.* at Para 2 (emphasis added).

[14] *AT & T Techs., Inc. v. Communications Workers of Am.*, 475 U.S. 643, 648 (1986) ("[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.").

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contract, because "a contract is unenforceable if it fails to obligate [one party] to do anything."

VII. UNCONSCIONABILITY

In *Herron v. Century BMW*,[15] the supreme court opined that "unconscionability is defined as 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."[16]

Applying the supreme court's definition to the contracts at issue, the Benson contract was one of adhesion, and the Plaintiffs had no part in drafting the documents.[17]

However, the fact that a contract is one of adhesion is merely the starting point in the analysis of unconscionability, keeping in mind, however, that our courts approach adhesion contract between consumers and car dealers with considerable skepticism.[18]

(a) Absence of a meaningful choice

"Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. In determining whether there is

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[15] 387 S.C. 525 (2011).

[16] *Id.* at 532.

[17] *Herron v. Century BMW*, 387 S.C. 525, 532 (2010) ("We agree with the trial court that his is an adhesion contract. This was a contract on a standard form, presented on a take-it-or-leave-it basis.").

[18] *Id.*

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an absence of a meaningful choice, courts consider certain factors. A discussion of each factor is made below:

(i) The relative disparity in the parties' bargaining power

As in *Herron*, there was "an inherent disparity in bargaining power between the parties, as this was a transaction between a consumer and a commercial entity."

(ii) The parties' relative sophistication

In *Simpson v. MSA of Myrtle Beach, Inc.*,[19] the supreme court noted that "we also acknowledge Simpson's claim that she did not possess the business judgment necessary to make her aware of the implications of the arbitration agreement, and that she did not have a lawyer present to provide any assistance in the matter." Plaintiffs were without a lawyer at Benson's dealership, were unaware of the effect that waiving a jury trial would have,[20] and were being pressured to finalize the sale. Moreover, it is highly unlikely that anyone at the dealership could explain the entirety of the Federal Rules of Civil Procedure to them.

(iii) The nature of the injuries suffered by the Plaintiff

The Plaintiffs lost the use of the Saab, their Hyundai,

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[19] 373 S.C. 14, 27 (2007).

[20] There is substantial case law recognizing the disparity in bargaining power and sophistication between consumers and car dealers. For example, as a remedial statute, the Truth in Lending Act is designed to aid unsophisticated consumers who might be easily misled about the total costs of financing. *In re Wright*, 133 B.R. 704, 707 (Bankr. E.D. Pa. 1991). The Act should be construed liberally to ensure achievement of this goal. *Johnson v. McCrackin-Sturman Ford, Inc.*, 527 F.2d 257, 262 (3d Cir. 1975). The Truth in Lending Act's enforcement is through a system of "strict liability favoring consumers. *Thomka v. A.Z. Chevrolet, Inc.*, 619 F.2d 246, 248 (3d Cir.1980). *See also In re Steinbrecher*, 110 B.R. 155, 161 (Bankr. E.D. Pa. 1990).

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and their money used as a down payment, all of which is in Benson's possession. They also have made monthly payments to Hyundai through Benson since the vehicle was driven off the lot.

(iv) Whether the defendant is a substantial business concern

Benson owns and operates multiple car dealerships ad has for many years.

(v) Whether there is an element of surprise in the inclusion of the challenged clause

The Plaintiffs were presented with the arbitration document along with several other documents, all of which were presented to them for the first time during the closing process.

(vi) The conspicuousness of the clause[21]

Benson's own arbitration clause was in a freestanding document and in that sense was conspicuous. *See* Exhibit C. The Sales/Financing Arbitration Provision was on page four (the back of the Sales/Financing Agreement). *See* Exhibit D. However, they were given no copies of the AAA rules. *See* Exhibit E or the Rules of Civil Procedure. Under the circumstances, there could be no knowing and voluntary waiver of a known right, namely the right to try the case before a jury and its importance. *Spoone v. State*, 379 S.C. 138 (Sup. Ct. 2008) ("However, such a waiver will be held effective only if it is knowing and voluntary.").

(vii) Dealer's remedies not stayed pending outcome of arbitration

In *Simpson*, the supreme court noted an improper clause allowing the dealer to litigate and dispose of the claim, even

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[21] *Id.* (citation omitted).

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while arbitration is pending. Those type clauses are found in Benson's contracts.[22]

As in *Simpson*, Benson has inserted rules allowing it to repossess the car, try the case in small claims court, litigate a set-off, or seek injunctive relief. Thus, in many cases, Benson may completely deal with the dispute and obtain a judgment before arbitration is completed. See Benson's Rule 3.

Similarly, under the Sales/Financing Arbitration Provision at the last paragraph, Benson may repo the vehicle, sue, litigate a deficiency judgment, and file an action to recover the vehicle before or simultaneously with arbitration.

(viii) Severance

Our supreme court has held that "severability is not always an appropriate remedy for an unconscionable provision in an arbitration clause . . . . Although, "a critical consideration in assessing severability is giving effect to the intent of the contracting parties, the D.C. Circuit recently cautioned, 'If illegality pervades the arbitration agreement such that only a disintegrated fragment would remain after hacking away the unenforceable parts, the judicial effort begins to look more like rewriting the contract than fulfilling the intent of the parties.' Similarly, . . . it is not the function of the court to rewrite

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[22] The clause in *Simpson* read as follows: "Nothing in this contract shall require the Dealer to submit to arbitration any claims by Dealer against Customer for claim and delivery, repossession, injunctive relief, or monies owed by Consumer in connection with the purchase or lease of any vehicle and any claims by Dealer for these remedies shall not be stayed pending the outcome of arbitration." *Simpson*, 644 S.E.2d 663, 672 (Supreme Court 2007).

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contracts for parties."[23]

Severance in this case would be unworkable and contrary to public policy. Fairness dictates that the Defendants not be allowed to insert improper provisions in a contract that scare off lawsuits or bind non-signatory third persons, then come to the court to ask for help in enforcing it.[24]

(ix) Unforeseeable and outrageous acts

The Defendants' actions were outrageous and not reasonably foreseeable "in the context of normal business dealings."[25] The Plaintiffs submit that the Court should not allow the Defendants to shield their torts behind an arbitration clause and avoid a jury trial on the issues.

> Our opinion in *Aiken* unequivocally provides that although these types of uncivilized acts often arise in the course of performance of contracts containing arbitration clauses, South Carolina courts will not interpret arbitration clauses to apply to such acts which are outrageous and unforeseen.[26]

(x) Oppressive One-Sided Terms

Further regarding unconscionability, the one-sided nature of the terms has been discussed above. Benson's appointment of itself

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[23] *Simpson* (citing *Lewis v. Premium Inv. Corp.*, 351 S.C. 167 (2002)).

[24] *See Simpson v. MSA of Myrtle Beach, Inc.*, (2007) (citing *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1180 (9th Cir. 2003) (finding arbitration agreement wholly unenforceable because of an "insidious pattern" of unconscionable provisions, and therefore "any earnest attempt to ameliorate the unconscionable aspects of [the] arbitration agreement would require [the] court to assume the role of contract author rather than interpreter")).

[25] *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 171-72, 644 S.E.2d 718, 720 (2007).

[26] *Id.*

as arbitration Administrator, the $250 initial filing fee Plaintiffs must pay (but not Benson), the requirement of a request for arbitration from Plaintiffs on Benson's special form, Benson's requirement that the $250 filing fee be paid only five days after notice or the claim is void, exceptions to the arbitration rules allowing the dealer to proceed out of court, and multiple provisions requiring Plaintiffs to pay attorneys' fees and costs are all examples.

(xi) Contract provisions against public policy

The South Carolina courts have expressly pointed out that they will not tolerate contracts that violate public policy.

The South Carolina Supreme Court has dealt with violations of public-policy concerns the Magnuson-Moss Warranty Act. The Act bars arbitration. 15 U.S.C. §§ 2301-12. "[Our courts] will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution."[27] In *Simpson*, the supreme court held that "[t]he fact that Simpson did not bring a claim under the MMWA is irrelevant to our conclusion that the inclusion of the MMWA in the scope of the arbitration clause is unenforceable as a matter of public policy. Accordingly, we hold that this provision of the arbitration clause is an unconscionable and unenforceable violation."

VIII. WHO DECIDES ARBITRABILITY?

As in *Simpson*, the decision of arbitrability where the arbitration clause was challenged on the bases of unconscionability

[27] *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 33 (2007).

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is "for the court to decide." Simpson, 373 S.C. at 24-25.

Plaintiff's affidavit shows that the last document signed was the Sales/Financing Agreement, which F&I Manager Perry folded it, put the document into an envelope, and said "Let's run your card (for the down payment) and get you out of here."

IX. CONCLUSION

For the reasons given above, the Plaintiffs ask that the Court refuse Defendant's request to quash and permit this court action to proceed.

GRIMBALL & CABANISS, L.L.C.

By: s/E. WARREN MOÏSE
473 SAVANNAH HIGHWAY
CHARLESTON, SC 29407
(843) 722-0311
(843) 722-1374 fax
warren.moise@gmail.com
ATTORNEYS FOR THE PLAINTIFFS

Charleston, South Carolina

Dated: September 22, 2017

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BENSON

P. O. Box 8669
Spartanburg, South Carolina 29305
Nissan: (864) 585-3611
Kia: (864) 699-9090
Hyundai: (864) 541-0029

DEAL# 8136

BIRTHDAY INFORMATION
BUYER [redacted]
CO-BUYER [redacted]
ANNIVERSARY

E-MAIL
1) DRIVER LIC#
2) DRIVER LIC#

South Carolina and North Carolina require names and addresses on deal to match names and addresses on driver licenses

RETAIL BUYER'S ORDER

CUST. NO. 10637
DATE 07/26/2016
WORK PHONE [redacted]
HOME PHONE [redacted]
SS # □□□ - □□ - □□□□
SS # □□□ - □□ - □□□□

THE UNDERSIGNED PURCHASER CARLEE ROBIN SIMMONS OR DONALD LAWRENCE SIMMONS
ADDRESS [redacted] ZIP 31201

Hereby agrees to purchase from Benson Cadillac-Nissan, Inc.; hereinafter referred to as Seller, subject to all terms, conditions and agreements contained herein, the following: [X] NEW [ ] USED [ ] DEMONSTRATOR

YEAR	MAKE	MODEL	TYPE	CYL	SERIAL #
2016	HYUNDAI	VELOSTER	TURBO A	4	KMHTC6AE5GU281969

COLOR	STOCK #	MILEAGE	COUNTY	INSPECTION #	SALESMAN'S NAME
ELITE WH	H60666	5	BIBB		ROBERT H WINECOFF

LIST PRICE OR MSRP		$ 19600	00
ADDED EQUIPMENT:			
TOTAL SALES PRICE		19600	00
TRADE IN ALLOWANCE		3500	00
DIFFERENCE		16100	00
SUB TOTAL		16100	00
S.C. SALES TAX	324 / 324A	931	00
LICENSE TITLE & REGIST.	906	38	00
CLOSING FEE	905C	225.00 / 299	00
SECURE ETCH	905E	235	00
RESISTALL	905K	299	00
DENT REPAIR	905T		N/A
LIFE & A&H	807 / 809		N/A
GAP INSURANCE	807G / 809G		N/A
SERVICE PROGRAM	444 / 455		N/A
ROAD HAZARD	444R / 455R		N/A
MAINTENANCE	444G		N/A
SUB-TOTAL		17593	00
AMOUNT OWING ON TRADE-IN	300B		N/A
TOTAL AMOUNT DUE		17593	00
DEPOSIT WITH ORDER Rec#	220A		N/A
CASH ON DELIVERY Rec#	220A	3800	00
FACTORY REBATE	220	3750	00
UNPAID BALANCE DUE		$ 10043	00

CLOSING FEE

This fee includes complete cosmetic detail materials, administrative services, notary services, courier service, fuel, hazardous waste removal such as oil rags, oil, antifreeze, tires. This charge represents costs and/or profit to the seller/dealer for items such as inspecting, cleaning and adjusting new and used vehicles and preparing documents related to the sale. This fee does not represent any payment for mechanical services which have been reimbursed to the dealer by the manufacturer.

[X] This vehicle delivered subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

Carlee Robin Simmons
Purchaser's Signature

[ ] I agree to pay any difference in loan payoff.

Purchaser's Signature

REMARKS

CONTRACTUAL DISCLOSURE STATEMENT

"The information you see on the window form (Buyer's Guide) for this vehicle is part of the contact. Information on the window form overrides any contrary provision in the contract of sale."

LICENSE TAG INFORMATION: ACV:

PURCHASE NEW TAG [X] TRANSFER [ ]
1) DL# TAG #
2) DL# EXP. DATE
VALIDATION #

INSURANCE INFORMATION

POLICY # PHONE #
COMPANY CINCIATTI EFFECTIVE DATES
AGENT VERIFIED BY

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	TYPE	COLOR
2006	SAAB	9-2X	2006 SAAB	[GRAY]

CYL.	SERIAL #	STATE	COUNTY	LIC.#	MILEAGE
4	JF14GG616460H050029				123635

1ST LIEN 2ND LIEN

NAME ON TITLE:
LIENHOLDER:
ADDRESS:
AMT. (15 DAYS):
GOOD THRU:
ACCT. NO.:
VERIFIED BY:
QUOTED BY:
PHONE NO.:

As part of the purchase price, the Purchaser does hereby grant, bargain, sell and convey the above described automobile to Seller. Purchaser warrants title to and possession of said automobile to be in him, and that same is free from encumbrances, and all debts, except the pay-off amounts stated above. Purchaser further warrants his good right to sell and deliver the above described automobile with clear title - no salvage title.

DISCLAIMER OF WARRANTIES

NEW VEHICLE. All warranties on the new vehicle are those offered by the Manufacturer. The Seller hereby expressly disclaims all warranties either express or implied including any implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, and the Seller neither assumes nor authorizes any person to assume for it any liability in connection with the sale of the vehicle. This disclaimer by the Seller in no way affects the terms of the Manufacturer's warranty. Buyer shall not be barred by reason from the Selling Dealer any consequential damages, damages to property, damages for loss of time, loss of fares, loss of profits, or income, or any other incidental damages.

Purchaser hereby acknowledges that he has read and understands the above and that Seller has made available to him prior to the purchase the factory warranty which Purchaser understands contains all of the warranties with respect to the sale of this vehicle.

USED VEHICLES: In the event that the vehicle being purchased is a used vehicle, Purchaser hereby acknowledges that the above disclaimer will also apply to said used vehicle. EXCEPT AS MAY BE EXPRESSED COMPLETELY BY WRITING BY THE SELLER ON A SEPARATE INSTRUMENT DELIVERED TO THE PURCHASER, ALL USED VEHICLES ARE SOLD "AS IS - WITH NO WARRANTY." Purchaser hereby acknowledges that Seller has made available to him and Purchaser has read any limited warranty delivered to him by separate instrument and said limited warranty constitutes all of the warranties with respect to the sale of this used vehicle and that any implied warranty that may not be waived by law is limited to the duration of said limited warranty. Purchaser understands that any new or remaining Manufacturer's warranties on used vehicles are not the responsibility of Seller.

ADDITIONAL TERMS AND CONDITIONS

This Order will not become binding upon either the Purchaser or the Seller until the vehicle described above is physically delivered and Purchaser has received the Disclosure required under Federal Law, if applicable. In the case of a credit sale, the Seller shall not be obligated to sell until a finance source approves this Order and agrees to purchase a retail instalment contract between the Purchaser and the Seller based on this Order.

As a part of the New Car Pre-Delivery Procedures of Used Car Reconditioning of the Seller all body repairs in an amount not exceeding three hundred dollars ($300.00) have been made prior to the delivery of the described automobile. Purchaser waives notice concerning said repairs and accepts the automobile as delivered. Any body repairs made by the Seller exceeding $300.00 have been set out herein or in a separate disclosure statement if said repairs were made by the Seller or were needed because to and said repairs are hereby accepted and approved by Purchaser.

The trade-in allowance shown in the Order is that amount that the Seller agrees to allow at the time the Purchaser accepts delivery and completes the Order. In the event of any disagreement over the value of the car traded in, the Seller will not be liable for any more than the wholesale market value as determined by the loan value of the automobile as shown in the Black Book less the estimated cost of reconditioning same.

It is agreed and understood that the legal title to the described automobile does not pass to Purchaser until the entire purchase price is paid in full and also until the check given by the Purchaser to all or part of the payment for said automobile clears the bank on which it is drawn.

The Purchaser agrees that all provisions stated hereon are part of this Order and that this Order supersedes any prior agreement and is the complete and exclusive agreement on the subject matters covered by this Order. Further Purchaser and Seller agree that no person is authorized to make any representations beyond those expressed in this Order. Verbal promises by salesman are not valid and any promises or understandings not herein specified in writing are hereby expressly waived by the Purchaser.

The purchaser warrants that he is of majority age and further warrants that all statements made by him are true and correct, and that the Seller may accept them as being true representations of existing facts.

Purchaser has read all the conditions of this Order including the Disclaimer of Warranties. Purchaser acknowledges that he has received a true copy of this Order and that the Order has been completely filled in and signed.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Purchaser's Signature Carlee Robin Simmons ACCEPTED BY

THIS ORDER NOT VALID UNLESS ACCEPTED BY AN AUTHORIZED MANAGER OF THE COMPANY

DEFENDANT'S EXHIBIT A

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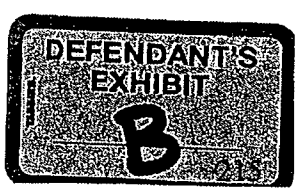
FTC to auto dealers: don't toy with yo-yo financing

September 29, 2016
by Colleen Tressler
Consumer Education Specialist

Buying a car can be exciting, but what if there are strings attached? Some buyers told us that they financed a car through a dealership, signed a contract, and drove the car home, only to be told that the financing didn't go through and they had to sign a new deal or lose their down payment. There's a name for that: it's called a "yo-yo" financing tactic. It's just one of a trunk-load of charges the FTC is bringing against Sage Auto Group, a group of nine Los Angeles-based auto dealerships, and the three brothers who control them.

The FTC alleges that Sage Auto engaged in a host of yo-yo financing tactics. For example, Sage Auto allegedly told customers the contract was cancelled, but the dealer would keep their down payments or trade-ins if the customers refused to sign a new deal. The dealerships even threatened some customers with arrest, criminal prosecution, or vehicle repossession if they didn't take the second deal – even when the original deal was still valid.

As if yo-yo financing isn't egregious enough, the FTC also alleges the defendants packed on extra charges for aftermarket products and services, like extended warranties, guaranteed auto protection, and service plans, without customer consent. Sometimes, Sage Auto falsely claimed



the products were required as part of the sale or financing or were being thrown in for free. In reality, Sage Auto was adding those charges into the amount financed by consumers.

The FTC's complaint also says Sage Auto used phony online reviews to tout their dealerships and to try to discredit negative reviews about the company's bad advertising, sales, and financing practices. Potential customers rely on online reviews to decide where to shop, and Sage Auto undermined that ability with phony reviews written by its employees and other people tied to the dealerships. The FTC's lawsuit seeks a court order to require Sage Auto to stop these bad practices and give refunds to some customers.

Today's action is part of the FTC's continuing efforts to protect buyers from deceptive advertising in the auto marketplace. If you think you've been misled when buying a car, report it to the FTC.

If you're in the market for a car, don't let deceptive sales, financing, or leasing practices leave you spinning your wheels. To find your best deal, shop around and compare offers from different dealers and financing sources like banks or credit unions. And check out our free publications about buying and owning a car before you start shopping.

Tagged with: advertising, buying, car, car financing, loan, offer, online, review, seller, service contract, warranty, yo-yo financing
Blog Topics: Money & Credit
Comments
bob | September 30, 2016 | reply
How about swearing your the co signer just to find out from the CU that you are the "owner"- other person did not qualify, but nobody told me.

ctressler | September 30, 2016 | reply
The FTC publication, Co-signing a Loan, explains your obligations if you decide to co-sign on a loan for a friend or relative.

MANNSRO | October 3, 2016 | reply
I had a shock also, bought a Genesis fro Prime Dealer in Rockland at their Quincy outlet. The sales service was fine except, last minute they asked me if I would like a Genesis symbol on the car instead of Huyandi. Only $ 125 and then I find out the same is available on line for $10.

2nd I was asked to sign for something after the deal was done and ready to take the car away. It turned out a form that was annually deduction $180 for updating my GPB and connection to Blue link, as the installed system will only work for 6 months.

dontgetstung | October 3, 2016 | reply
This is a very useful and informative article. It's a shame we have to become so educated about the ripoff tactics of these so-called "businesses" but an educated consumer certainly has the upper hand in these situations.

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BruceF | October 3, 2016 | reply
Thanks 2 All 4 Info! bf 5

MANUELA | October 4, 2016 | reply
I have a claim against Felix Chevrolet and Ally Bank. English is my second language and I need help in Spanish. Thanks

Bridget Small - FTC | October 4, 2016 | reply
We don't publish personal information, or contact people directly. The Los Angeles Department of Consumer & Business Affairs has a information in Spanish online, and lists contact numbers so you can call for more help. The FTC also has information about buying & owning a car in Spanish.

Lfobbs-green | October 4, 2016 | reply
I need to file a report....this company let my son write a bad check so that he could get the car off the lot....let the insurance xompany move them off the insurance policy AFTERWARDS and they are a financing company...so the insurance removed them and the comp and collision off of his car...

whay does people hv to be so sheisty to make a buck. I m glad to learn there is somewhere to complain and have action taken againat them. They also relorted my son to dmv 2 days later for writing this bounced check

Bridget Small - FTC | October 4, 2016 | reply
You can report the car dealer to your state Attorney General's office and to the FTC. File a complaint with the FTC at FTC.gov/complaint. The information you give will go into a database that law enforcement uses for investigations.

If you have questions or concerns about what the insurance company did, you can contact the insurance commission for your state. Search on line for your state name + the words "insurance commission."

schaft | October 5, 2016 | reply
Stay away from Hyundai Motor Finance Corporation. We are going through hell with them, after deciding to assume my father's lease, upon his death. They are by far the most inept, shady organization that I have ever done business with.

BCarbon | October 10, 2016 | reply
It is funny that the last person warned about Hy unday Kia Finance. We are having all kinds of trouble with them. We bought our leased car back in May and as of today October 10, they had not given us the tittle of the car. We paid off the car. "They are by far the most inept organization we had ever done business with". Stay away from them.

Lovelyheart | November 3, 2016 | reply
How long and successful are the complaints you file? It's a real shame that usually a car is a

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necessity especially if you are in a rural area and have to travel for a doctor. White collar crime affects blue collar dollars in America

Nietzsche | December 1, 2016 | reply
Why don't you explain that yo-yo financing is not necessarily unlawful, and state when dealers may legally require a new car just purchased to be returned if financing falls through, etc.? The article implies that all such situations are unlawful, when they are not.

Bridget Small - FTC | December 21, 2016 | reply
Sometimes, depending on the sales contract and applicable law, a dealer may require a consumer to return a car if the dealer can't get financing.

However, the dealer can't have set up the situation knowing it likely wouldn't be able to fulfill the original financing terms.

And regardless, if financing falls through, the dealer can't engage in deceptive or unfair practices (like threatening to hold back the customer's down payment) to get the consumer into a new financing deal.

Mark David | January 6, 2017 | reply
In business many auto dealers cheat to their customer and this is very shameful.

Kalepittman | March 21, 2017 | reply
Can anyone answer my question?

Wyomom | May 1, 2017 | reply
My coworker was a victim of this yoyo financing by a car dealership. She did return the car and now they are taking her to small claims court for the mileage she put on the car. High pressure sales tactics on low income women who don't know any better. Something needs to be done about this.

Bridget Small - FTC | May 1, 2017 | reply
The FTC wants to know about this. Please report it at FTC.gov/complaint. The information you give will go into a database that the FTC and other law enforcement use for investigations.

Leave a CommentComment Policy
Read Our Privacy Act Statement

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BENSON
ARBITRATION POLICIES AND PROCEDURES

Benson's Policies and Procedures are intended to provide the exclusive means of resolving all Disputes, as defined below, which may arise between an Individual and Benson. In consideration for their mutual promises, both parties, by entering into the Agreement, give up their right to trial by court or by jury. This Agreement evidences a "transaction involving commerce" under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 and is subject to the FAA. In the event that it is determined that the FAA does not apply, then the Agreement shall be enforced by the South Carolina Arbitration Act.

Description of Vehicle: 2016 HYUNDAI VELOSTER Customer/Buyer: CARLEE ROBIN SIMMONS

Co-Buyer: DONALD LAWRENCE SIMMONS

I. PARTIES. For purposes of the Policies and Procedures, the term "Benson" shall include Benson Cadillac-Nissan, Benson Chrysler, Benson Ford, as well as any other affiliated entity, parent or subsidiary their successors and assigns and all of their owners, shareholders, managers and agents. "Customer" shall include the Buyer and Co-Buyer listed above.

2. DISPUTES SUBJECT TO ARBITRATION. Disputes subject to arbitration are any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Agreement, and the arbitrability of the claim or dispute), between Customer and Benson or our employees, agents, successors or assigns, which arise out of or relate to Customer's credit application, purchase or condition of this vehicle, Customer's purchase or financing contract or any resulting transaction or relationship. Also subject to arbitration are disputes involving any person or entity whose liability or right of recovery derives from a Dispute that is covered by this Agreement (e.g. partner, agent, subsidiary or parent corporation, affiliate, shareholder, successor or assign of a party).

3. DISPUTES THAT MAY BE ADDRESSED OUTSIDE OF ARBITRATION. If the Claim or Dispute is with in the jurisdiction of the small claims court in the State either Benson or Customer may take the dispute to small claims court rather than to arbitration. Also, this Agreement to arbitrate does not limit the rights of Benson or Customer, whether before, during, or after the pendency of any arbitration proceeding, to exercise self-help remedies such as set-off, repossession, and the like. This Agreement to arbitrate does not limit Benson or Customer, whether before or during the pendency of any arbitration proceeding to bring an action individually to obtain provisional or ancillary remedies or injunctive relief (other than a stay of arbitration) to protect the rights or property of the party seeking such relief. However, the arbitrator(s) shall have the power to vacate and/or stay any such proceedings or orders granting provisional or ancillary remedies or injunctive relief upon application by Benson or Customer. The taking by either Customer or Benson of any of the self-help remedies or by filing any action in court or before an administrative agency, including but not limited to the actions described in the preceding sentence, shall not be deemed to be a waiver of this right to elect BINDING ARBITRATION of any Claim upon the filing of a counter claim or the like by either Benson or Customer in response to any such action.

4. AGREEMENT NOT TO PARTICIPATE IN CLASS OR GROUP ACTION. Because all of the above disputes are subject to arbitration, you agree that there will be no right to participate as a class or group representative or class or group member of any class or group claim you may have against Benson, including any right to class or group arbitration or any consolidation of individual arbitrations.

5. AUTHORITY OF THE ARBITRATOR.

a. Action by either party for a temporary restraining order or other preliminary injunctive relief may be pursued in a court of competent jurisdiction pending resolution of the underlying dispute in arbitration.

b. Resolution of Disputes shall be based solely upon the law governing the claims and defenses asserted. The Arbitrator shall have the authority of a trial court judge sitting without a jury, but may not add to, modify, invalidate or ignore any provision of the Agreement or the Policies and Procedures, nor may the Arbitrator invoke any basis (such as "just cause" or "authority") other than controlling law. The Arbitrator shall be a former federal judge or federal magistrate judge, a former judge of a state court of general jurisdiction or state appellate court or an experienced attorney, selected as provided under the Policies and Procedures.

I AGREE TO ARBITRATE ANY DISPUTES AND UNDERSTAND THAT I AM GIVING UP MY RIGHT TO A JURY AND TO PARTICIPATE IN A CLASS OR GROUP ACTION.

07/26/16 — Buyer

07/26/16 — Co-Buyer

07/26/16 — Dealer Rep/Date

I AGREE THAT THE FOLLOWING RULES GOVERN ANY ARBITRATION BETWEEN THE PARTIES.

07/26/16 — Buyer

07/26/16 — Co-Buyer

07/26/16 — Dealer Rep/Date

DEFENDANT'S EXHIBIT C

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

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

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

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

10. REQUEST FOR ARBITRATION.

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

1. To initiate arbitration, the Claimant must submit a written "Request for Arbitration" ("RFA") by hand delivery or certified mail with return receipt to the Arbitration Administrator who shall be Tony Benson or his designee, and serve a copy of the RFA on the party or parties against whom the claim is brought (Respondents) by having it hand-delivered to each Respondent or by certified mail with return receipt.

2. An RFA form may be obtained from the Arbitration Administrator. The party requesting arbitration must identify persons having knowledge regarding the Dispute, the issue(s) to be arbitrated, the legal rights upon which the claims are founded (if known), the facts relevant to the Dispute, and the remedies sought. All related claims must be asserted in the same arbitration and failure to assert such a claim shall constitute a full release of the Respondent.

3. A filing fee in the amount of $250 made payable to Benson must be deposited with the Arbitration Administrator. The filing fee will be applied against the cost of the arbitration and any unused portion shall be returned. If the filing fee is not deposited as required, the Arbitration Administrator shall immediately so notify the delinquent claimant by certified mail or hand delivery. If the Claimant does not make the required deposit within five (5) days of receipt of the notification, the RFA shall be void, the same as if it had never been filed. When the Claimant asserts financial inability to pay the filing fee, the Arbitrator shall determine whether to waive this requirement using the same standard applied by federal courts.

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

11. RESPONSE, OTHER CLAIMS AND AMENDMENTS.

a. When a Response is Due. Within thirty (30) calendar days of a Respondent's receipt of the RFA, Respondent shall serve a response on all parties and provide a copy to the Arbitration Administrator.

b. Contents of the Response. The Response shall be on the form supplied by the Arbitration Administrator. The Response shall identify additional issues to be arbitrated, persons having knowledge regarding the Dispute, legal defenses which will be relied upon (if known), and facts relevant to the Dispute.

c. Counter-RFA. If the Respondent has a Dispute with the Claimant which has not been identified in the RFA but arises out of the same factual circumstances as the RFA, the Respondent must assert the Dispute as a Counter-RFA, with failure to do so constituting a full release of the Claimant.

d. Reply to the Counter-RFA. Within ten (10) calendar days from the service of the Counter-RFA, the Claimant shall serve a Response. The Reply shall conform to the content requirements of a Response.

e. Adding and Changing Disputes. At any time prior to the Initial Conference, any party may amend, add, or withdraw a Dispute as of right. Thereafter, no Dispute or Claim may be added except by motion to the Arbitrator, upon showing that manifest injustice would result from failure to permit the amendment and that the party did not have notice of the facts and circumstances relating to such Dispute or Claim at the time of the Initial Conference.

f. Additional RFAs. The Respondent to the Initial RFA may serve other non-parties who are subject to the Arbitration Agreement with an RFA if that person may be liable, in whole or in part, for the damages alleged in the initial RFA or Response. An "additional" RFA is treated the same as an initial RFA with regard to the receiving party.

g. Unavailable Non-Parties. Where a non-party who is alleged by either party to be jointly or partly responsible for injuries alleged, or who is alleged to share a Claim, is not subject to the Arbitration Agreement or is otherwise unavailable, the arbitration shall proceed notwithstanding the absence of said party and the Arbitrator shall fashion an award which is fair and equitable to all parties, given the absence of the non-party. In order to protect a party against multiple or inconsistent judgments, the Arbitrator may, in the interest of justice, require a party to proceed with a claim against a non-party to a final resolution or waive any such Claim prior to proceeding with the arbitration.

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

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

14. SELECTION OF AN ARBITRATOR.

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

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

1. Prior employment history;

2. Any direct or indirect financial or personal interest in the outcome of the arbitration; and

3. Any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias; and any relationships with any party or its counsel, or with any individual whom they have been told will be a witness.

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

d. Disqualification or Other Disability.

1. Challenge to Qualifications. Any party, upon learning of a reason that would disqualify the Arbitrator from deciding the Dispute, may request that the Arbitrator recuse herself or himself. The Arbitrator shall rule upon the request applying the standards a judge would use in deciding a motion to recuse in South Carolina.

2. Inability to Serve. In the event that an Arbitrator should resign, die, withdraw, or otherwise be unable to perform as an Arbitrator, the process for selecting an Arbitrator shall be repeated.

15. *SCOPE OF ARBITRAL AUTHORITY*

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

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

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

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

17. *REQUIRED CONFERENCES*

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

b. Final Pre-Arbitration Conference. Prior to the arbitration hearing, the Arbitrator shall conduct a final conference to address and determine, at a minimum, the issues to be arbitrated, the form of the award, evidentiary issues, dispositive motions, location, and time, and date, for the arbitration and any other issues relating to the subject matter or conduct of the arbitration.

18. *DISCOVERY*

a. Arbitrator's Authority to Order Discovery. The Arbitrator shall have the authority to order and enforce such discovery, by way of deposition, interrogatory, document production, independent medical examination, or otherwise (collectively referred to as "Information Requests"), as the Arbitrator considers necessary to a full and fair exploration of the issues in Dispute.

b. Discovery Requests. Any party may conduct discovery after the Arbitrator is selected. Discovery need not be filed with the Arbitrator unless necessary for the resolution of any motion. Unless a greater time is allowed by the requesting party, Information Requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. The form and content of the request for discovery and responses thereto, shall be the same as required by Rules 26, 30, 32, 33, 34, and 35 of the Federal Rules of Civil Procedure.

c. Limitations Upon Discovery. The discovery taken by each party shall be limited as set forth below, except that the parties may agree to modify these limitations, and absent an agreement, the Arbitrator may upon motion by a party which demonstrates a compelling need for additional discovery, expand these discovery limitations.

1. Depositions. The number of depositions to be taken by each party shall not exceed five (5).

2. Interrogatories. The number of written interrogatories requested by a party at any one time or cumulatively shall not exceed thirty (30). Each subdivision of an interrogatory shall be construed as a separate interrogatory.

3. Document Requests. The number of requests for documents by a party at any one time or cumulatively including by subpoena addressed to a party or the party's agent, shall not exceed thirty (30).

d. Compelling Discovery. Upon written motion to the Arbitrator by a party whose information is unsatisfied, the matter will be resolved by the Arbitrator pursuant to this section and 18. g., below. Any request for resolution by the Arbitrator must be accompanied by a statement that the parties have attempted in good faith but failed to resolve their discovery dispute, and must explain what good faith efforts were made. Upon request, the Arbitrator shall issue subpoenas to compel the attendance and testimony of a witness and/or the production of documents. A party shall respond to a motion to compel within fourteen (14) days.

e. Discovery of Experts. A party may through Information Requests require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. A party may also depose the expert. Unless manifest injustice would result, the Arbitrator shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this Rule.

f. Supplementation of Discovery. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

1. A party is under a duty to seasonably supplement the response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert is expected to testify and the substance of the expert testimony.

2. A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which (a) the party knows that the response was incorrect when made, or (b) the party knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment, or (c) a duty to supplement responses may be imposed by order of the Arbitrator, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

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

1. The Arbitrator should order production where the discovery request seeks evidence which is relevant or reasonably calculated to lead to the discovery of admissible evidence;

2. The Arbitrator should refuse to order production of Information Requests which are unreasonably cumulative, burdensome, or duplicative, or which exceed the discovery limits set forth in 18. c.;

3. The Arbitrator should refuse to order production of requests that seek documents which are prepared in anticipation of arbitration or litigation by or for a party or by or for that party's attorney, consultant, surety, indemnitor, insurer, or agent unless the requesting party shows that it has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Arbitrator shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the arbitration or litigation;

4. The Arbitrator may make any ruling to protect any party to the arbitration from unreasonable discovery requests and may issue any other discovery order which justice requires;

5. The Arbitrator should look to the terms of Rules 26, 30, 32, 33, 34, 35 and 37 of the Federal Rules of Civil Procedure and federal cases interpreting those Rules for guidance in resolving discovery disputes; and

6. The Arbitrator may assess the Arbitrator's and/or award reasonable attorneys' fees and costs incurred in hearing and resolving any discovery dispute against the losing party to such discovery dispute, if the losing party's position was not substantially justified.

h. Time Limitations for Discovery. Because it is the parties' intent that these procedures be expedited to the greatest extent possible, all requests for discovery must be initiated such that discovery can be completed no more than ninety (90) calendar days after the date of the Initial Conference.

19. *SUMMARY JUDGMENT*

a. Time Requirements. A party may, at any time after the expiration of thirty (30) calendar days from the Initial Conference, move for summary judgment upon all or any part of a disputed claim. A party must file a response or opposition to a motion for summary judgment within thirty (30) days of service of the motion. Any reply must be served within fifteen (15) days of service of the response.

b. Standard. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Arbitrator may permit affidavits to be supplemented or opposed by depositions, answers to Information Requests, or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue for the hearing. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. Summary judgment is appropriate if the pleadings, depositions, and answers to information requests, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A party opposing summary judgment does not raise genuine issues of material fact by contradicting that party's own prior sworn statement unless said party explains to the satisfaction of the Arbitrator the reason for the subsequent change and shows that the subsequent changed testimony or statement is more likely true than the former testimony or statement which the party would contradict. In construing and applying this section, the Arbitrator should look to Rule 56 of the Federal Rules of Civil Procedure.

20. *ARBITRATION HEARING*

a. Hearing Requirement-Waiver of Hearing. A hearing shall be held to resolve a Dispute which is not decided by dismissal or summary judgment, unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings, documentary evidence, and briefs submitted. The Arbitrator shall determine the time and date of the hearing which shall be held no later than one hundred eighty (180) days following the selection of the Arbitrator. Notice of the hearing date shall be given at least thirty (30) calendar days prior to the hearing.

b. Failure to Appear. The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement.

c. Attendance at Hearings. The Arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The Arbitrator shall exclude any persons whose presence is not necessary to the resolution of the Dispute. All parties, including a corporate representative, shall have the right to be present during the proceedings.

d. Burden of Proof. The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if the Dispute had been brought in court.

e. Evidence. The Arbitrator shall determine the materiality and relevance of any evidence proffered and shall be bound by rules governing the admissibility of evidence contained in the Federal Rules of Evidence.

f. Record of Proceedings. A verbatim record of all arbitration hearings may be kept by stenographic reporter or tape recording. If a party or parties to a Dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless a non-requesting party subsequently requests a copy of the transcript in which case the total costs of transcription (including duplicate copies, court reporter's fee and Arbitrator's copy) shall be borne equally by all parties having access to the transcript.

g. Oaths of the Witnesses. All testimony shall be under oath or affirmation administered by the Arbitrator.

h. Confidentiality of Hearings. The Arbitrator shall maintain the confidentiality of the hearings and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.

i. Post-Hearing Briefs. At any party's election, or at the discretion of the Arbitrator, the parties may submit post-hearing briefs to the Arbitrator, and the record shall not be deemed to be closed until the last day on which briefs could be timely submitted; provided, however, that no such briefs shall contain or refer to evidence not adduced at the hearing.

j. Privileged Communications. The Arbitrator shall have the immunity of a judicial officer from civil liability, when acting in the capacity of an Arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or in connection with the arbitration proceedings are privileged in accordance with state law applicable to judicial proceedings.

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

22. *COSTS AND FEES*

a. Filing Fee. Upon the filing of an RFA, the party so filing shall pay a filing fee of $250.00 made payable to Benson. The filing fee shall be applied to administrative costs and Arbitrator's fees and expenses.

b. Expense of Arbitration. Except as otherwise provided in this paragraph, the Arbitrator's fees and expenses, together with the other expenses, not including attorneys' fees, incurred in the conduct of the arbitration, shall be paid by Benson.

c. Costs and Attorneys' Fees. The prevailing party shall be awarded costs of the Arbitration, including the filing fee, subpoena service fees and witness fees, deposition and hearing transcription costs and similar expenses, but not including expert fees unless the expert testimony was necessary to establishing or refuting liability. In cases where a party asserts any claim, position or defense that is not substantially justified by the law or facts, the Arbitrator shall award to the opposing party that party's reasonable attorneys' fees incurred as a result of that party's defending any such claim, position or defense.

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

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

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

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

Buyer Name and Address (Including County and Zip Code)	Co-Buyer Name and Address (Including County and Zip Code)	Seller-Creditor (Name and Address)
CARLEE ROBIN SIMMONS [redacted] MACON GA 31201 CO: BIBB	DONALD LAWRENCE SIMMONS [redacted] MACON GA 31201 CO: BIBB	BENSON HYUNDAI 2550 REIDVILLE RD SPARTANBURG SC 29301

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 Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New/Used	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2016	HYUNDAI VELOSTE	KMHTC6AE5GU281969	Personal, family, or household unless otherwise indicated below ☐ business ☐ agricultural ☐ N/A

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of $ 11050.00
3.09 %	$ 985.96	$ 10043.00	$ 11028.96	$ 22078.96

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
72	153.18	Monthly beginning 09/09/2016
N/A	N/A	N/A

Or As Follows: N/A

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

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

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

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

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including $ 300.00 sales tax and $ 225.00 doc/tag fee) $ 20424.00 (1)

2 Total Downpayment =

Trade-in 2006 SAAB 9-2X (Year) (Make) (Model)

Gross Trade-In Allowance	$ 3500.00	
Less Pay Off Made By Seller	$ N/A	
Equals Net Trade In	$ 3500.00	
+ Cash	$ 3800.00	
+ Other REBATES	$ 3750.00	
(If total downpayment is negative, enter "0" and see 4I below)		$ 11050.00 (2)
3 Unpaid Balance of Cash Price (1 minus 2)		$ 9374.00 (3)
4 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):		
A Cost of Optional Credit Insurance Paid to Insurance Company or Companies.		
Life $ N/A		
Disability $ N/A		$ N/A
B Vendor's Single Interest Insurance Paid to Insurance Company		$ N/A
C Other Optional Insurance Paid to Insurance Company or Companies		$ N/A
D Optional Gap Contract		$ N/A
E Official Fees Paid to Government Agencies		
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
F Government Taxes Not Included in Cash Price		$ N/A
G Government License and/or Registration Fees LIC=20.00		$ 20.00
H Government Certificate of Title Fees		$ 18.00
I Other Charges (Seller must identify who is paid and describe purpose)		
to N/A for Prior Credit or Lease Balance		$ N/A
to GA DEPT OF REV for GA TAVT		$ 631.00
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
to N/A for N/A		$ N/A
		$ 669.00

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 $ N/A

Credit Disability $ N/A

Insurance Company Name N/A

N/A

Home Office Address N/A

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) N/A (Term)

Premium $ N/A

Insurance Company Name N/A

N/A

Home Office Address N/A

N/A

☐ N/A (Type of Insurance) N/A (Term)

Premium $ N/A

Insurance Company Name N/A

N/A

Home Office Address N/A

N/A

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

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

X N/A (Buyer Signature) N/A (Date)

X N/A (Co-Buyer Signature) N/A (Date)

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

X N/A (Buyer Signature) N/A (Date)

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

Returned Check Charge: You agree to pay a charge of

DEFENDANT'S EXHIBIT 1

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B	Vendor's Single Interest Insurance Paid to Insurance Company		$ N/A
C	Other Optional Insurance Paid to Insurance Company or Companies		$ N/A
D	Optional Gap Contract		$ N/A
E	Official Fees Paid to Government Agencies		
	to N/A	for N/A	$ N/A
	to N/A	for N/A	$ N/A
	to N/A	for N/A	$ N/A
F	Government Taxes Not Included in Cash Price		$ N/A
G	Government License and/or Registration Fees LIC=20.00		$ 20.00
H	Government Certificate of Title Fees		$ 18.00
I	Other Charges (Seller must identify who is paid and describe purpose)		
	to N/A	for Prior Credit or Lease Balance	$ N/A
	to GA DEPT OF REV	for GA TAVT	$ 631.00
	to N/A	for N/A	$ N/A
	to N/A	for N/A	$ N/A
	to N/A	for N/A	$ N/A
	to N/A	for N/A	$ N/A
	to N/A	for N/A	$ N/A
	to N/A	for N/A	$ N/A
	to N/A	for N/A	$ N/A
	to N/A	for N/A	$ N/A
	Total Other Charges and Amounts Paid to Others on Your Behalf		$ 669.00 (4)
5	Amount Financed (3 + 4)		$ 10043.00 (5)

Insurance Company Name N/A

Home Office Address N/A
N/A

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

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

X N/A — Buyer Signature — N/A Date

X N/A — Co-Buyer Signature — N/A Date

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

X N/A — Buyer Signature — N/A Date

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

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 N/A, Year N/A SELLER'S INITIALS N/A

Agreement to Arbitrate: By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.
Buyer Signs X Carla Robin Simmons — Co-Buyer Signs X David Lavier Simmons

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

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

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

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

I want to buy a gap contract.

Buyer Signs X N/A

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 Carla Robin Simmons Co-Buyer Signs X David Lavier Simmons
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 provision on the reverse side, before signing below. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X Carla Robin Simmons Date 07/26/16 Co-Buyer Signs X David Lavier Simmons Date 07/26/16

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

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

Seller signs BENSON HYUNDAI Date 07/26/16 By X Title

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

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

BENSON HYUNDAI
Seller By Title

LAW FORM NO. 553-SC-ARB (REV. 1/0) U.S. PATENT NO. D414,782
©2014 The Reynolds and Reynolds Company TO ORDER: 1-800-334-4079; fax 1-800-631-9055
THE PARTIES MAKE NO WARRANTY, EXPRESS OR IMPLIED, AS TO CONTENT OR FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

CUSTOMER/TRUTH IN LENDING 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 (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.
   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 computed 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, 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 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.

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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 computed 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.
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.

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 those 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 PROVISION
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 Provision, 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 Provision 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. You may choose the American Arbitration Association, 1633 Broadway, 10th Floor, New York, New York 10019 (www.adr.org), or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the 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 and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor 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 pay your filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of $5000, unless the law or the rules of the chosen arbitration organization require us to pay more. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. 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 Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et. seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

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, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual injunctive relief. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, 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 Provision shall be unenforceable.

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CONSUMER

Consumer Arbitration Rules

AMERICAN ARBITRATION ASSOCIATION®

Available online at adr.org/consumer

Rules Amended and Effective September 1, 2014
Cost of Arbitration Effective January 1, 2016

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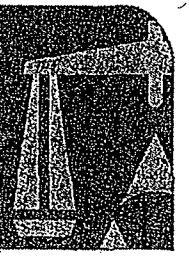
Consumer Arbitration Rules



Introduction

Millions of consumer purchases take place each year. Occasionally, these transactions lead to disagreements between consumers and businesses. These disputes can be resolved by arbitration. Arbitration is usually faster and cheaper than going to court.

The American Arbitration Association® ("AAA®," "the Association") applies the *Consumer Arbitration Rules* ("Rules") to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA has the discretion to apply or not to apply the *Consumer Arbitration Rule*, and the parties are able to bring any disputes concerning the application or non-application of the Rules to the attention of the arbitrator. Consumers and businesses are permitted to seek relief in a small claims court for disputes or claims within the scope of the small claims court's jurisdiction. These Rules were drafted and designed to be consistent with the minimum due process principles of the *Consumer Due Process Protocol.*

About the AAA

The administrator's role is to manage the administrative aspects of the arbitration, such as the appointment of the arbitrator, preliminary decisions about where hearings might take place, and handling the fees associated with the arbitration. As administrator, however, the AAA does not decide the merits of a case or make any rulings on issues such as what documents must be shared with each side. Because the AAA's role is only administrative, the AAA cannot overrule or change an arbitrator's decisions or rulings. The administrator will comply with any court orders issued from litigation involving the parties to the dispute.

The American Arbitration Association, founded in 1926, is a neutral, independent, and private not-for-profit organization. We offer a broad range of conflict management services to businesses, organizations, and individuals. We also provide education, training, and publications focused on methods for settling disputes out of court.

The Arbitrator

Except where the parties to a case reach their own settlement, the arbitrator will make the final, binding decision called the Award on the dispute and render it in writing. The Arbitrator makes all the procedural decisions on a case not made by the Administrator or not decided jointly by the parties. The arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorney's fees and costs, in accordance with the law or laws that apply to the case.

Arbitrators are neutral and independent decision makers who are not employees of the AAA. Once appointed to a case, an arbitrator may not be removed by one party without the other party's consent or unless the Administrator determines an arbitrator should be removed and replaced by another arbitrator chosen by the Administrator in a manner described in these Rules.

The AAA's Consumer Arbitration Rules

The AAA has developed the *Consumer Arbitration Rules* for consumers and businesses that want to have their disagreements resolved through arbitration.

Availability of Mediation through Mediation.org

Mediation in consumer disputes is also available to help parties resolve their disputes. Parties interested in participating in mediation may find a mediator through **www.mediation.org.**

Administrative Fees

The Association charges a fee for its services under these Rules. A fee schedule is included at the end of these Rules in the Costs of Arbitration section.

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Arbitrator's Fees

Arbitrators are paid for the time they spend resolving disputes. The business makes deposits as outlined in the fee schedule in the Costs of Arbitration section of these Rules. Unused deposits are refunded at the end of the case.

Notification

A business intending to incorporate these Rules or to refer to the dispute resolution services of the AAA in a consumer alternative dispute resolution ("ADR") plan should, at least 30 days prior to the planned effective date of the program,

- notify the Association of its intention to do so, and
- provide the Association with a copy of the consumer dispute resolution plan.

If a business does not comply with this requirement, the Association reserves the right to withhold its administrative services. For more information, please see R-12 below.

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Filing a Case and Initial AAA Administrative Steps

R-1. Applicability (When the AAA Applies These Rules)

(a) The parties shall have made these *Consumer Arbitration Rules* ("Rules") a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association ("AAA"), and

1) have specified that these *Consumer Arbitration Rules* shall apply;

2) have specified that the *Supplementary Procedures for Consumer-Related Disputes* shall apply, which have been amended and renamed the *Consumer Arbitration Rules*;

3) the arbitration agreement is contained within a consumer agreement, as defined below, that does not specify a particular set of rules; or

4) the arbitration agreement is contained within a consumer agreement, as defined below, that specifies a particular set of rules other than the *Consumer Arbitration Rules*.

When parties have provided for the AAA's rules or AAA administration as part of their consumer agreement, they shall be deemed to have agreed that the application of the AAA's rules and AAA administration of the consumer arbitration shall be an essential term of their consumer agreement.

The AAA defines a consumer agreement as an agreement between an individual consumer and a business where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use.

Examples of contracts that typically meet the criteria for application of these Rules, if the contract is for personal or household goods or services and has an arbitration provision, include, but are not limited to the following:

- Credit card agreements
- Telecommunications (cell phone, ISP, cable TV) agreements
- Leases (residential, automobile)
- Automobile and manufactured home purchase contracts
- Finance agreements (car loans, mortgages, bank accounts)
- Home inspection contracts
- Pest control services

- Moving and storage contracts
- Warranties (home, automobile, product)
- Legal funding
- Health and fitness club membership agreements
- Travel services
- Insurance policies
- Private school enrollment agreements

Examples of contracts that typically do not meet the criteria for application of these Rules, should the contract contain an arbitration provision, include, but are not limited to the following:

- Home construction and remodeling contracts
- Real estate purchase and sale agreements
- Condominium or homeowner association by-laws
- Business insurance policies (including crop insurance)
- Commercial loan and lease agreements
- Commercial guaranty agreements

(b) When parties agree to arbitrate under these Rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these Rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these Rules and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices. Arbitrations administered under these Rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so.

(c) The consumer and the business may agree to change these Rules. If they agree to change the Rules, they must agree in writing. If the consumer and the business want to change these Rules after the appointment of the arbitrator, any changes may be made only with the approval of the arbitrator.

(d) The AAA administers consumer disputes that meet the due process standards contained in the *Consumer Due Process Protocol* and the *Consumer Arbitration Rules*. The AAA will accept cases after the AAA reviews the parties' arbitration agreement and if the AAA determines the agreement substantially and materially complies with the due process standards of these Rules and the *Consumer Due Process Protocol*. Should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.

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(e) The AAA has the initial authority to apply or not to apply the *Consumer Arbitration Rules*. If either the consumer or the business disagrees with the AAA's decision, the objecting party must submit the objection by the due date for filing an answer to the demand for arbitration. If an objection is filed, the arbitrator shall have the authority to make the final decision on which AAA rules will apply.

(f) If, within 30 days after the AAA's commencement of administration, a party seeks judicial intervention with respect to a pending arbitration and provides the AAA with documentation that judicial intervention has been sought, the AAA will suspend administration for 30 days to permit the party to obtain a stay of arbitration from the court.

(g) Where no disclosed claims or counterclaims exceed $25,000, the dispute shall be resolved by the submission of documents only/desk arbitration (see R-29 and the *Procedures for the Resolution of Disputes through Document Submission* below). Any party, however, may ask for a hearing. The arbitrator also may decide that a hearing is necessary.

R-2. Starting Arbitration under an Arbitration Agreement in a Contract

(a) Arbitration filed under an arbitration agreement naming the AAA shall be started in the following manner:

(1) The party who starts the arbitration (referred to as the "claimant" throughout the arbitration) must contact, in writing, the party that the case is filed against (referred to as the "respondent" throughout the arbitration) that it wishes to arbitrate a dispute. This written contact is referred to as the Demand for Arbitration ("Demand"). The Demand must do the following:

- Briefly explain the dispute
- List the names and addresses of the consumer and the business, and, if known, the names of any representatives of the consumer and the business
- Specify the amount of money in dispute, if applicable
- Identify the requested location for the hearing if an in-person hearing is requested
- State what the claimant wants

(2) The claimant must also send one copy of the Demand to the AAA at the same time the demand is sent to the respondent. When sending a Demand to the AAA, the claimant must also send the following:

- A copy of the arbitration agreement contained in the contract and/or agreement and/or purchase document
- The proper filing fee; the amount of the filing fee can be found in the Costs of Arbitration section at the end of these Rules.

(3) If the arbitration is pursuant to a court order, the claimant must send one copy of the Demand to the AAA at the same time the Demand is sent to the respondent. When sending a demand to the AAA, the claimant must also send the following:

- A copy of the court order
- A copy of the arbitration agreement contained in the contract and/or agreement and/or purchase document
- The proper filing fee

The filing fee must be paid before a matter is considered properly filed. If the court order directs that a specific party is responsible for the filing fee, it is the responsibility of the filing party either to make such payment to the AAA and seek reimbursement as directed in the court order or to make other such arrangements so that the filing fee is submitted to the AAA with the Demand.

The claimant may file by mail. The mailing address of the AAA's Case Filing Services is:

American Arbitration Association
Case Filing Services
1101 Laurel Oak Road, Suite 100
Voorhees, NJ 08043

Or, the claimant may file online using AAA WebFile: **https://www.adr.org**

Or, the claimant may file at any of the AAA's offices.

(b) The AAA will send a written notice letting the consumer and the business know the Demand for Arbitration has been received.

(c) The respondent may submit a written response to the Demand, known as an "answer," which describes how the respondent responds to the claimant's claim. The answer must be sent to the AAA within 14 calendar days after the date the AAA notifies the parties that the Demand for Arbitration was received and all filing requirements were met. The answer must be

- in writing,
- sent to the AAA, and
- sent to the claimant at the same time.

(d) The respondent may also file a counterclaim, which is the respondent filing a Demand against the claimant. If the respondent has a counterclaim, the counterclaim must briefly explain the dispute, specify the amount of money involved, and state what the respondent wants.

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(e) If no answer is filed within 14 calendar days, the AAA will assume that the respondent does not agree with the claim filed by the claimant. The case will move forward after 14 days regardless of whether an answer is filed.

(f) When sending a Demand or an answer, the consumer and the business are encouraged to provide enough details to make the dispute clear to the arbitrator.

R-3. Agreement to Arbitrate When There is No AAA Arbitration Clause

If the consumer and business do not have an arbitration agreement or their arbitration agreement does not name the AAA, the parties may agree to have the AAA arbitrate their dispute. To start the arbitration, the parties must send the AAA a submission agreement, which is an agreement to arbitrate their case with the AAA, signed by the consumer and the business (email communications between all parties to a dispute reflecting an agreement to arbitrate also is acceptable). The submission agreement must

- be in writing (electronic communication is acceptable);
- be signed by both parties;
- briefly explain the dispute;
- list the names and addresses of the consumer and the business;
- specify the amount of money involved;
- specify the requested location for the hearing if an in-person hearing is requested; and
- state the solution sought.

The parties should send one copy of the submission agreement to the AAA. They must also send the proper filing fees. A fee schedule can be found in the Costs of Arbitration section at the end of these Rules.

R-4. AAA Administrative Fees

As a not-for-profit organization, the AAA charges fees to compensate it for the cost of providing administrative services. The fee schedule in effect when the case is filed shall apply for all fees charged during the administration of the case. The AAA may, in the event of the consumer's extreme hardship, defer or reduce the consumer's administrative fees.

AAA fees shall be paid in accordance with the Costs of Arbitration section found at the end of these Rules.

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R-5. Neutral Arbitrator's Compensation

(a) Arbitrators serving under these Rules shall be compensated at a rate established by the AAA.

(b) Any arrangement for the compensation of an arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

(c) Arbitrator compensation shall be paid in accordance with the Costs of Arbitration section found at the end of these Rules.

R-6. Depositing Neutral Arbitrator's Compensation with the AAA

The AAA may require the parties to deposit in advance of any hearings such sums of money as it decides are necessary to cover the expense of the arbitration, including the arbitrator's fee, and shall render an accounting to the parties and return any unused money at the conclusion of the case.

R-7. Expenses

Unless otherwise agreed by the parties or as provided under applicable law, the expenses of witnesses for either side shall be borne by the party producing such witnesses.

All expenses of the arbitrator, including required travel and other expenses, and any AAA expenses, as well as the costs relating to proof and witnesses produced at the direction of the arbitrator, shall be borne in accordance with the Costs of Arbitration section found at the end of these Rules.

R-8. Changes of Claim

Once a Demand has been filed, any new claims or counterclaims, or changes to the claim or counterclaim, must be made in writing and sent to the AAA. The party making the new or different claim or counterclaim shall send a copy to the opposing party. As with the original Demand or counterclaim, a party shall have 14 calendar days from the date the AAA notifies the parties it received the new or different claim or counterclaim to file an answering statement with the AAA.

If an arbitrator has already been appointed, a new or different claim or counterclaim may only be considered if the arbitrator allows it.

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R-9. Small Claims Option for the Parties

If a party's claim is within the jurisdiction of a small claims court, either party may choose to take the claim to that court instead of arbitration as follows:

(a) The parties may take their claims to small claims court without first filing with the AAA.

(b) After a case is filed with the AAA, but before the arbitrator is formally appointed to the case by the AAA, a party can send a written notice to the opposing party and the AAA that it wants the case decided by a small claims court. After receiving this notice, the AAA will administratively close the case.

(c) After the arbitrator is appointed, if a party wants to take the case to small claims court and notifies the opposing party and the AAA, it is up to the arbitrator to determine if the case should be decided in arbitration or if the arbitration case should be closed and the dispute decided in small claims court.

R-10. Administrative Conference with the AAA

At the request of any party or if the AAA should so decide, the AAA may have a telephone conference with the parties and/or their representatives. The conference may address issues such as arbitrator selection, the possibility of a mediated settlement, exchange of information before the hearing, timing of the hearing, the type of hearing that will be held, and other administrative matters.

R-11. Fixing of Locale (the city, county, state, territory and/or country where the arbitration will take place)

If an in-person hearing is to be held and if the parties do not agree to the locale where the hearing is to be held, the AAA initially will determine the locale of the arbitration. If a party does not agree with the AAA's decision, that party can ask the arbitrator, once appointed, to make a final determination. The locale determination will be made after considering the positions of the parties, the circumstances of the parties and the dispute, and the *Consumer Due Process Protocol*.

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R-12. Business Notification and Publicly-Accessible Consumer Clause Registry

Beginning September 1, 2014, a business that provides for or intends to provide for these Rules or another set of AAA Rules in a consumer contract (as defined in R-1) should

1. notify the AAA of the existence of such a consumer contract or of its intention to do so at least 30 days before the planned effective date of the contract.
2. provide the AAA a copy of the arbitration agreement.

Upon receiving the arbitration agreement, the AAA will review the agreement for material compliance with due process standards contained in the *Consumer Due Process Protocol* and the *Consumer Arbitration Rules* (see Rule 1(d)). There is a nonrefundable fee to conduct this initial review and maintain a publicly-available clause registry, which is detailed in the Costs of Arbitration section found at the end of these Rules. Any subsequent changes, additions, deletions, or amendments to a currently-registered arbitration agreement must be resubmitted for review and a review fee will be assessed at that time. The AAA will decline to administer consumer arbitrations arising out of that arbitration agreement where the business fails to pay the review fee.

If a business does not submit its arbitration agreement for review and a consumer arbitration then is filed with the AAA, the AAA will conduct an expedited review at that time. Along with any other filing fees that are owed for that case, the business also will be responsible for paying the nonrefundable review and Registry fee (including any fee for expedited review at the time of filing) for this initial review, which is detailed in the Costs of Arbitration section found at the end of these Rules. The AAA will decline to administer consumer arbitrations arising out of that arbitration agreement if the business declines to pay the review and Registry fee.

After the AAA reviews the submitted consumer clause, receives the annual consumer registry fee, and determines it will administer consumer-related disputes filed pursuant to the consumer clause, the business will be included on the publicly-accessible Consumer Clause Registry. This Consumer Clause Registry maintained by the AAA will contain the name of the business, the address, and the consumer arbitration clause, along with any related documents as deemed necessary by the AAA. The AAA's review of a consumer arbitration clause and determination whether or not to administer arbitrations pursuant to

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that clause is only an administrative determination by the AAA and cannot be relied upon or construed as a legal opinion or advice regarding the enforceability of the arbitration clause. Consumer arbitration agreements may be registered at: **www.adr.org/consumerclauseregistry** or via email at **consumerreview@adr.org.**

For more information concerning the Consumer Clause Registry, please visit the AAA's website at **www.adr.org/consumerclauseregistry.**

The Registry fee to initially review a business's agreement and maintain the clause registry list is a yearly, non-refundable fee for the business's arbitration agreement. Any different arbitration agreements submitted by the same business or its subsidiaries must be submitted for review and are subject to the current review fee.

If the AAA declines to administer a case due to the business's non-compliance with this notification requirement, the parties may choose to submit their dispute to the appropriate court.

R-13. AAA and Delegation of Duties

When the consumer and the business agree to arbitrate under these Rules or other AAA rules, or when they provide for arbitration by the AAA and an arbitration is filed under these Rules, the parties also agree that the AAA will administer the arbitration. The AAA's administrative duties are set forth in the parties' arbitration agreement and in these Rules. The AAA will have the final decision on which office and which AAA staff members will administer the case. Arbitrations administered under these Rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so.

R-14. Jurisdiction

(a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.

(b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

(c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

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Appointing the Arbitrator

R-15. National Roster of Arbitrators

The AAA maintains a National Roster of Arbitrators ("National Roster") and shall appoint arbitrators from this National Roster to resolve the parties' dispute(s).

R-16. Appointment from National Roster

(a) If the parties have not appointed an arbitrator and have not agreed to a process for appointing the arbitrator, immediately after the filing of the submission agreement or the answer, or after the deadline for filing the answer, the AAA will administratively appoint an arbitrator from the National Roster.

(b) If the parties' arbitration agreement provides for three or more arbitrators and they have not appointed the arbitrators and have not agreed to a process for appointing the arbitrators, immediately after the filing of the submission agreement or the answer, or after the deadline for filing the answer, the AAA will administratively appoint the arbitrators from the National Roster. The AAA will appoint the chairperson.

(c) Arbitrator(s) serving under these Rules will be neutral and must meet the standards of R-19 with respect to being impartial and independent.

R-17. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators and the parties do not agree on the number, the dispute shall be heard and decided by one arbitrator.

R-18. Disclosure

(a) Any person appointed or to be appointed as an arbitrator, as well as the parties and their representatives, must provide information to the AAA of any circumstances likely to raise justifiable doubt as to whether the arbitrator can remain impartial or independent. This disclosure of information would include

(1) any bias;

(2) any financial interest in the result of the arbitration;

(3) any personal interest in the result of the arbitration; or

(4) any past or present relationship with the parties or their representatives.

Such obligation to provide disclosure information remains in effect throughout the arbitration. A failure on the part of a party or a representative to comply with the

requirements of this rule may result in the waiver of the right to object to an arbitrator in accordance with Rule R-50.

(b) If the AAA receives such information from the arbitrator or another source, the AAA will communicate the information to the parties. If the AAA decides it is appropriate, it will also communicate the information to the arbitrator and others.

(c) In order to encourage disclosure by arbitrators, disclosing such information does not mean that the arbitrator considers the disclosed information will likely affect his or her ability to be impartial or independent.

R-19. Disqualification of Arbitrator

(a) Any arbitrator shall be impartial and independent and shall perform his or her duties carefully and in good faith. The AAA may disqualify an arbitrator who shows

(1) partiality or lack of independence;

(2) inability or refusal to perform his or her duties with diligence and in good faith; or

(3) any grounds for disqualification provided by applicable law.

(b) If a party objects to the continued service of an arbitrator, or if the AAA should so decide to raise the issue of whether the arbitrator should continue on the case, the AAA will decide if the arbitrator should be disqualified. After gathering the opinions of the parties, the AAA will decide and that decision shall be final and conclusive.

R-20. Vacancies

If for any reason an arbitrator cannot or is unwilling to perform the duties of the office, the AAA may declare the office vacant. Any vacancies shall be filled based on the original procedures used to appoint the arbitrator. If a substitute arbitrator is appointed, the substitute arbitrator will decide if it is necessary to repeat all or part of any prior ruling or hearing.

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Pre-Hearing Preparation

R-21. Preliminary Management Hearing with the Arbitrator

(a) If any party asks for, or if the AAA or the arbitrator decides to hold one, the arbitrator will schedule a preliminary management hearing with the parties and/or their representatives as soon as possible. The preliminary management hearing will be conducted by telephone unless the arbitrator decides an in-person preliminary management hearing is necessary.

(b) During the preliminary management hearing, the parties and the arbitrator should discuss the future conduct of the case, including clarification of issues and claims, scheduling of the hearings, and any other preliminary matters.

(c) The arbitrator shall promptly issue written orders that state the arbitrator's decisions made during or as a result of the preliminary management hearing. The arbitrator may also conduct additional preliminary management hearings if the need arises.

R-22. Exchange of Information between the Parties

(a) If any party asks or if the arbitrator decides on his or her own, keeping in mind that arbitration must remain a fast and economical process, the arbitrator may direct

1) specific documents and other information to be shared between the consumer and business, and

2) that the consumer and business identify the witnesses, if any, they plan to have testify at the hearing.

(b) Any exhibits the parties plan to submit at the hearing need to be shared between the parties at least five business days before the hearing, unless the arbitrator sets a different exchange date.

(c) No other exchange of information beyond what is provided for in section (a) above is contemplated under these Rules, unless an arbitrator determines further information exchange is needed to provide for a fundamentally fair process.

(d) The arbitrator has authority to resolve any disputes between the parties about exchanging information.

R-23. Enforcement Powers of the Arbitrator

The arbitrator may issue any orders necessary to enforce the provisions of rules R-21 and R-22 and to otherwise achieve a fair, efficient, and economical resolution of the case, including, but not limited to:

(a) an order setting the conditions for any exchange or production of confidential documents and information, and the admission of confidential evidence at the hearing in order to preserve such confidentiality;

(b) to the extent the exchange of information takes place pursuant to R-22, imposing reasonable search limitations for electronic and other documents if the parties are unable to agree;

(c) allocating costs of producing documentation, including electronically-stored documentation;

(d) in the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance; and

(e) issuing any other enforcement orders that the arbitrator is empowered to issue under applicable law.

R-24. Written Motions (except for Dispositive Motions—see R-33)

The arbitrator may consider a party's request to file a written motion (except for Dispositive Motions— see R-33) only after the parties and the arbitrator conduct a conference call to attempt to resolve the issue that gives rise to the proposed motion. Only after the parties and the arbitrator hold the call may the arbitrator consider a party's request to file a written motion. The arbitrator has the sole discretion to allow or deny the filing of a written motion and his or her decision is final.

R-25. Representation of a Party

Any party may participate in the arbitration without representation, or may be represented by counsel or other authorized representative, unless such choice is prohibited by applicable law. A party intending to be represented shall give the opposing party and the AAA the name, address, and contact information of the representative at least three business days before the hearing where that representative will first appear in the case. It will be considered proper notice if a representative files the arbitration demand or answer or responds for a party during the course of the arbitration.

While parties do not need an attorney to participate in arbitration, arbitration is a final, legally-binding process that may impact a party's rights. As such, parties may want to consider consulting an attorney.

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R-26. Setting the Date, Time, and Place (the physical site of the hearing within the designated locale) of Hearing

The arbitrator will set the date, time, and place for each hearing within the locale as determined in R-11. A hearing may be by telephone or in person. For their part, the parties commit to

(1) respond promptly to the arbitrator when he or she asks what dates the parties are available to have the hearings;

(2) cooperate in the scheduling of the hearing on the earliest possible date; and

(3) follow the hearing schedule set up by the arbitrator.

The AAA will send a notice of the hearing to the parties at least 10 days before the hearing date, unless the parties agree to a different time frame.

R-27. Written Record of Hearing

(a) If a party wants a written record of the hearing, that party must make such arrangement directly with a stenographer (court reporter) and notify the opposing parties, the AAA, and the arbitrator of these arrangements at least three business days before the hearing. The party or parties who request the written record shall pay the cost of the service.

(b) No other type of recording will be allowed unless the parties agree or the arbitrator directs a different form of recording.

(c) The arbitrator may resolve disputes between the parties over who will pay the costs of the written record or other type of recording.

(d) The parties can agree or the arbitrator may decide that the transcript (written record) is the official record of the hearing. If it is the official record of the hearing, the transcript must be given to the arbitrator and made available to all the parties so that it can be reviewed. The date, time, and place of the inspection will be decided by the arbitrator.

R-28. Interpreters

If a party wants an interpreter present for any part of the process, that party must make arrangements directly with the interpreter and shall pay for the costs of the service.

R-29. Documents-Only Procedure

Disputes may be resolved by submission of documents and without in-person or telephonic hearings. For cases being decided by the submission of documents only, the *Procedures for the Resolution of Disputes through Document Submission* (found at the end of these Rules) shall supplement these Rules. These Procedures will apply where no disclosed claims or counterclaims exceed $25,000 (see R-1(g)), unless any party requests an in-person or telephonic hearing or the arbitrator decides that a hearing is necessary.

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Hearing Procedures

R-30. Attendance at Hearings

The arbitrator and the AAA will keep information about the arbitration private except to the extent that a law provides that such information shall be shared or made public. The parties and their representatives in the arbitration are entitled to attend the hearings. The arbitrator will determine any disputes over whether a non-party may attend the hearing.

R-31. Oaths

Before starting the hearing, each arbitrator may take an oath of office and, if required by law, shall do so. If the arbitrator determines that witnesses shall testify under oath, then the arbitrator will direct the oath be given by a duly-qualified person.

R-32. Conduct of Proceedings

(a) The claimant must present evidence to support its claim. The respondent must then present evidence to support its defense. Witnesses for each party also must answer questions from the arbitrator and the opposing party. The arbitrator may change this procedure, as long as each party has the right to be heard and is given a fair opportunity to present its case.

(b) When the arbitrator decides it is appropriate, the arbitrator may also allow the parties to present evidence in alternative ways, including web conferencing, Internet communication, and telephonic conferences. All procedures must provide the parties with a full and equal opportunity to present any evidence that the arbitrator decides is material and relevant to deciding the dispute. If the alternative ways to present evidence involve witnesses, those ways may include that the witness submit to direct and cross-examination questioning.

(c) The arbitrator will use his or her discretion to resolve the dispute as quickly as possible and may direct the parties to present the evidence in a certain order, or may split the proceedings into multiple parts and direct the parties in the presentation of evidence.

(d) The hearing generally will not exceed one day. However, if a party shows good cause, the arbitrator may schedule additional hearings within seven calendar days after the initial day of hearing.

(e) The parties may agree in writing to waive oral hearings.

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R-33. Dispositive Motions

The arbitrator may allow the filing of a dispositive motion if the arbitrator determines that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case.

R-34. Evidence

(a) The parties may offer relevant and material evidence and must produce any evidence the arbitrator decides is necessary to understand and decide the dispute. Following the legal rules of evidence shall not be necessary. All evidence should be taken in the presence of the arbitrator and all of the parties, unless any of the parties is absent, in default, or has waived the right to be present.

(b) The arbitrator shall determine what evidence will be admitted, what evidence is relevant, and what evidence is material to the case. The arbitrator may also exclude evidence that the arbitrator decides is cumulative or not relevant.

(c) The arbitrator shall consider applicable principles of legal privilege, such as those that involve the confidentiality of communications between a lawyer and a client.

(d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so on the request of any party or on the arbitrator's own determination. If a party requests the arbitrator sign a subpoena, that party shall copy the request to the other parties in the arbitration at the same time it is provided to the arbitrator.

R-35. Evidence by Affidavit and Post-Hearing Filing of Documents or Other Evidence

(a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit rather than in-person testimony but will give this evidence only such credence as the arbitrator decides is appropriate. The arbitrator will consider any objection to such evidence made by the opposing party.

(b) If the parties agree or the arbitrator decides that documents or other evidence need to be submitted to the arbitrator after the hearing, those documents or other evidence will be filed with the AAA so that they can be sent to the arbitrator. All parties will be given the opportunity to review and respond to these documents or other evidence.

R-36. Inspection or Investigation

An arbitrator finding it necessary to inspect property or conduct an investigation in connection with the arbitration will request that the AAA inform the parties. The arbitrator will set the date and time of the inspection and investigation, and

the AAA will notify the parties. Any party who would like to be present at the inspection or investigation may attend. If one or all parties are not present at the inspection or investigation, the arbitrator will make an oral or written report to the parties and allow them an opportunity to comment.

R-37. Interim Measures (a preliminary decision made by the arbitrator involving part or all of the issue(s) in dispute in the arbitration)

(a) The arbitrator may grant whatever interim measures he or she decides are necessary, including granting an injunction and ordering that property be protected.

(b) Such interim measures may take the form of an interim award, and the arbitrator may require a security payment for the costs of such measures.

(c) When making a decision on an interim measure, the arbitrator may grant any remedy, relief, or outcome that the parties could have received in court.

(d) A party to an arbitration agreement under these Rules may instead file in state or federal court for interim relief. Applying to the court for this type of relief, including temporary restraining orders, is consistent with the agreement to arbitrate and will not be considered a waiver of the right to arbitrate.

R-38. Postponements

The arbitrator may postpone any hearing

(a) if requested by a party, and the party shows good cause for the postponement;

(b) if all parties agree to a postponement;

(c) on his or her own decision.

R-39. Arbitration in the Absence of a Party or Representative

The arbitration may proceed even if any party or representative is absent, so long as proper notice was given and that party or representative fails to appear or obtain a postponement from the arbitrator. An award cannot be made only because of the default of a party. The arbitrator shall require the party who participates in the hearing to submit the evidence needed by the arbitrator to make an award.

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Conclusion of the Hearing

R-40. Closing of Hearing

The arbitrator must specifically ask all parties whether they have any further proofs to offer or witnesses to be heard. When the arbitrator receives negative replies or he or she is satisfied that the record is complete, the arbitrator will declare the hearing closed.

If briefs or other written documentation are to be filed by the parties, the hearing shall be declared closed as of the final date set by the arbitrator. Absent agreement of the parties, the time that the arbitrator has to make the award begins upon the closing of the hearing. The AAA may extend the time limit for the rendering of the award only in unusual and extreme circumstances.

R-41. Reopening of Hearing

If a party requests, or if the arbitrator decides to do so, the hearing may be reopened at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. If the arbitrator reopens the hearing, he or she shall have 30 days from the closing of the reopened hearing within which to make an award.

R-42. Time of Award

The award shall be issued promptly by the arbitrator and, unless the parties agree differently or the law indicates a different time frame, no later than 30 calendar days from the date the hearing is closed, or, if the case is a documents-only procedure, 14 calendar days from the date the arbitrator set for his or her receipt of the final statements and proofs. The AAA may extend the time limit for the rendering of the award only in unusual and extreme circumstances.

R-43. Form of Award

(a) Any award shall be in writing and executed in the form and manner required by law.

(b) The award shall provide the concise written reasons for the decision unless the parties all agree otherwise. Any disagreements over the form of the award shall be decided by the arbitrator.

(c) The AAA may choose to publish an award rendered under these Rules; however, the names of the parties and witnesses will be removed from awards that are published, unless a party agrees in writing to have its name included in the award.

R-44. Scope of Award

(a) The arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorney's fees and costs, in accordance with the law(s) that applies to the case.

(b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and divide up the fees, expenses, and compensation related to such award as the arbitrator decides is appropriate, subject to the provisions and limitations contained in the Costs of Arbitration section.

(c) The arbitrator may also allocate compensation, expenses as defined in sections (v) and (vii) of the Costs of Arbitration section, and administrative fees (which include Filing and Hearing Fees) to any party upon the arbitrator's determination that the party's claim or counterclaim was filed for purposes of harassment or is patently frivolous.

(d) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections R-4, R-5, and R-7 in favor of any party, subject to the provisions and limitations contained in the Costs of Arbitration section.

R-45. Award upon Settlement

If the parties settle their dispute at any point during the arbitration and at the parties' request, the arbitrator may lay out the terms of the settlement in a "consent award" (an award drafted and signed by the arbitrator that reflects the settlement terms of the parties). A consent award must include a division of the arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses. Consent awards will not be made available to the public per Rule 43(c) unless the parties agree otherwise.

R-46. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at the last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

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R-47. Modification of Award for Clerical, Typographical, or Mathematical Errors

(a) Within 20 days after the award is transmitted, any party, upon notice to the opposing parties, may contact the AAA and request that the arbitrator correct any clerical, typographical, or mathematical errors in the award. The arbitrator has no power to re-determine the merits of any claim already decided.

(b) The opposing parties shall be given 10 days to respond to the request. The arbitrator shall make a decision on the request within 20 days after the AAA transmits the request and any responses to the arbitrator.

(c) If applicable law provides a different procedural time frame, that procedure shall be followed.

Post Hearing

R-48. Release of Documents for Judicial Proceedings

The AAA shall give a party certified copies of any records in the AAA's possession that may be required in judicial proceedings relating to the arbitration, except for records determined by the AAA to be privileged or confidential. The party will have to pay a fee for this service.

R-49. Applications to Court and Exclusion of Liability

(a) No court or judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these Rules is a necessary or proper party in judicial proceedings relating to the arbitration.

(c) Parties to an arbitration under these Rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Parties to an arbitration under these Rules shall be deemed to have consented that neither the AAA, AAA employees, nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.

(e) Parties to an arbitration under these Rules may not call the arbitrator, the AAA, or any AAA employee as a witness in litigation or any other proceeding relating to the arbitration. The arbitrator, the AAA, and AAA employees are not competent to and may not testify as witnesses in any such proceeding.

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General Procedural Rules

R-50. Waiver of Rules

If a party knows that any of these Rules have not been followed, it must object in writing before proceeding with arbitration or it will lose its right to object that the rule has not been followed.

R-51. Extensions of Time

The parties may agree to change any period of time provided for in the Rules, except that any such modification that negatively affects the efficient resolution of the dispute is subject to review and approval by the arbitrator. The AAA or the arbitrator may for good cause extend any period of time in these Rules, except as set forth in R-42. The AAA will notify the parties of any extension.

R-52. Serving of Notice and AAA and Arbitrator Communications

(a) Any papers or notices necessary for the initiation or continuation of an arbitration under these Rules, or for the entry of judgment on any award made under these Rules, may be served on a party by mail or email addressed to the party or its representative at the last-known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.

(b) The AAA, the arbitrator, and the parties also may use overnight delivery, electronic facsimile transmission (fax), or electronic mail (email) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be sent by other methods of communication.

(c) Unless directed differently by the AAA or by the arbitrator, any documents and all written communications submitted by any party to the AAA or to the arbitrator also shall be sent at the same time to all parties to the arbitration.

(d) A failure to provide the other parties with copies of communications made to the AAA or to the arbitrator may prevent the AAA or the arbitrator from acting on any requests or objections contained within those communications.

(e) A party and/or someone acting on behalf of a party cannot have any communications with an arbitrator or a potential arbitrator about the arbitration outside of the presence of the opposing party. All such communications shall be conducted through the AAA.

(f) The AAA may direct that any oral or written communications that are sent by a party or their representative shall be sent in a particular manner. The failure of a party or its representative to do so may result in the AAA's refusal to consider the issue raised in the communication.

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R-53. Interpretation and Application of Rules

The arbitrator shall interpret and apply these Rules as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these Rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other Rules shall be interpreted and applied by the AAA.

R-54. Remedies for Nonpayment

(a) If arbitrator compensation or administrative charges have not been paid in full, the AAA may inform the parties so that one of them may forward the required payment.

(b) Once the AAA informs the parties that payments have not been received, a party may request an order from the arbitrator directing what measures might be taken in light of a party's nonpayment.

Such measures may include limiting a party's ability to assert or pursue its claim. However, a party shall never be precluded from defending a claim or counterclaim. The arbitrator must provide the party opposing a request for relief with the opportunity to respond prior to making any determination. In the event that the arbitrator grants any request for relief that limits any party's participation in the arbitration, the arbitrator will require the party who is making a claim and who has made appropriate payments to submit the evidence required to make an award.

(c) Upon receipt of information from the AAA that full payments have not been received, the arbitrator, on the arbitrator's own initiative, may order the suspension of the arbitration. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.

(d) If arbitrator compensation or AAA administrative fees remain unpaid after a determination to suspend an arbitration due to nonpayment, the arbitrator has the authority to terminate the proceedings. Such an order shall be in writing and signed by the arbitrator. The impact of the termination for nonpayment of the Consumer Clause Registry fee is the removal from the "Registered" section of the Registry.

R-55. Declining or Ceasing Arbitration

The AAA in its sole discretion may decline to accept a Demand for Arbitration or stop the administration of an ongoing arbitration due to a party's improper conduct, including threatening or harassing behavior towards any AAA staff, an arbitrator, or a party or party's representative.

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Costs of Arbitration (including AAA Administrative Fees)*

Arbitrator compensation is not included as part of the administrative fees charged by the AAA. Arbitrator compensation is based on a rate established by the AAA as set forth below. If a Preliminary Management Hearing is held by the arbitrator, the arbitrator is entitled to one-half the arbitration compensation rate for a full hearing day or a documents-only hearing. Once evidentiary hearings are held, the arbitrator is entitled to the full-day rate of compensation. The business shall pay the arbitrator's compensation unless the consumer, post dispute, voluntarily elects to pay a portion of the arbitrator's compensation. Arbitrator compensation, expenses as defined in sections (v) and (vii) below, and administrative fees (which include Filing and Hearing Fees) are not subject to reallocation by the arbitrator(s) except as may be required by applicable law or upon the arbitrator's determination that a claim or counterclaim was filed for purposes of harassment or is patently frivolous.

* *Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA at 1-800-778-7879, if you have any questions regarding the waiver of administrative fees. (Effective January 1, 2003)*

Party	Desk Arbitration	In-Person or Telephonic Hearing—Single Arbitrator	In-Person or Telephonic Hearing—Three Or More Arbitrators
Consumer	Filing Fee—$200 (nonrefundable)	Filing Fee—$200 (nonrefundable)	Filing Fee—$200 (nonrefundable)
Business	Filing Fee—$1,700 Arbitrator Compensation—$750 per case	Filing Fee—$1,700 Hearing Fee—$500 Arbitrator Compensation—$1,500 per hearing day	Filing Fee—$2,200 Hearing Fee—$500 Arbitrator Compensation—$1,500 per hearing day per arbitrator

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(i) Filing Fees

In cases before a single arbitrator, a nonrefundable filing fee capped in the amount of $200 is payable in full by the consumer when a case is filed, unless the parties' agreement provides that the consumer pay less. A partially refundable fee in the amount of $1,700 is payable in full by the business, unless the parties' agreement provides that the business pay more. This fee is due from the business once the consumer has met the filing requirements.

In cases before three or more arbitrators, a nonrefundable filing fee capped in the amount of $200 is payable in full by the consumer when a case is filed, unless the parties' agreement provides that the consumer pay less. A partially refundable fee in the amount of $2,200 is payable in full by the business, unless the parties' agreement provides that the business pay more. This fee is due from the business once the consumer has met the filing requirements.

There shall be no filing fee charged for a counterclaim.

The AAA reserves the right to assess additional administrative fees for services performed by the AAA beyond those provided for in these Rules and which may be required by the parties' agreement or stipulation.

(ii) Neutral Arbitrator's Compensation

Arbitrators serving on a case with an in-person or telephonic hearing will receive compensation at a rate of **$1,500 per day.**

Arbitrators serving on a case with a desk arbitration/documents-only hearing will receive compensation at a rate of **$750 per case.**

The AAA reserves the right to raise the daily or per-case arbitrator compensation rate because of the complexity of the case or for processes and procedures beyond those provided for in these Rules and which may be required by the parties' requests, agreement, or stipulation (1) at the time of the AAA's initiation of the case; (2) upon the addition of a new party; (3) when a change of claim is made and, if necessary, approved by the arbitrator(s); (4) or if circumstances arise during the course of the case due to the complexity of issues and submissions by the parties. Any determination by the AAA on compensation rates is in the sole discretion of the AAA and such decision is final and binding on the parties and arbitrator.

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(iii) Refund Schedule

Once the claimant has met the filing requirements, refunds to the business will be calculated as follows:

- if the case is settled or withdrawn within 30 calendar days, 50% of the filing fee will be refunded to the business.

However, no refund of the filing fee will be made once an arbitrator has been appointed and no refunds will be made on awarded cases. The date the claimant's filing requirements are met is the date used to calculate any refund of filing fees. If the matter is settled or withdrawn prior to receipt of filing fees from the business, the AAA will bill the business in accordance with this refund schedule.

(iv) Hearing Fees

For telephonic hearings or in-person hearings held, an additional administrative fee of $500 is payable by the business.

There is no AAA hearing fee for the initial Administrative Conference (see R-10).

(v) Hearing Room Rental

The hearing fees described above do not cover the rental of hearing rooms. The AAA maintains rental hearing rooms in most offices for the convenience of the parties. Check with the administrator for availability and rates. Hearing room rental fees will be borne by the business.

(vi) Abeyance Fee

Parties on cases held as inactive for one year will be assessed an annual abeyance fee of $300. If a party refuses to pay the assessed fee, the opposing party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed. All filing requirements, including payment of filing fees, must be met before a matter may be placed in abeyance.

(vii) Expenses

All expenses of the arbitrator, including required travel and other expenses, and any AAA expenses, as well as the costs relating to proof and witnesses produced at the direction of the arbitrator, shall be borne by the business.

(viii) Consumer Clause Review and Registry Fee

Please note that all fees described below are **nonrefundable.**

For businesses submitting a clause, the cost of reviewing the clause and maintaining that clause on the Registry is $500. A yearly Registry fee of $500 will be charged to maintain each clause on the Registry for each calendar year thereafter.

If the AAA receives a demand for consumer arbitration from an arbitration clause that was not previously submitted to the AAA for review and placement on the Registry, the business will incur an additional $250 fee to conduct an expedited review of the clause.

Any subsequent changes, additions, deletions, or amendments to currently registered arbitration agreement must be resubmitted for review and a review fee of $500 will assessed at that time.

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Procedures for the Resolution of Disputes through Document Submission

D-1. Applicability

(a) In any case, regardless of claim size, the parties may agree to waive in-person/telephonic hearings and resolve the dispute through submission of documents to one arbitrator. Such agreement should be confirmed in writing no later than the deadline for the filing of an answer.

(b) Where no disclosed claims or counterclaims exceed $25,000, the dispute shall be resolved by these Procedures, unless a party asks for a hearing or the arbitrator decides that a hearing is necessary.

(c) If one party makes a request to use the *Procedures for the Resolution of Disputes through Document Submission* (Procedures) and the opposing party is unresponsive, the arbitrator shall have the power to determine whether to proceed under the Procedures. If both parties seek to use the Procedures after the appointment of an arbitrator, the arbitrator must also consent to the process.

(d) When parties agree to these Procedures, the procedures in Sections D-1 through D-4 of these Rules shall supplement other portions of these rules which are not in conflict with the Procedures.

D-2. Preliminary Management Hearing

Within 14 calendar days of confirmation of the arbitrator's appointment, the arbitrator shall convene a preliminary management hearing, via conference call, video conference, or internet, to establish a fair and equitable procedure for the submission of documents, and, if the arbitrator deems appropriate, a schedule for one or more telephonic or electronic conferences.

D-3. Removal from the Procedures

(a) The arbitrator has the discretion to remove the case from the Procedures if the arbitrator determines that an in-person or telephonic hearing is necessary.

(b) If the parties agree to in-person or telephonic hearings after a previous agreement to proceed under the Procedures, the arbitrator shall conduct such hearings. If a party seeks to have in-person or telephonic hearings after agreeing to the Procedures, but there is not agreement among the parties to proceed with in-person or telephonic hearings, the arbitrator shall resolve the issue after the parties have been given the opportunity to provide their respective positions on the issue.

D-4. Time of Award

(a) The arbitrator shall establish the date for either final written submissions or a final telephonic or electronic conference. Such date shall operate to close the hearing, and the time for the rendering of the award shall commence on that day as well.

(b) The arbitrator shall render the award within 14 calendar days from the date the hearing is closed.

(c) The award is subject to all other provisions of these Rules that pertain to awards.

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Glossary of Terms

Administrator

The Administrator's role is to manage the administrative aspects of the arbitration, such as the appointment of the arbitrator, to make preliminary decisions about where hearings might take place, and to handle the fees associated with the arbitration. As Administrator, however, the Administrator does not decide the merits of a case or make any rulings on issues such as what documents must be shared with each side. Because the Administrator's role is only administrative, the Administrator cannot overrule or change an arbitrator's decisions or rulings. The Administrator will comply with any court orders issued from litigation involving the parties to the dispute.

ADR Agreement

An ADR Agreement is an agreement between a business and a consumer to submit disputes to mediation, arbitration, or other ADR processes.

ADR Process

An ADR (Alternative Dispute Resolution) Process is a method of resolving a dispute other than by court litigation. Mediation and Arbitration are the most widely used ADR processes.

ADR Program

An ADR Program is any program or service set up or used by a business to resolve disputes out of court.

Arbitration

In arbitration, the parties submit disputes to an impartial person (the arbitrator) for a decision. Each party can present evidence to the arbitrator. Arbitrators do not have to follow the Rules of Evidence used in court.

Arbitrators decide cases with written decisions or "awards." An award is usually binding on the parties. A court may enforce an arbitration award and the court's review of arbitration awards is limited.

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Arbitration Agreement

An arbitration agreement is a contract between parties to settle their disputes by binding arbitration. It is typically found in the parties' contract in a section entitled "Arbitration" or "Dispute Resolution." It gives the parties information about how they are choosing to settle any disputes that they might have.

Arbitrator

Arbitrators are neutral and independent decision makers who are not employees of the administrator. Except where the parties to a case reach their own settlement, the Arbitrator will make the final, binding decision on the dispute and render it in writing, called the Award. The Arbitrator makes all the procedural decisions on a case not made by the administrator or not decided jointly by the parties. The Arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorney's fees and costs, in accordance with the law(s) that applies to the case.

Once appointed to a case, an Arbitrator may not be removed by one party without the other party's consent or unless the administrator determines an Arbitrator should be removed and replaced by another Arbitrator chosen by the administrator in a manner described in these Rules.

Case Administrator

The Case Administrator is the AAA's employee assigned to handle the administrative aspects of the case. He or she does not decide the case. He or she manages the case's administrative steps, such as exchanging documents, matching schedules, and setting up hearings. The Case Administrator is the parties' contact point for almost all aspects of the case outside of any hearings.

Claimant

A Claimant is the party who files the claim or starts the arbitration. Either the consumer or the business may be the Claimant.

Demand for Arbitration (also referred to as "Demand")

The written document created by the claimant that informs the respondent that it wishes to arbitrate a dispute. This document provides basic information about the dispute, the parties involved and what the claimant wants as a result of the arbitration.

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Documents-Only Arbitration

In a Documents-Only Arbitration, the parties submit their arguments and evidence to the arbitrator in writing. The arbitrator then makes an award based only on the documents. No in-person or telephone hearing is held.

Independent ADR Institution

An Independent ADR Institution is an organization that provides independent and impartial administration of ADR programs for consumers and businesses. The American Arbitration Association is an Independent ADR Institution.

In-Person Hearing

During an In-Person Hearing, the parties and the arbitrator meet in a conference room or office and the parties present their evidence in a process that is similar to going to court. However, an In-Person Hearing is not as formal as going to court.

Mediation

In Mediation, an impartial person (the mediator) helps the parties try to settle their dispute by reaching an agreement together. A mediator's role is to help the parties come to an agreement. A mediator does not arbitrate or decide the outcome.

Neutral

A "Neutral" is a mediator, arbitrator, or other independent, impartial person selected to serve as the independent third party in an ADR process.

Party

The party is the person(s) or business that is involved in the dispute in the arbitration process. Usually, these are the people or businesses that have an arbitration agreement between them that specifies that a dispute should be resolved by arbitration.

Parties

Parties are all the separate individuals, businesses, or organizations involved in the arbitration.

Opposing Party

The opposing party is the other party that is on the opposite side of the arbitration from you. If you are the claimant, the Opposing Party is the respondent. If you are the respondent, the Opposing Party is the claimant. If you are the consumer, the Opposing Party is the business. If you are the business, the Opposing Party is the consumer.

Respondent

The respondent is the party against whom the claim is filed. If a Respondent states a claim in arbitration, it is called a counterclaim. Either the consumer or the business may be the Respondent.

Telephone Hearing

In a Telephone Hearing, the parties have the opportunity to tell the arbitrator about their case during a conference call. They also present their evidence to the arbitrator during the call. Often this is done after the parties have sent in documents for the arbitrator to review.

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SPECIAL DELIVERY AGREEMENT

The Special Delivery Agreement is incorporated into the Retail Installment Sale Contract or Lease (the Contract) dated this date between Benson Hyundai, as Seller, and the undersigned Purchaser(s) as Buyer, with respect to the vehicle listed below under the following conditions.

1. Buyer acknowledges an represents that he/she possesses a valid driver's license, current motor vehicle liability insurance and assumes risk of loss of the vehicle while in his/her possession. Buyer understands that all financing/lease decisions are made by a financial source not affiliated with Benson Hyundai and said source is the credit reporting agency in accordance with the Equal Credit Opportunity and the Fair Credit Reporting Act. Seller will attempt to assign the contract on terms satisfactory to the Seller. If the Seller is successful in so doing, the contract (and all other documents executed by Buyer) shall be deemed delivered and fully binding.

2. If Seller does not receive approval from a financial source for assignment of the Contract on terms acceptable to Seller, Buyer agrees that upon notice from Seller, Buyer shall return the vehicle in good condition without excess mileage and the sales transaction may be rescinded. Seller retains a priority security interest in the vehicle and upon Buyer's failure to return the vehicle, Seller shall be entitled to all statutory and common law remedies including, but not limited to, the right of self-help, repossession, collection/repossession costs, reasonable interest and reasonable attorney's fees.

3. Upon return of the vehicle, both Buyer and Seller shall be relieved of any further obligation or liability to the other, except that Seller shall return any trade vehicle and shall refund any cash deposit- less any expense from repairs or reconditioning seller incurred on the trade vehicle or any expense from repairs or reconditioning on the vehicle listed below.

4. Buyer agrees that if a financing source other than the one originally contemplated agrees to accept assignment of the Contract on the same terms and conditions as the original lending source, Buyer will execute a replacement Contract and related documents on the same terms and conditions as the original Contract.

Date: 07/26/2016 Year: 2016 Make: Hyundai

Model: Veloster VIN: KMHTC6AE5GU281969

Karen Simmons

Purchaser

DEFENDANT'S EXHIBIT F

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Case No. 2017-CP-42-02072
	)	
Donald and Carlee Simmons	)	
	)	
Plaintiffs,	)	
	)	AFFIDAVIT OF DONALD LEE SIMMONS
v.	)	
	)	
Benson Hyundai, LLC	)	
	)	
Defendant.	)	

PERSONALLY APPEARED before me, Donald Simmons, who states and deposes as follows:

1. I am one of the Plaintiffs in this matter, I am over 18 years of age, and I am personally familiar with the matters alleged below.

2. On or about July 26, 2016, my wife and I went to the Defendant's business to purchase a Hyundai Veloster. The sales price and credits are set forth on Exhibit A (Retail Buyer's Order) and Exhibit B (Sales/Financing Agreement).

3. My wife and I made a substantial down payment, including a trade-in of my Saab, and a direct debit from our bank account, all of which are still in Benson's possession. We have made payments every month to Hyundai's finance company through Benson Hyundai.

4. On the night of the sale, it was nearly midnight when we were finally given the closing documents and left to drive home to Macon, Georgia. My wife got no sleep at all that night and went to work the next morning.

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5. The closing documents were given to us to sign in a hurried fashion. The figures looked correct, but the different arbitration clauses were detailed and used legal language we did not understand. We were under pressure to sign documents because we had been told by Benson's manager, Nate Burden, that a substantial rebate from Hyundai for several thousand dollars was good for that night only and that if we didn't complete the sale, the rebate would expire.

6. We did not have time to consult with a lawyer at that late hour. Neither of us has any legal training.

7. Finance and Insurance Manager Brian Perry handled our questions in a strange way. For example, my wife and I asked questions about why Carlee's name was listed as a buyer when the car was to be bought by me. Mr. Perry would not answer them directly, just saying that it didn't make any difference.

8. I also asked Mr. Perry about the arbitration clause. Mr. Perry explained that it only applied to service work. He said that if someone wanted to sue for service-related issues like a dispute over an oil change or if a car had not been vacuumed, only then would this arbitration clause apply.

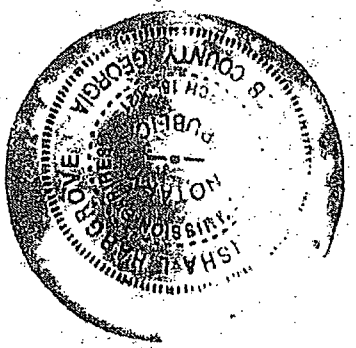
9. When we asked other questions about the transaction, Mr. Perry would frequently avoid the question, saying things like, "It's all the same" or "It doesn't make any difference" and act as if the question were irrelevant. Then he would steer the conversation to family matters or make other small talk.

10. Neither my wife nor I know what the Federal Rules of Civil Procedure are or had read the AAA Consumer Arbitration Rules. Beyond Mr. Perry's statement that the arbitration referred to minor service work, there was no explanation of the arbitration. We did not stay in his office 40 minutes.

Donald L. Simmons

Sworn to and subscribed before me
this 22 day of September, 2017
personally appeared Donald Simmons
known to me to be that person and
who stated that he/she executed
the same under penalty of perjury
and that the statements in this
affidavit are true and correct.

Marquita D Mangrum
Notary Public for Georgia
My Commission Expires: March 15, 2021



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BENSON

NISSAN KIA HYUNDAI

P. O. Box 8669
Spartanburg, South Carolina 29305
Nissan: (864) 585-3811
Kia: (864) 699-9090
Hyundai: (864) 541-0029

DEAL# 8136

BIR[redacted]MATION
BUYER [redacted]
CO-BUYER [redacted]
ANNIVERSARY
E-MAIL ****
1) DRIVER LIC#
2) DRIVER LIC#
South Carolina and North Carolina require names and addresses on deal to match names and addresses on driver licenses

RETAIL BUYER'S ORDER

CUST. NO. 10637
DATE 07/26/2016
WORK PHONE ([redacted]
HOME PHONE ([redacted]
SS # ☐☐☐ - ☐☐ - ☐☐☐☐
SS # ☐☐☐ - ☐☐ - ☐☐☐☐

THE UNDERSIGNED PURCHASER CARLEE ROBIN SIMMONS OR DONALD LAWRENCE SIMMONS
ADDRESS [redacted] ZIP 31301

Hereby agrees to purchase from Benson Cadillac-Nissan, Inc.: hereinafter referred to as Seller, subject to all terms, conditions and agreements contained herein, the following: ☒ NEW ☐ USED ☐ DEMONSTRATOR

YEAR	MAKE	MODEL	TYPE	CYL	SERIAL #
2016	HYUNDAI	VELOSTER	TURBO A	4	KMHTC6AE5GUZ819699

COLOR	STOCK #	MILEAGE	COUNTY	INSPECTION #	SALESMAN'S NAME
ELITE WH	HG0666	5	GIBE		ROBERT H WINECOFF

LIST PRICE OR MSRP		$ 19600	00
ADDED EQUIPMENT:			
TOTAL SALES PRICE		19600	00
TRADE IN ALLOWANCE		3500	00
DIFFERENCE		16100	00
SUB TOTAL		16100	00
S.C. SALES TAX	324 / 324A	931	00
LICENSE TITLE & REGIST.	908	36	00
CLOSING FEE	905C	225 .00 -$389	00
SECURE ETCH	905E	-$239	00
REGISTALL	905K	299	00
DENT REPAIR	905T		N/A
LIFE & A&H	807 / 809		N/A
GAP INSURANCE	807G / 809G		N/A
SERVICE PROGRAM	444 / 455		N/A
ROAD HAZARD	444R / 455R		N/A
MAINTENANCE	444G		N/A
SUB-TOTAL		17593	00
AMOUNT OWING ON TRADE-IN	300B		N/A
TOTAL AMOUNT DUE		17593	00
DEPOSIT WITH ORDER Rec'd	220A		N/A
CASH ON DELIVERY Rec'd	220A	3800	00
FACTORY REBATE	220	3750	00
UNPAID BALANCE DUE		$ 10043	00

CLOSING FEE

This fee includes complete cosmetic detail materials, administrative services, notary services, courier service, fuel, hazardous waste removal such as oil filters, oil, antifreeze, tires. This charge represents costs and/or profits to the seller/dealer for items such as inspecting, cleaning and adjusting new and used vehicles and processing documents related to the sale. This fee does not represent any payment for mechanical services which have been reimbursed to the dealer by the manufacturer.

☒ This vehicle delivered subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

Carlee Robin Simmons
Purchaser's Signature

☐ I agree to pay any difference in lien payoff.

Purchaser's Signature

REMARKS

CONTRACTUAL DISCLOSURE STATEMENT

"The information you see on the window form (Buyer's Guide) for this vehicle is part of the contact. Information on the window form overriders any contrary provision in the contract of sale."

LICENSE TAG INFORMATION: AGV:

PURCHASE NEW TAG ☒ TRANSFER ☐
1) DL# TAG #
2) DL# EXP. DATE
VALIDATION #

INSURANCE INFORMATION

POLICY # PHONE #
COMPANY CINCIATTI EFFECTIVE DATES
AGENT VERIFIED BY

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	TYPE	COLOR
2006	SAAB	9-3X	2006 SAAB	[GRAY]

CYL.	SERIAL #	STATE	COUNTY	LIC. #	MILEAGE
4	JF14GG61864H05029				123635

1ST LIEN 2ND LIEN

NAME ON TITLE:
LIENHOLDER:
ADDRESS:
AMT. (15 DAYS):
GOOD THRU:
ACCT. NO.:
VERIFIED BY:
QUOTED BY:
PHONE NO.:

As part of the purchase price, the Purchaser does hereby grant, bargain, sell and convey the above described automobile to Seller. Purchaser warrants title to and possession of said automobile to be in him, and that same is free from encumbrances, and all debts, except the pay off amounts stated above. Purchaser further warrants his good right to sell and deliver the above described automobile which is clear title - no salvage title.

DISCLAIMER OF WARRANTIES

NEW VEHICLE. All warranties on this new vehicle are those offered by the Manufacturer. The Seller hereby expressly disclaims all warranties either express or implied including any implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, and the Seller neither assumes nor authorizes any person to assume for it any liability in connection with the sale of this vehicle. This disclaimer by the Seller was a key factor in the terms of the Manufacturer's warranty. Buyer shall not be relieved hereunder from the Selling Dealer any consequential damages, damages for loss of use, loss of time, loss of profit, or income, or any other incidental damages.

Purchaser hereby acknowledges that he has read and understands the above and that Seller has made available to him prior to the purchase the factory warranty which Purchaser understands constitutes all of the warranties with respect to the sale of this vehicle.

USED VEHICLES: Unless expressly set forth herein, Purchaser hereby acknowledges that the above disclaimer will also apply to advertised vehicle. EXCEPT AS MAY BE EXPRESSED COMPLETELY IN WRITING BY THE SELLER ON SEPARATE INSTRUMENT DELIVERED TO THE PURCHASER, ALL USED VEHICLES ARE SOLD "AS IS - WITH NO WARRANTY." Purchaser hereby acknowledges that Seller has made available to him and Purchaser has read any limited warranty offered to him by separate instrument and said limited warranty constitutes all of the warranties with respect to the sale of this used vehicle and that any implied warranty that may not be waived by law is limited to the duration of said limited warranty. Purchaser understands that any new or remaining Manufacturer's warranties on used vehicles are not the responsibility of Seller.

ADDITIONAL TERMS AND CONDITIONS

This Order shall not become binding upon either the Purchaser or the Seller until the vehicle described above is physically delivered and Purchaser has received the Disclosure required under Federal Law, if applicable to the sale of a used car, and the Seller shall not be obligated to sell and finance same approved this Order and agrees to purchase a retail instalment contract between the Purchaser and the Seller based on this Order.

As a part of the New Car Pre-Delivery Procedures of Used Car Reconditioning of the Seller all body repairs in an amount not exceeding three hundred dollars ($300.00) have been made prior to the delivery of the described automobile. Purchaser waives notice concerning said repairs and accepts the automobile as delivered. Any body repairs made by the Seller exceeding $300.00 have been listed herein or in a separate disclosure statement if said repairs were made by the Seller or approved. Items in and said repairs are hereby accepted and approved by Purchaser.

The trade-in allowance shown in the Order is that amount that the Seller agrees to allow at the time the Purchaser accepts delivery and completes the Order. In the event of any disagreement over the value of the car traded in, the Seller will be liable for any more than the wholesale market value as determined by the loan value of the automobile as shown in the Black Book less the estimated cost of reconditioning same.

It is agreed and understood that the legal title to the described automobile does not pass to Purchaser until the entire purchase price is paid in full and she until the check given by the Purchaser for all or part of the payment for said automobile clears on bank on which it is drawn.

The Purchaser agrees that all provisions stated herein are part of this Order and that this Order supersedes any prior agreement and is the complete and exclusive agreement on the subject matter covered by this Order. Further Purchaser and Seller agree that no person is authorized to make any representations beyond those expressed in this Order. Verbal promises by salesmen are not valid and any promises or understandings not herein specified in writing are hereby expressly waived by the Purchaser.

The purchaser warrants that he is of majority age and further warrants that all statements made by him are true and correct, and that the Seller may accept them as being true representations of existing facts.

Purchaser has read all the provisions of this Order including the Disclaimer of Warranties. Purchaser acknowledges that he has received a true copy of this Order and that this Order has been completely filled in and signed.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Purchaser's Signature Carlee Robin Simmons ACCEPTED BY

THIS ORDER NOT VALID UNLESS ACCEPTED BY AN AUTHORIZED MANAGER OF THE COMPANY.

EXHIBIT A

Buyer Name and Address (Including County and Zip Code)	Co-Buyer Name and Address (Including County and Zip Code)	Seller-Creditor (Name and Address)
CARLEE ROBIN STIMONS [redacted]6 MACON GA 31201 CO: BIBB	DONALD LAWRENCE STIMONS [redacted] MACON GA 31201 CO: BIBB	BENSON HYUNDAI 2550 REIDVILLE RD SPARTANBURG SC 29301

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 Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New/Used	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2016	HYUNDAI VELOSTER	KMHTC6AE5GU281969	Personal, family, or household unless otherwise indicated below ☐ business ☐ agricultural ☐ N/A

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of $ 11050.00
3.09 %	$ 985.96	$ 10043.00	$ 11028.96	$ 22078.96

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
72	153.18	Monthly beginning 09/09/2016
N/A	N/A	N/A

Or As Follows: N/A

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

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

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

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

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including $ 300.00 sales tax and $ 225.00 closing fee) $ 20424.00 (1)

2 Total Downpayment =

Trade-in 2006 SAAB 9-2X (Year) (Make) (Model)

Gross Trade-In Allowance	$ 3500.00
Less Pay Off Made By Seller	$ N/A
Equals Net Trade In	$ 3500.00
+ Cash	$ 3800.00
+ Other REBATES	$ 3750.00
(If total downpayment is negative, enter "0" and see 4I below)	$ 11050.00 (2)

3 Unpaid Balance of Cash Price (1 minus 2) $ 9374.00 (3)

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

A Cost of Optional Credit Insurance Paid to Insurance Company or Companies.		
Life $ N/A		
Disability $ N/A	$ N/A	
B Vendor's Single Interest Insurance Paid to Insurance Company	$ N/A	
C Other Optional Insurance Paid to Insurance Company or Companies	$ N/A	
D Optional Gap Contract	$ N/A	
E Official Fees Paid to Government Agencies		
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
F Government Taxes Not Included in Cash Price	$ N/A	
G Government License and/or Registration Fees LIC=20.00	$ 20.00	
H Government Certificate of Title Fees	$ 18.00	
I Other Charges (Seller must identify who is paid and describe purpose)		
to N/A for Prior Credit or Lease Balance	$ N/A	
to GA DEPT OF REV for GA TAVT	$ 631.00	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
to N/A for N/A	$ N/A	
	$ 669.00	

...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 $ N/A

Credit Disability $ N/A

Insurance Company Name N/A

N/A

Home Office Address N/A

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) N/A (Term)

Premium $ N/A

Insurance Company Name N/A

N/A

Home Office Address N/A

N/A

☐ N/A (Type of Insurance) N/A (Term)

Premium $ N/A

Insurance Company Name N/A

N/A

Home Office Address N/A

N/A

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

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

X N/A (Buyer Signature) N/A (Date)

X N/A (Co-Buyer Signature) N/A (Date)

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

X N/A (Buyer Signature) N/A (Date)

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

Returned Check Charge. You agree to pay a charge of

EXHIBIT B

ELECTRONICALLY FILED - 2017 Sep 22 2:00 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

ELECTRONICALLY FILED - 2017 Sep 22 2:00 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

B Vendor's Single Interest Insurance Paid to Insurance Company		$ N/A
C Other Optional Insurance Paid to Insurance Company or Companies		$ N/A
D Optional Gap Contract		$ N/A
E Official Fees Paid to Government Agencies		
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
F Government Taxes Not Included in Cash Price		$ N/A
G Government License and/or Registration Fees LIC=20.00		$ 20.00
H Government Certificate of Title Fees		$ 18.00
I Other Charges (Seller must identify who is paid and describe purpose)		
to N/A	for Prior Credit or Lease Balance	$ N/A
to GA DEPT OF REV	for GA TAVT	$ 631.00
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
to N/A	for N/A	$ N/A
Total Other Charges and Amounts Paid to Others on Your Behalf		$ 669.00 (4)
B Amount Financed (3 + 4)		$ 10043.00 (5)

Insurance Company Name: N/A

Home Office Address: N/A

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

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

X N/A — Buyer Signature — N/A Date

X N/A — Co-Buyer Signature — N/A Date

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

X N/A — Buyer Signature — N/A Date

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

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 N/A, Year N/A. SELLER'S INITIALS N/A

Agreement to Arbitrate: By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

Buyer Signs X Carla Robin Summers — Co-Buyer Signs X David Carlton Summers

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

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

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

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

I want to buy a gap contract.

Buyer Signs X N/A

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 Carla Robin Summers Co-Buyer Signs X David Carlton Summers

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 provision on the reverse side, before signing below. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X Carla Robin Summers Date 07/26/16 Co-Buyer Signs X David Carlton Summers Date 07/26/16

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

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

Seller signs BENSON HYUNDAI Date 07/26/16 X Title

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

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

BENSON HYUNDAI

Seller By Title

FORM NO. 553-SC-ARB (07/16) U.S. PATENTED DEALER
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THE PRINTER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO CONTENT OR FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

CUSTOMER/TRUTH IN LENDING 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 (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.
   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 computed 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 charges, you will owe what is left after we subtract the refund from the charges. 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 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.

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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 computed 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.
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.

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 PROVISION
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 Provision, 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 Provision 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. You may choose the American Arbitration Association, 1633 Broadway, 10th Floor, New York, New York 10019 (www.adr.org), or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the 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 and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor 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 pay your filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of $5000, unless the law or the rules of the chosen arbitration organization require us to pay more. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. 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 Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et. seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.
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, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual injunctive relief. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, 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 Provision shall be unenforceable.

ELECTRONICALLY FILED - 2017 Sep 22 2:00 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

ELECTRONICALLY FILED - 2017 Sep 25 1:54 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	FOR THE 7TH JUDICIAL CIRCUIT
	)	
Donald and Carlee Simmons,	)	C.A. No. 2017-CP-42-02072
	)	
Plaintiffs,	)	
vs.	)	AFFIDAVIT OF DARYL TURNER
	)	
Benson Hyundai, LLC,	)	
	)	
Defendant.	)	

1. My name is Daryl Turner. I am a Salesman at Benson Hyundai.

2. Mr. and Mrs. Simmons arrived at the dealership at 7 p.m. to begin their car buying process.

3. They changed their minds several times regarding the car they wanted to purchase and with each change, negotiated the monthly payment.

4. Mr. and Mrs. Simmons never indicated that it was too late in the evening for them to understand the negotiation process or any paperwork that they signed.

THE AFFIANT FURTHER SAYETH NOT.

Daryl Turner

AFFIRMED THIS

26 day of SEPT, 2017.

Notary Public for S.C

My Commission Expires: 10-17-21

ELECTRONICALLY FILED - 2017 Sep 25 1:54 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	FOR THE 7TH JUDICIAL CIRCUIT
Donald and Carlee Simmons,	C.A. No. 2017-CP-42-02072
Plaintiffs,	
vs.	**AFFIDAVIT OF NATE BURDEN**
Benson Hyundai, LLC,	
Defendant.	

1. My name is Nate Burden. I am the New Car Sales Manager at Benson Hyundai.

2. The Plaintiffs were not pressured to purchase a car the day that they came to the dealership.

3. The incentive that was available for their vehicle would have been available until the end of the month and I would not have told them that the incentive ended at midnight on Monday, July 26, 2016.

THE AFFIANT FURTHER SAYETH NOT.

Nate Burden

AFFIRMED THIS

25 day of Sept, 2017.

Notary Public for South Carolina
My Commission Expires: 10-17-21

ELECTRONICALLY FILED - 2017 Sep 25 1:54 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF SPARTANBURG	)	**FOR THE 7TH JUDICIAL CIRCUIT**
	)	
Donald and Carlee Simmons,	)	C.A. No. 2017-CP-42-02072
	)	
Plaintiffs,	)	
vs.	)	**SUPPLEMENTAL AFFIDAVIT OF BRIAN PERRY**
	)	
Benson Hyundai, LLC,	)	
	)	
Defendant.	)	
	)	

1. My name is Brian Perry. I am a Finance and Insurance Manager at Benson Hyundai.

2. Plaintiffs agreed to purchase the Veloster for $26,691 and Mrs. Simmons actually signed the work order. (Exhibit A) This was the dealership's invoice amount and already below the MSRP of $27,920. Due to a clerical error, the final paperwork reflected the price as $19,600, an error in the Simmons' favor in the amount of $7,091. (Exhibit B) Despite this error, we agreed to honor the $7,000 lower price, which meant we were selling a brand new car for less than what we were paying for it.

3. Carlee Simmons signed the Retail Buyer's Order which states, in part:

> . . . In the case of a credit sale the seller should not be obligated to sell until a finance source approved this Order and agrees to purchase a retail installment contract between the Purchaser and the Seller based on this Order.

4. Carlee Simmons also signed under the following statement:

> The vehicle delivered is subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

5. The Simmons did not disclose that Donald Simmons had been through a bankruptcy and his credit was blocked.

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6. Hyundai Finance declined the financing for Mr. and Mrs. Simmons and sent more than one notice to them regarding this adverse action. Mr. and Mrs. Simmons were aware that any checks made out to Hyundai Finance would not be accepted.

7. I have reviewed the Affidavit of Donald Simmons. Mr. Simmons' allegation in Paragraph 8 is untrue. I never told Mr. and Mrs. Simmons that the Arbitration Agreement applied only to service work. The Arbitration Agreement clearly states that it applies to all disputes arising out of Customer's Credit Application, purchase, or financing contract.

8. Mr. and Mrs. Signed directly below the following statement:

I AGREE TO ARBITRATE ANY DISPUTES AND UNDERSTAND THAT I AM GIVING UP MY RIGHT TO A JURY AND TO PARTICIPATE IN A CLASS OR GROUP ACTION.

THE AFFIANT FURTHER SAYETH NOT.

Brian Perry

AFFIRMED THIS

25 day of Sept, 2017.

Notary Public for S.C
My Commission Expires: 10-17-21

ELECTRONICALLY FILED - 2017 Sep 25 1:54 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

7/26/2016 Worksheet

2550 Reidville Road
Spartanburg, SC 29301
Phone: (864) 541-0029

BIRTHDAY INFORMATION
BUYER [redacted]
CO-BUYER [redacted]
ANNIVERSARY
E-MAIL
1) DRIVER LIC#
2) DRIVER LIC#

RETAIL BUYER'S ORDER

CUST. NO
DATE 07/26/2016
WORK PHONE [redacted]
HOME PHONE [redacted]

South Carolina and North Carolina require names and addresses on deal to match names and addresses on driver's licenses.

THE UNDERSIGNED PURCHASER CARLEE ROBIN SIMMONS DONALD LAWRENCE SIMMONS
ADDRESS [redacted] ZIP 31201
Hereby agrees to purchase from Inc.: hereinafter referred to as Seller, subject to all terms, conditions, and agreements contained herein, the following: ☑ NEW ☐ USED ☐ DEMONSTRATOR

YEAR	MAKE	MODEL	TYPE	CYL	SERIAL#
2016	Hyundai	Veloster	Turbo (A7) 3dr		KMHTC6AE5GU281969

COLOR	STOCK #	MILEAGE	COUNTY	INSPECTION #	SALESMAN'S NAME
ELITE WHITE	H60666	5	MA		Robert Winecoff

LIST PRICE OR MSRP		26,691	00
ADDED EQUIPMENT			
TOTAL SALES PRICE		26,691	00
TRADE IN ALLOWANCE		3,500	00
DIFFERENCE		23,191	00
SUB TOTAL		23,191	00
SALES TAX	324 / 324A	1,376	62
LICENSE TITLE & REGIST.	906	39	00
CLOSING FEE	905C	225	00
SECURE ETCH	905E		
RESISTALL	905K		
ROAD HAZARD	444R / 455R		
LIFE & A&H	807 / 809		
GAP INSURANCE	807G / 809G		
SERVICE PROGRAM	444 / 455		
SUB-TOTAL		24,831	62
AMOUNT OWING ON TRADE-IN	300B		
TOTAL AMOUNT DUE		24,831	62
DEPOSIT WITH ORDER REC#	220A		
CASH ON DELIVERY REC#	220A	3,800	00
FACTORY REBATE	220C / 220N	3,750	00
UNPAID BALANCE DUE		17,281	62

CLOSING FEE
This fee includes complete cosmetic detail materials, administrative services, notary services, courier service, fuel, hazardous waste removal such as oil filters, oil, antifreeze, tires. This charge represents costs and/or profit to the seller/dealer for items such such as inspecting, cleaning and adjusting new and used vehicles and preparing documents related to the sale. This fee does not represent any payment for mechanical services which have been reimbursed to the dealer by the manufacturer.

☐ The vehicle delivered is subject to credit approval by financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

Carlee Simmons
Purchaser's Signature

☐ I agree to pay any difference in option payoff.

Carlee Simmons
Purchaser's Signature

REMARKS

CONTRACTUAL DISCLOSURE STATEMENT
"The information you see on the window form (Buyer's Guide) for this vehicle is part of the contact. Information on the window form overriders any contrary provision in the contract of sale."

LICENSE TAG INFORMATION: ACV: $ 0.00

PURCHASE NEW TAG ☐	TRANSFER ☐
1) DL#	TAG #
2) DL#	EXP. DATE
	VALIDATION #

INSURANCE INFORMATION

POLICY #	PHONE # 0
COMPANY	EFFECTIVE DATES
AGENT	VERIFIED BY

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	TYPE	COLOR
2006	Saab	9-2X	2.5i 4dr All	[Gray] Sati

CYL	SERIAL#															
	J	F	4	G	G	6	1	6	4	6	H	0	5	0	0	2	9

STATE	COUNTY	LIC.#	MILEAGE
			123635

1ST LIEN 2ND LIEN

NAME ON TITLE: CARLEE ROBIN SIMMONS
LIENHOLDER:
ADDRESS:
AMT. (15 DAYS):
GOOD THRU:
ACCT. NO.:
VERIFIED BY:
QUOTED BY:
PHONE NO:

As part of the purchase price, the Purchaser does hereby grant, bargain, sell and convey the above described automobile to Seller. Purchaser warrants title to and possession of said automobile to be in him, and that same is free from encumbrances, and all debts, except the pay-off amounts stated above. Purchaser further warrants his good right to sell and deliver the above described automobile with clear title - no salvage title.

DISCLAIMER OF WARRANTIES

NEW VEHICLE: All warranties on this new vehicle are those offered by the Manufacturer. The Seller hereby expressly disclaims all warranties either express or implied including any implied warranty or MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, and the Seller neither assumes nor authorizes any person to assume for it any liability in connection with the sale of the vehicle. This disclaimer by the Seller in no way affects the terms of the Manufacturer's warranty. Buyer shall not be entitled to recover from the Selling Dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or any other incidental damages.

Purchaser hereby acknowledges that he has read and understands the above and that Seller has made available to him prior to the purchase the factory warranty which Purchaser understands constitutes all of the warranties with respect to the sale of the vehicle.

USED VEHICLE: In the event that the vehicle being purchased is a used vehicle, Purchaser hereby acknowledges that the above disclaimer will also apply to said used vehicle, EXCEPT AS MAY BE EXPRESSED COMPLETELY IN WRITING BY THE DEALER ON SEPARATE INSTRUMENT DELIVERED TO THE PURCHASER. ALL USED VEHICLES ARE SOLD "AS IS - WITH NO WARRANTY". Purchaser hereby acknowledges that Seller has made available to him and Purchaser has read any limited warranty delivered to him by separate instrument and said limited warranty constitutes all of the warranties with respect to the sale of this used vehicle and that any implied warranty that may not be waived by law is limited to the duration of said limited warranty. Purchaser understands that any new or remaining Manufacturer's warranties on used vehicles are not the responsibility of Seller.

ADDITIONAL TERMS AND CONDITIONS

This order shall not binding upon either the Purchaser or the Seller until the vehicle described above is physically delivered and Purchaser has received the Disclosure required under Federal Law, if applicable, in the case of a credit sale the seller should not be obligated to sell until a finance source approves this Order and agrees to purchase a retail installment contract between the Purchaser and the Seller based on this Order.

As a part of the New Car Pre-Delivery Procedures or Used Car Reconditioning of the Seller all body repairs in an amount not exceeding three hundred dollars ($300.00) have been made prior to the delivery of the described automobile. Purchaser waives notice concerning said repairs and accepts the automobile as delivered. Any body repairs made by the Seller exceeding $300.00 have been set out herein or in a separate disclosure statement if said repairs were made by the Seller or were made known to and said repairs are hereby accepted and approved by Purchaser.

The trade-in allowance shown in the Order is that amount that the Seller agrees to allow at the time the Purchaser accepts delivery and completes the Order. In the event of any disagreement over the value of the car tradedin, the Seller will not be liable for any more than the wholesale market value as determined by the loan value of the automobile as shown in the Black Book less the estimated cost of reconditioning same.

It is agreed that the legal title to the described automobile does not pass to Purchaser until the entire purchase price is paid in full and also until the check given by the Purchaser for all or part of the payment for said automobile clears the bank on which it is drawn.

The Purchaser agrees that all provisions stated hereon are part of this Order and that this Order supersedes any prior agreement and is the complete and exclusive agreement on the subject matters covered by this Order. Further Purchaser and Seller agree that no person is authorized to make any representations beyond those expressed in this Order. Verbal promises by salesman regarding trade and any promises or understandings not herein specified in writing are hereby expressly waived by the Purchaser.

The purchaser warrants that he is of majority age and further warrants that all statements made by him are true and correct, and that the Seller may accept them as being true representations of existing facts.

Purchaser has read all provisions of this Order including the Disclaimer of Warranties. Purchaser acknowledges that he has received a true copy of this Order and that the Order has been completely filled in and signed.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Purchaser's Signature [redacted] ACCEPTED BY [redacted]

ELECTRONICALLY FILED - 2017 Sep 25 1:54 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP420272

BENSON

NISSAN KIA HYUNDAI

P. O. Box 8669
Spartanburg, South Carolina 29305
Nissan: (864) 585-3611
Kia: (864) 699-9090
Hyundai: (864) 541-0029

BIRTHDAY INFORMATION
BUYER [redacted]
CO-BUYER [redacted]
ANNIVERSARY

E-MAIL ****
1) DRIVER LIC#
2) DRIVER LIC#

South Carolina and North Carolina require names and addresses on deal to match names and addresses on driver licenses

RETAIL BUYER'S ORDER

CUST. NO. 10637
DATE 07/26/2016
WORK PHONE [redacted]
HOME PHONE [redacted]
SS # ☐☐☐ - ☐☐ - ☐☐☐☐
SS # ☐☐☐ - ☐☐ - ☐☐☐☐

DEAL# 8136
THE UNDERSIGNED PURCHASER CARLEE ROBIN SIMMONS OR DONALD LAWRENCE SIMMONS
ADDRESS [redacted] ZIP 31201

Hereby agrees to purchase from Benson Cadillac-Nissan, Inc.: hereinafter referred to as Seller, subject to all terms, conditions and agreements contained herein, the following: ☒ NEW ☐ USED ☐ DEMONSTRATOR

YEAR	MAKE	MODEL	TYPE	CYL	SERIAL #
2016	HYUNDAI	VELOSTER	TURBO A	4	KMHTC6AE5GU281969

COLOR	STOCK #	MILEAGE	COUNTY	INSPECTION #	SALESMAN'S NAME
ELITE WH	H60666	5	BIBB		ROBERT M WINECOFF

LIST PRICE OR MSRP		$ 19600.00
ADDED EQUIPMENT:		
TOTAL SALES PRICE		19500.00
TRADE IN ALLOWANCE		3500.00
DIFFERENCE		16100.00
SUB TOTAL		16100.00
S.C. SALES TAX	324 / 324A	931.00
LICENSE TITLE & REGIST.	908	38.00
CLOSING FEE	905C	225.00
SECURE ETCH	905E	XXXX
RESISTALL	905K	299.00
DENT REPAIR	905T	N/A
LIFE & A&H	807 / 809	N/A
GAP INSURANCE	807G / 809G	N/A
SERVICE PROGRAM	444 / 455	N/A
ROAD HAZARD	444R / 455R	N/A
MAINTENANCE	444G	N/A
SUB-TOTAL		17593.00
AMOUNT OWING ON TRADE-IN	300B	N/A
TOTAL AMOUNT DUE		17593.00
DEPOSIT WITH ORDER Rec#	220A	N/A
CASH ON DELIVERY Rec#	220A	3800.00
FACTORY REBATE	220	3750.00
UNPAID BALANCE DUE		$ 10043.00

CLOSING FEE

This fee includes complete cosmetic detail materials, administrative services, notary services, courier service, fuel, hazardous waste removal such as oil filters, oil, antifreeze, tires. This charge represents costs and/or profit to the seller/dealer for items such as inspecting, cleaning and adjusting new and used vehicles and preparing documents related to the sale. This fee does not represent any payment for mechanical services which have been reimbursed to the dealer by the manufacturer.

☒ This vehicle delivered subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

Carlee Robin Simmons
Purchaser's Signature

☐ I agree to pay any difference in lien payoff.

Purchaser's Signature

REMARKS

CONTRACTUAL DISCLOSURE STATEMENT

"The information you see on the window form (Buyer's Guide) for this vehicle is part of the contact. Information on the window form overriders any contrary provision in the contract of sale."

LICENSE TAG INFORMATION: ACV:

PURCHASE NEW TAG ☒ TRANSFER ☐
1) DL# TAG #
2) DL# EXP. DATE
VALIDATION #

INSURANCE INFORMATION

POLICY # PHONE #
COMPANY CINCIATTI EFFECTIVE DATES
AGENT VERIFIED BY

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	TYPE	COLOR
2006	SAAB	9-2X	2006 SAAB	[GRAY]

CYL	SERIAL #	STATE	COUNTY	LIC. #	MILEAGE
4	JF4GG61646H050029				123635

1ST LIEN 2ND LIEN

NAME ON TITLE:
LIENHOLDER:
ADDRESS:
AMT. (15 DAYS):
GOOD THRU:
ACCT. NO.:
VERIFIED BY:
QUOTED BY:
PHONE NO.:

As part of the purchase price, the Purchaser does hereby grant, bargain, sell and convey the above described automobile to Seller. Purchaser warrants title to and possession of said automobile to be in him and that same is free from encumbrances, and all debts, except the pay-off amounts stated above. Purchaser further warrants his good right to sell and deliver the above described automobile with clear title - no salvage title.

DISCLAIMER OF WARRANTIES

NEW VEHICLE. All warranties on this new vehicle are those offered by the Manufacturer. The Seller hereby expressly disclaims all warranties either express or implied including any implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, and the Seller neither assumes nor authorizes any person to assume for it any liability in connection with the sale of the vehicle. This disclaimer by the Seller in no way affects the terms of the Manufacturer's warranty. Buyer shall not be entitled

Ex. B

ELECTRONICALLY FILED - 2017 Sep 25 1:54 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

ADDED EQUIPMENT:			
TOTAL SALES PRICE		19600	00
TRADE IN ALLOWANCE		3500	00
DIFFERENCE		16100	00
SUB TOTAL		16100	00
S.C. SALES TAX	324 / 324A	931	00
LICENSE TITLE & REGIST.	606	38	00
CLOSING FEE	905C	225.00	XX
SECURE ETCH	906E	XXXX	XX
RESISTALL	905K	299	00
DENT REPAIR	905T	N/A	
LIFE & A&H	607 / 609	N/A	
GAP INSURANCE	607G / 609G	N/A	
SERVICE PROGRAM	444 / 455	N/A	
ROAD HAZARD	444R / 455R	N/A	
MAINTENANCE	444G	N/A	
SUB-TOTAL		17593	00
AMOUNT OWING ON TRADE-IN	300B	N/A	
TOTAL AMOUNT DUE		17593	00
DEPOSIT WITH ORDER Rec#	220A	N/A	
CASH ON DELIVERY Rec#	220A	3800	00
FACTORY REBATE	220	3750	00
UNPAID BALANCE DUE		$ 10043	00

CLOSING FEE

This fee includes complete cosmetic detail materials, administrative services, notary services, courier service, fuel, hazardous waste removal such as oil filters, oil, antifreeze, tires. This charge represents costs and/or profit to the seller/dealer for items such as inspecting, cleaning and adjusting new and used vehicles and preparing documents related to the sale. This fee does not represent any payment for mechanical services which have been reimbursed to the dealer by the manufacturer.

[XX] This vehicle delivered subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

Carlee Robin Simmons

Purchaser's Signature

[ ] I agree to pay any difference in lien payoff.

Purchaser's Signature

CONTRACTUAL DISCLOSURE STATEMENT

"The information you see on the window form (Buyer's Guide) for this vehicle is part of the contact. Information on the window form overriders any contrary provision in the contract of sale."

LICENSE TAG INFORMATION: ACV:

PURCHASE NEW TAG [XX] TRANSFER [ ]

1) DL# TAG #

2) DL# EXP. DATE

VALIDATION #

INSURANCE INFORMATION

POLICY # PHONE #

COMPANY CINCIATTI EFFECTIVE DATES

AGENT VERIFIED BY

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	TYPE	COLOR
2006	SAAB	9-2X	2006 SAAB	(GRAY)

CYL 4 SERIAL # JF4GG61646H050029

STATE COUNTY LIC. # MILEAGE 123635

1ST LIEN 2ND LIEN

NAME ON TITLE:

LIENHOLDER:

ADDRESS:

AMT. (15 DAYS):

GOOD THRU:

ACCT. NO.:

VERIFIED BY:

QUOTED BY:

PHONE NO.:

As part of the purchase price, the Purchaser does hereby grant, bargain, sell and convey the above-described automobile to Seller. Purchaser warrants title to and possession of said automobile to be in him, and that same is free from encumbrances, and all debts, except the pay-off amounts stated above. Purchaser further warrants his good right to sell and deliver the above described automobile with clear title - no salvage title.

DISCLAIMER OF WARRANTIES

NEW VEHICLE. All warranties on this new vehicle are those offered by the Manufacturer. The Seller hereby expressly disclaims all warranties either express or implied including any implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, and the Seller neither assumes nor authorizes any person to assume for it any liability in connection with the sale of the vehicle. The disclaimer by the Seller in no way affects the terms of the Manufacturer's warranty. Buyer shall not be entitled to recover from the Selling Dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.

Purchaser hereby acknowledges that he has read and understands the above and that Seller has made available to him prior to the purchase the factory warranty which Purchaser understands constitutes all of the warranties with respect to the sale of this vehicle.

USED VEHICLES: in the event that the vehicle being purchased is a used vehicle, Purchaser hereby acknowledges that the above disclaimer will also apply to said used vehicle. EXCEPT AS MAY BE EXPRESSED COMPLETELY IN WRITING BY THE SELLER ON SEPARATE INSTRUMENT DELIVERED TO THE PURCHASER, ALL USED VEHICLES ARE SOLD "AS IS - WITH NO WARRANTY." Purchaser hereby acknowledges that Seller has made available to him and Purchaser has read any limited warranty delivered to him by separate instrument and said limited warranty constitutes all of the warranties with respect to the sale of this used vehicle and that any implied warranty that may not be waived by law is limited to the duration of said limited warranty. Purchaser understands that any new or remaining Manufacturer's warranties on used vehicles are not the responsibility of Seller.

ADDITIONAL TERMS AND CONDITIONS

This Order shall not become binding upon either the Purchaser or the Seller until the vehicle described above is physically delivered and Purchaser has received the Disclosure required under Federal Law, if applicable. In the case of a credit sale, the Seller shall not be obligated to sell until a finance source approves this Order and agrees to purchase a retail installment contact between the Purchaser and the Seller based on this Order.

As a part of the New Car Pre-Delivery Procedures or Used Car Reconditioning of the Seller all body repairs in an amount not exceeding three hundred dollars ($300.00) have been made prior to the delivery of the described automobile. Purchaser waives notice concerning said repairs and accepts the automobile as delivered. Any body repairs made by the Seller exceeding $300.00 have been set out herein or in a separate disclosure statement if said repairs were made by the Seller or were made known to and said repairs are hereby accepted and approved by Purchaser.

The trade-in allowance shown in the Order is that amount that the Seller agrees to allow at the time the Purchaser accepts delivery and completes the Order. In the event of any disagreement over the value of the car traded-in, the Seller will not be liable for any more than the wholesale market value as determined by the loan value of the automobile as shown in the Black Book less the estimated cost of reconditioning same.

It is agreed and understood that the legal title to the described automobile does not pass to Purchaser until the entire purchase price is paid in full and also until the check given by the Purchaser for all or part of the payment for said automobile clears the bank on which it is drawn.

The Purchaser agrees that all provisions stated hereon are part of this Order and that this Order supersedes any prior agreement and is the complete and exclusive agreement on the subject matters covered by this Order. Further Purchaser and Seller agree that no person is authorized to make any representations beyond those expressed in this Order. Verbal promises by salesmen are not valid and any promises or understandings not herein specified in writing are hereby expressly waived by the Purchaser.

The purchaser warrants that he is of majority age and further warrants that all statements made by him are true and correct, and that the Seller may accept them as being true representations of existing facts.

Purchaser has read all the provisions of this Order including the Disclaimer of Warranties. Purchaser acknowledges that he has received a true copy of this Order and that the Order has been completely filled in and signed.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Purchaser's Signature Carlee Robin Simmons ACCEPTED BY _____ DATE _____

THIS ORDER NOT VALID UNLESS ACCEPTED BY AN AUTHORIZED MANAGEMENT OF THE COMPANY.

ELECTRONICALLY FILED - 2017 Sep 27 3:05 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Case No. 2017-CP-42-02072
Donald and Carlee Simmons	)	
	)	
Plaintiffs,	)	AMENDED AFFIDAVIT OF
	)	DONALD LAWRENCE SIMMONS
v.	)	
	)	
Benson Hyundai, LLC	)	
	)	
Defendant.	)	

PERSONALLY APPEARED before me, Donald Lawrence Simmons, who states and deposes as follows:

1. I am one of the Plaintiffs in this matter, I am over 18 years of age, and I am personally familiar with the matters alleged below.

2. On or about July 26, 2016, my wife and I went to the Defendant's business to purchase a Hyundai Veloster. The sales price and credits are set forth on Exhibit A (Retail Buyer's Order) and Exhibit B (Sales/Financing Agreement).

3. My wife and I made a substantial down payment, including a trade-in of my Saab, and a direct debit from our bank account, all of which are still in Benson's possession. We have made payments every month to Hyundai's finance company through Benson Hyundai.

4. On the night of the sale, it was nearly midnight when we were finally given the closing documents and left to drive home to Macon, Georgia. My wife did not get any sleep at all that night and went to work the next morning.

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5. The closing documents were given to us to sign in a hurried fashion. The figures looked correct, but the different arbitration clauses were detailed and used legal language we did not understand. We were under pressure to sign documents because we had been told by Benson's manager, Nate Burden, that a substantial rebate from Hyundai for several thousand dollars was good for that night only and that if we didn't complete the sale, the rebate would expire.

6. We did not have time to consult with a lawyer at that late hour. Neither of us has any legal training.

7. Finance and Insurance Manager Brian Perry handled our questions in a strange way. For example, my wife and I asked questions about why Carlee's name was listed as a buyer when the car was to be bought by me. Mr. Perry would not answer them directly, just saying that it didn't make any difference.

8. I also asked Mr. Perry about the arbitration clause. Mr. Perry explained that it only applied to service work. He said that if someone wanted to sue for service-related issues like a dispute over an oil change or if a car had not been vacuumed, only then would this arbitration clause apply.

9. When we asked other questions about the transaction, Mr. Perry would frequently avoid the question, saying things like, "It's all the same" or "It doesn't make any difference" and act as if the question were irrelevant. Then he would steer the conversation to family matters or make other small talk.

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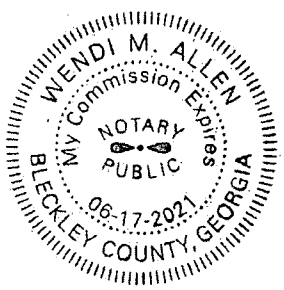
10. Neither my wife nor I know what the Federal Rules of Civil Procedure are or had read the AAA Consumer Arbitration Rules. Beyond Mr. Perry's statement that the arbitration referred to minor service work, there was no explanation of the arbitration. We did not stay in his office 40 minutes.

11. The last document signed was the Sales/Financing Agreement, which F&I Manager Perry folded it, put the document into an envelope, and said, "Here are all of your papaers. Let's run your card (for the down payment) and get you out of here."

Donald Lawrence Simmons

Sworn to and subscribed before me
this 27th day of September, 2017
personally appeared Donald Lawrence Simmons
known to me to be that person and
who stated that he/she executed
the same under penalty of perjury
and that the statements in this
affidavit are true and correct.

Wendi M Allen
Notary Public for Georgia
My Commission Expires:



ELECTRONICALLY FILED - 2017 Sep 28 4:29 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP420272

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF SPARTANBURG	)	**FOR THE 7TH JUDICIAL CIRCUIT**
	)	
Donald and Carlee Simmons,	)	C.A. No. 2017-CP-42-02072
	)	
Plaintiffs,	)	
vs.	)	**DEFENDANT'S REPLY IN SUPPORT OF MOTION TO STAY AND COMPEL ARBITRATION**
	)	
Benson Hyundai, LLC,	)	
	)	
Defendant.	)	
	)	

There is no dispute that the parties agreed to arbitrate any disputes between them. There are no inconsistent provisions because the Retail Installment Sales Contract states that it is not to be read with other documents unless they are considered to be written modifications to that document. Either the stand-alone Arbitration Agreement is such a modification or the provisions of the Retail Installment Sales Contract control.

The South Carolina Court of Appeals has recognized that language that a contract can be modified by another contract negates the existence of any inconsistent terms. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 48, 749 S.E.2d 139, 148 (S.C. Ct. App. 2013). In the present case the Retail Installment Sales Contract states that it can be modified by another written agreement and the subsequently signed Arbitration Agreement should be treated as a modification of the previously documents. See *U.S. Bank Trustee Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009) (stating a contract can be modified by another contract that includes a meeting of the minds on essential terms). Brian Perry has closed thousands of car sales and it is his practice to have the stand-alone Arbitration Agreement signed last. Mr. Perry stated in his Affidavit that the Arbitration Agreement was signed after the Buyers Order and the Retail Installment Sales Contract.

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If the Court determines that the Retail Installment Sales Contract was signed last and that there is no written modification, then the arbitration provisions in that document will control. In either case, the parties have evidenced a clear intent to arbitrate any disputes and this Court should compel arbitration.

Finally, there are no conflicting terms because the conditions precedent to the Retail Buyer's Order and Retail Installment Sales Contract were not met. Carlee Simmons signed the Retail Buyer's Order which states, in part:

> . . . In the case of a credit sale the seller should not be obligated to sell until a finance source approved this Order and agrees to purchase a retail installment contract between the Purchaser and the Seller based on this Order.
>
> Carlee Simmons also signed under the following statement:
>
> The vehicle delivered is subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

The Plaintiffs' credit was declined by Hyundai Finance, therefore the condition precedent was not met for the Buyers' Order or the Retail Installment Sales Contract. There are no inconsistent terms because these contracts drop out, leaving only the stand-alone Arbitration Agreement. The stand-alone Agreement remains enforceable because the consideration is the forbearance of the right to a jury trial.

Respectfully submitted,

s/Bradford N. Martin
Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
BRADFORD NEAL MARTIN & ASSOCIATES, P.A.
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ATTORNEYS FOR BENSON HYUNDAI

September 28, 2017

ELECTRONICALLY FILED - 2018 May 04 2:58 PM - SPARTANBURG - COMMON PLEAS - CASE#2017CP4202072

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
Case No. 2017-CP-42-02072

Donald and Carlee Summons,

Plaintiffs,

vs.

Benson Hyundai, LLC,

Defendant.

MOTION TO ALTER OR AMEND

TO: PLAINTIFFS AND THEIR ATTORNEY, E. WARREN MOISE, ESQ.:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Defendant, Benson Hyundai, LLC, will move before the Honorable J. Derham Cole at such time and place as Judge Cole may designate, pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, to reconsider, alter, or amend his Order filed April 30, 2018, denying Defendant's Motion to Stay and Compel Arbitration.

INTRODUCTION

Plaintiffs came to Benson Hyundai at 7 p.m. to purchase a vehicle. They changed their minds several times about the car they wanted, and Benson's employees stayed quite late to help them. They are educated customers, both employed with Middle Georgia State University, one as a professor. After finally selecting the new car they wished to purchase, Mrs. Simmons agreed on a purchase price of $26,691 and signed the Buyer's Order.

A later clerical error was made by Mr. Perry when he mistakenly entered the purchase price of another deal, a $7,000 mistake in Plaintiffs' favor. Instead of pointing out the mistake, Plaintiffs signed the final paperwork for the lower price. Carlee Simmons signed under the following statement in the Buyers Order:

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> The vehicle delivered is subject to credit approval by Financial source and I authorize an investigation of my credit and employment history and the release of information about my credit experience.

The Buyer's Order further provided:

> In the case of a credit sale, the Seller shall not be obligated to sell until a finance source approves this Order and agrees to purchase a retail installment contract between the Purchaser and the Seller based on this Order.

Plaintiffs then requested Benson to see if they could get them approved for a loan and signed a Retail Installment Sales Contract (RISC), which was for the purpose of financing the new car. However, Benson never signed the RISC. The RISC provided that it could be modified in writing, signed by both parties. Plaintiffs took over 40 minutes to read the documents before signing.

Plaintiffs were allowed to use the new car under an agreement conditioned upon approval for financing. A condition precedent entails something that is essential to a right of action, as opposed to a condition subsequent, which is something relied upon to modify or defeat the action. 4 S.C.Juris. Actions, § 25 (1991); *see also Ballenger Corp. v. City of Columbia*, 286 S.C. 1, 331 S.E.2d 365 (Ct.App.1985); *Travelers Indem. Co. v. Dees*, 235 F.Supp. 515 (1964).

The RISC was not signed by Benson because the parties agreed that it did not constitute a binding agreement unless a third-party lender agreed to approve the loan as set forth in the RISC. Hyundai Financing denied financing to the Plaintiffs; therefore, Benson did not sign it. Neither the RISC, nor the arbitration clause it contained were ever agreed to by Benson.

There is no dispute that both the Plaintiffs and Benson signed a document entitled "Benson Arbitration Policies and Procedures," (the stand-alone Agreement) which stated, in italicized, capital letters on a 11 x 17 sheet of paper:

> *I AGREE TO ARBITRATE ANY DISPUTES AND UNDERSTAND THAT I AM GIVING UP MY RIGHT TO A JURY AND TO PARTICIPATE IN A CLASS OR GROUP ACTION.*

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The stand-alone Agreement provides the rules for arbitration, either in the document itself or by reference to the rules and clearly provides which rules will apply in case of any conflicts. "[P]arties are generally free to structure their arbitration agreements as they see fit . . . . [S]o too may they specify by contract the rules under which that arbitration will be conducted." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989). Arbitration agreements are not unconscionable because of unknown costs, fees, and procedures. *Sydnor v. Conseco Fin. Serv. Corp.*, 252 F.3d 302 (4th Cir. 2001).

Benson allowed the couple to drive the new car home to Macon, Georgia. The Simmons agreed in writing that they would return the car if financing was not approved. Following the contingent sale, Benson discovered the $7,000 clerical error in the Plaintiffs' favor, and asked Plaintiffs to acknowledge. They refused, so Benson agreed to honor the lower price. However, Hyundai Financing later denied financing to the Plaintiffs. The Simmons have not returned the car which has been in their possession since July 26, 2016, almost 2 years. Benson respectfully requests reconsideration upon the following grounds:

UNDISPUTED FACTS

1. Plaintiffs are educated customers who can read and understand the English language.
2. Plaintiffs agreed that the sale of the new car and any financing associated with the sale were contingent upon a third-party lender agreeing to purchase a retail installment contract based upon the Buyers Order.
3. Plaintiffs and Benson both signed the stand-alone arbitration Agreement and agreed to arbitrate any disputes between them.
4. The stand-alone Agreement can only be changed by a writing signed by the Plaintiffs and an executive officer of Benson.
5. The stand-alone Agreement provides the applicable rules for arbitration and explains which will apply in the case of any conflicts.
6. Hyundai Financing declined to finance the new car.
7. Benson did not sign the RISC as it was never entered into by the parties.

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STRONG PRESUMPTION IN FAVOR OF ARBITRATION

1. The Court's Order overlooks the fact that there is a strong and heavy presumption in favor of the validity of arbitration agreements because both federal and state policy favor them. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 111 S.Ct. 1647 (1991); *Carolina Care Plan, Inc. v. United Healthcare Servs., Inc.*, 361 S.C. 544, 606 S.E.2d 752 (2004).

THE FAA PREEMPTS STATE LAW

2. The sale of automobiles is considered commerce sufficient for the FAA to apply. *See Saturn Distribution Corp. v. Williams*, 905 F.2d 719 (4th Cir. 1990). The Court's Order overlooks the fact that the FAA preempts state law rules and holdings that invalidate the parties' agreement to arbitrate. *See AT&T Mobility v. Concepcion*, 563 U.S. 333, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011).

THE ARBITRATOR DETERMINES THE PROCEDURE TO BE FOLLOWED

3. The Court's Order overlooks the fact that when the question is not whether the parties agreed to arbitrate a matter but what kind of arbitration proceedings the parties agreed to, it is a matter of contract interpretation for the arbitrator to decide. *See Green Tree Financial Corp. v. Bazzle, et al.*, 539 U.S. 444, 452-453 (2003). There is no dispute that the parties evidenced an intent to resolve any disputes between them by arbitration and not in court.

4. "There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989).

5. The Court's Order overlooks the fact that parties may "specify by contract the rules under which that arbitration will be conducted." *Id.* at 479.

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THERE CLEARLY WAS A MEETING OF THE MINDS UNDER SOUTH CAROLINA LAW

6. The Court erred in finding there was no meeting of the minds as to arbitration. The stand-alone Agreement provides all the essential and material terms of the agreement. The Court's finding would render every contract that it is subject to the rules of a particular jurisdiction unenforceable for a lack of a meeting of the minds since the purchaser would not necessarily know the rules of the jurisdiction.

7. The only arbitration document signed by both parties was the stand-alone Arbitration Agreement. Therefore, no inconsistencies exist and the stand-alone Agreement controls even if the Court determines the RISC was signed later by the Plaintiffs.

8. Plaintiffs claim the RISC was the last signed document. It is undisputed that the RISC was never signed by Benson, so it cannot be a valid modification of the stand-alone Arbitration Agreement which requires:

> 24. . . [the Agreement] can be changed only in writing signed by the individual and an executive officer of Benson.[1]

This issue was addressed in *Brewer v. Stokes Kia, Isuzu, Subaru, Inc.*, 364 S.C. 444, 613 S.E.2d 802 (Ct. App. 2005). Although Brewer signed the installment contract, it was never signed by Stokes Kia. The South Carolina Court of Appeals found that because the document

---

[1]Even if the Court finds that the RISC was signed by both parties, then a dispute exists as to the last signed contract. Both the RISC and Benson's Arbitration Policies and Procedures state that they can be modified by another signed writing. The Court's Order errs in ignoring South Carolina law directly on point (*York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 83, 84, 749 S.E.2d 139, 147 (Ct. App. 2013)), and relies instead upon Florida, New Jersey, and Tenth Circuit cases to find that there was no meeting of the minds as to arbitration. *Dodgeland* makes it clear that:

> "if the subsequently executed Installment Contract effectuated a valid modification to the arbitration terms of the Buyers Order, no inconsistencies existed."

Dodgeland, 406 S.C. at 84, 749 S.E.2d at 149.

Therefore, the contract which the Court finds was signed by both parties last would control. The Court does not definitively state which contract it finds was the last signed. Benson would ask, in the alternative, that the Court modify its Order to make such a finding and, if the Court determines additional discovery is necessary, hold the Order in abeyance until discovery can be completed and the hearing reconvened.

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was not signed by Stokes Kia, it is not enforceable against it. *Id.* 364 S.C. at 449-450, 613 S.E.2d at 806, *citing S.C. Code Ann. § 36-2-201* (2004).

9. The Court's Order erroneously finds that the Court would have to rewrite the arbitration agreement to create an understandable contract. This overlooks the fact that there was only one arbitration agreement signed by both parties and that the stand-alone Agreement clearly states which rules control in case of any conflict.

10. The Court's Order erroneously finds that there are four arbitration provisions and rules at issue. The stand-alone Agreement (the only arbitration agreement signed by both parties) incorporates the Federal Rules of Civil Procedure to the extent they are consistent with the Arbitration Policies. If the Federal Rules of Civil Procedure are inconsistent, they are waived to the extent allowed by law.[2]

11. The Court's Order erroneously finds that Plaintiffs are impermissibly prejudiced by any limitations on pretrial depositions or subpoenas under the FAA. The Order overlooks the fact that Rule 45(b)(2), SCRCP limits the Court's subpoena power to persons or entities located within South Carolina and Rule 45(c)(3)(A)(ii) would require the Court to quash any subpoena requiring a non-party to travel more than 50 miles from the county where that person resides, is employed, or regularly conducts business. Therefore, Plaintiffs' ability to depose Hyundai Motor Finance, located in El Dorado Hills, California is constrained under South Carolina state law and Plaintiffs are not prejudiced by any such constraint.

THE AGREEMENT TO ARBITRATE IS ENFORCEABLE

12. The Court's Order erroneously finds that either of the arbitration agreements is illusory. This overlooks the fact that arbitration agreements are severable from the contracts in which they are imbedded. *Prima Paints v. Flood & Conklin*, 388 U.S. 395, 87 S.Ct. 1801

[2] Likewise, the RISC, if the Court finds it was signed by both parties, incorporates the rules of the American Arbitration Association to the extent that they are not inconsistent.

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(1967). The duty to arbitrate survives any termination of the contract. *South Carolina Pub. Serv. Auth. V. Great Western Coal. Inc.*, 312 S.C. 559, 437 Ss.E.2d 22 (1993); *Jackson Mills, Inc. v. BT Capital Corp.*, 312 S.C. 400, 403, 440 S.E.2d 877, 879 (1993). Therefore, even if the Court finds the Buyers Order or RISC illusory (which they were not) either arbitration agreement is enforceable.

13. The Court's Order erroneously finds that the contracts are illusory because they are contingent upon financing. The non-precedential cases on which the Court relies are easily distinguishable because the Courts in those cases found that the arbitration agreements themselves were illusory. In *Penn v. Ryans Family Steak Houses*, 269 F.3d 753 (7th Cir. 2001) and *Floss v. Ryan's Family Steak Houses, Inc.*, 211 F.3d 306, 315-316 (6th Cir. 2000) the employees did not enter into arbitration agreements with their employers, rather they entered into arbitration agreements with a third-party who lacked the mutuality of obligation necessary to make the arbitration agreement enforceable. In *Poole v. Incentives Unlimited, Inc.*, 338 S.C. 271, 525 S.E.2d 898 (Ct. App. 1999), Poole was asked to sign a covenant not to compete after she was already an at-will employee. The South Carolina Court of Appeals found there was no consideration to support the covenant not to compete because the promise of continued employment was illusory since Poole remained an at-will employee. In the present case both Plaintiffs and Benson have a separate, mutual, non-illusory obligation to arbitrate any claims they may have against one another.

14. This case is not controlled by *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 595 S.E.2d 461 (2004) where the buyer's order did not contain language making delivery of the car conditional upon the customer obtaining financing, but is instead like *Brewer v. Stokes Kia, Isuzu, Subaru, Inc.*, 364 S.C. 444, 613 S.E.2d 802 (Ct. App. 2005). In *Brewer*, the South Carolina Court of Appeals upheld a transaction where both the Buyer's Order and any additional conditional sales agreement stated that the sale was conditioned upon the buyer obtaining

financing. South Carolina's appellate courts clearly do not find such an agreement to be illusory, instead there is a contractual condition precedent that must be met for the sale to be finalized.

THE ARBITRATION AGREEMENT IS NOT UNCONSCIONABLE

15. The Court's Order erroneously finds that any of the arbitration agreements are unconscionable. This Court should not refuse to enforce a contract on grounds of unconscionability. Unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability, and the drafter's evident intent to obscure the term, only then the party against whom enforcement is sought cannot be said to have consented to the contract. *See Gladden v Boykin*, 402 S.C. 140, 145, 739 S.E.2d 882, 884 (2013). The Plaintiffs do not claim to be unable to read, in fact, they both work at Middle Georgia State University, one as a professor.

16. The Court's Order erroneously finds that the Plaintiffs lacked meaningful choice in entering into any arbitration agreement because the Plaintiffs were not provided with copies of the AAA Rules or the Federal Rules of Civil Procedure. An arbitration agreement does not have to spell out all of its rules and provisions in order to be enforceable. *See Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 89-92 (2000).

17. The Court erred in finding that the Plaintiffs were surprised by either of the arbitration agreements. The stand-alone Agreement is an over-sized document, which the Plaintiffs were asked to separately sign.[3]

18. "[A] person who can read is bound to read an agreement before signing it," *Munoz v. Green tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001). "[A] party signing a written contract has a duty 'to inform himself of its contents before executing it, . . . and in the absence of fraud or overreaching he will not be allowed to impeach the effect of the

[3] If the Court finds the RISC was signed by both parties, it overlooks the fact that Plaintiffs acknowledged the arbitration agreement two separate times on the RISC by signing twice directly under language notifying them of the arbitration agreement that was both bolded and set apart from the rest of the contract by a box.

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instrument by showing that he was ignorant of its contents or failed to read it.'" *Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d 302, 306 (4th Cir. 2001). Furthermore, ("[T]he law does not impose a duty to explain a document's contents to an individual when the individual can learn the contents simply from reading the document."). *Towles v. United Healthcare Corp.*, 338 S.C. 29, 39, 524 S.E.2d 839, 845 (Ct.App.1999). Surely a college professor who took over 40 minutes to read these documents can understand the words:

> I AGREE TO ARBITRATE ANY DISPUTES AND UNDERSTAND THAT I AM GIVING UP MY RIGHTS TO A JURY.

19. The Court erred in finding that the Plaintiffs did not have adequate time to consider the arbitration agreements.[4] The Plaintiffs' own testimony is that they came into the dealership and stayed until late into the evening. Benson's Finance & Insurance Manager and its New Car Sales Manager deny that the Simmons' were rushed or pressured into making a decision and that Mrs. Simmons took 40 minutes to read the documents. (Affidavit of Brian Perry, Affidavit of Nate Burden) The salesman, Daryl Turner, testified that the Plaintiffs arrived at the dealership at 7 p.m. to begin the buying process and that the Plaintiffs extended the time it took to complete the process because they changed their minds several times regarding the car they wanted to purchase. (Affidavit of Daryl Turner) Each time the Plaintiffs negotiated the monthly payment and at no time did the Plaintiffs indicate it was too late in the evening for them to understand the negotiation process or the paperwork. (Affidavit of Daryl Turner) The testimony, when taken together, suggests not that the Plaintiffs were rushed through the process, but rather that they were given ample time to make decisions and complete all necessary

[4] If the Court finds that the RISC was signed by both parties, it overlooks the fact that Plaintiffs signed immediately below the following statement on the RISC:

> **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 provision on the reverse side, before signing below. You confirm that you received a completely filled-in copy when you signed it.**

paperwork. There is no indication in the Order that the Court considered the Affidavits of Nate Burden or Daryl Turner or the rebuttal Affidavit of Brian Perry.

20. The Court erred in finding that the Plaintiffs were told that they had to sign by midnight in order to receive a special rebate. The Court overlooks the testimony of Nate Burden in which he stated that the incentive for their vehicle was available until the end of the month and he would not have told them that it ended on July 26th.

21. The Court erred in finding Plaintiffs were misled regarding the scope of the stand-alone Agreement and were told that it only applied to service work. Benson presented the testimony of Brian Perry who stated that he never told the Plaintiffs that the stand-alone Agreement applied only to service work. Additionally, it clearly provides that it is not limited to issues involving the repair or servicing of the new car. Neither the RISC nor the stand-alone Agreement allow for oral modifications. A person who can read is bound to read an agreement before signing it. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360 (2001). The stand-alone Agreement is oversized, making its provisions conspicuous and easy to read. "[O]ne cannot complain of fraud in the misrepresentation of the content of a written instrument when the truth could have been ascertained by reading the instrument...." *Giles v. Lanford Gibson, Inc.*, 285 S.C. 285, 289, 328 S.E.2d 916, 918 (Ct.App.1985) (quoting *Guy v. Nat'l. Old Line Ins. Co.*, 252 S.C. 47, 51, 164 S.E.2d 905, 906 (1968)).

22. The Court erred in finding that the nature of the Plaintiffs' injuries weighs in favor of finding a lack of meaningful choice. The Court overlooks the fact that the Plaintiffs' injuries are small as they have kept the new car without paying for it even after they learned they did not have financing. Plaintiffs allege that they have sent checks to the dealership made out to Hyundai Finance; however, it is undisputed that Hyundai Finance has declined their financing. (Supplemental Affidavit of Brian Perry) Therefore, the Plaintiffs knew that their checks could not be cashed.

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23. The Court erred in finding that the Plaintiffs were not sophisticated enough to understand that they were agreeing to arbitration and waiving their right to a jury trial. The Plaintiffs are both employed at Middle Georgia State University, where Mr. Simmons is a professor. Any lack of sophistication on the part of the Plaintiffs does not overcome the fairness of the terms of the agreement itself. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 n.5 (2001) ("[I]nequality of bargaining power alone will not invalidate an arbitration agreement.").

24. The Court's Order overlooks the fact that both Benson and the Plaintiffs retain certain remedies outside of court, including self-help remedies and pursuant of a claim in Magistrate's Court. This is distinguishable from *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007), in which the Court found only the dealership retained the right to pursue remedies outside of arbitration.

25. The Court's Order erroneously finds that either of the arbitration agreements have oppressive one-sided terms.

26. The designation of Tony Benson as the Arbitration Administrator does not give an unconscionable advantage over the Plaintiffs that would make the terms of the stand-alone Agreement oppressive. The Administrator serves only a clerical role in receiving the initial Request for Arbitration and filing fee and in receiving the Response to the Request for Arbitration. The Administrator does not present a pool of arbitrators from which the Plaintiffs must select. If the Plaintiffs do not agree with the Arbitrator proposed, they select their own Arbitrator and the two Arbitrators select a third to comprise a panel. Then each would strike one, leaving the one not struck. The Administrator has no further role in the arbitration once the Arbitrator, or panel of Arbitrators, is selected.

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27. The Court improperly finds that only the Plaintiffs would have to pay a filing fee under the stand-alone Agreement. Either party who initiates a claim for arbitration is required to pay the fee under the Agreement. In fact, Benson has initiated a claim and paid the fee.

28. The requirement that a request be made on a form to be provided by Benson is not one-sided as both parties have the same requirement. Such a requirement is not unconscionable as the state court rules have requirements regarding the form and content of pleadings.

29. The requirement to pay the $250 filing fee within five days of filing a request for arbitration is not unconscionable. State Court rules require that a party pay the required filing fee at the time of filing a Complaint in Circuit Court. This payment was made by Benson.

30. The arbitration agreements do not contain one-sided provisions requiring only Plaintiffs to pay attorneys' fees and costs. Any such provisions apply mutually to both parties.

31. The Court erred in finding that Plaintiffs were contacted by Benson after their purchase, cursed at, and told they must pay more for the car than their current contract read or their loan would be denied, when there is no evidence in the record to support these facts. Benson discovered the mistake, asked Plaintiffs to acknowledge it, and when they refused, then agreed to sell the new car for $7,000 less than it paid for it from the manufacturer.

THEREFORE, the Defendant moves this Court for an Order altering or amending the April 30, 2018 Order denying Benson Hyundai's Motion to Stay and Compel Arbitration and granting Defendant's request to enforce the stand-alone Agreement as the parties agreed. If the Court cannot determine if the RISC arbitration agreement was signed by both parties and, if so, which agreement was signed last, on the testimony that has been presented, Defendant requests limited discovery on this issue to be presented to the Court for its use in altering or amending the April 30th Order.

Respectfully submitted,

May 4, 2018

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	Case No. 2017-CP-42-02072
Donald and Carlee Simmons	)	
	)	
Plaintiffs,	)	
	)	MEMORANDUM IN OPPOSITION TO DEFENDANT'S
	)	
v.	)	MOTION TO ALTER OR AMEND
	)	
Benson Hyundai, LLC	)	
	)	
Defendant.	)	

Plaintiffs Object to Defendant's Rule 59(e) Motion to Alter or Amend upon the following grounds:

I. Second Bite at the Apple[1]

Defendant's brief essentially contains the same arguments already advanced in its Motion to Dismiss and Stay and also in the supporting memorandum. It is another bite at the apple. This is not the purpose of such a motion, and it should be denied.

A Rule 59(e) "[is] not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment."[2] "Rather, Rule 59(e)

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[1] *Cf. Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (grounds for amending earlier judgment are: (1) "to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.").

[2] *EEOC v. Lockheed Martin Corp.*, 116 F.3d 110, 112 (4th Cir. 1997); *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990)). *Cf. Matthews v. Richland County Sch. Dist.*, 357 S.C. 594, 599 (Ct. App., 2004) ("School District's Rule 59(e) motion was

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"serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence."[3] Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly.[4]

In addition to rehashing the same arguments previously presented, Defendant's Motion improperly brings up new matter, such as a request for discovery and 10 new appellate cases.

II. Disagreement with Defendant's restatements of law and fact

There are numerous statements of law and fact in Defendant's Memorandum with which Plaintiffs disagree, including the allegedly "undisputed" ones. However, the Court already has been briefed extensively on these arguments. *See* Defendant's Motion to Alter or Amend at Page 5, n.1.

As for the issue of whether Plaintiff's or Defendant's manager's recollection was correct as to who actually signed the documents last, the Court has implicitly ruled on this issue:

> *"Defendant argues that the last document signed at the Dealership was the final arbitration agreement, which allegedly negates all prior arbitration provisions. Defendant submitted an Affidavit of Brian Perry who states that 'the Arbitration Agreement is signed by the*

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nothing but a restatement of the arguments it made in its post-trial motion . . . ."). .

[3] *Id.* (quoting *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989)).

[4] *Id.* (citing *Clancy v. Emp. Health Ins. Co.*, 101 F. Supp. 2d 463, 465 (E.D. La. 2000) (Clement, J.)).

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customer after the Buyer's Order and Retail Installment Contract.' This appears to be a statement of his general practice rather than the specific procedure used on the night of the sale.

In contrast, Plaintiffs' rebuttal Affidavit shows the specific series of events occurring at the sale that night, namely that the last document signed was the Sales/Financing Agreement, which F&I Manager Perry folded, put the document into an envelope, and said 'Let's run your card (for the down payment) and get you out of here.'"

The Court has compared the two Affidavits and found that Plaintiff's recollection of who signed last to be more believable.

IV. Conclusion

Defendant's Motion to Alter or Amend makes the same arguments as done previously, while adding new case law and a first-time request for discovery. Plaintiffs will be happy to respond to these cases and allegedly undisputed facts, should the Court request.

However, for the reasons given above, Plaintiffs ask that the Court deny Defendant's Motion to Alter or Amend and permit this court action to proceed.

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Dated: May 29, 2018

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-42-02072

Donald and Carlee Simmons,

Plaintiffs,

vs.

Benson Hyundai, LLC,

Defendant.

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO ALTER OR AMEND

I. Plaintiffs Provide Federal Court Authority to Cloud This Court's Right to Issue an Order to Alter or Amend

Plaintiffs' reliance on federal court authority is an attempt to cloud this Court's right to issue an Order to Alter or Amend. It is clear in South Carolina that it is within the Court's discretion to grant such a Motion.

As stated by former Chief Judge Alex Sanders and John S. Nichols in their *Trial Handbook for South Carolina Lawyers*, 4th Edition:

> A motion to alter or amend has two distinct functions: rehearing and error preservation. As a rehearing device, the motion simply seeks a reconsideration of the trial judge's findings and conclusions. It can be very useful where the trial judge misapprehends or overlooks some evidence or a point of law.
> *Handbook*, ¶2:33 at p. 150.

This is exactly what Defendant is seeking: a reconsideration of specific issues that this rule clearly allows.

With respect to the only case cited that comes from South Carolina, the reference is misleading. The case of *Matthews v. Richland County School District*, 357 S.C. 594, 594 S.E. 2d, (Ct. App. 2004) deals with a completely different factual situation. In *Matthews*, the Plaintiffs first moved for a judgment JNOV, and later after losing, moved for a Motion under Rule 59(e).

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The Court held that when a Motion simply repeated what was raised in the previous Motion, that was unacceptable. This is not the situation in this case. This is the first Motion asking this Court to reconsider its decision. Therefore, *Matthews* is completely inapplicable.

Even if you take the Federal Circuit cases as authoritative, what Defendant is asking is to "allow a party to correct manifest errors of law or fact." That is what this Motion seeks: there has been a manifest error of law and fact in how this decision has been made. There is no question that the stand-alone Arbitration Agreement was entered and signed by both parties. The Retail Installment Sales Contract was contingent upon credit approval and was never signed by Defendant. Therefore, there is only one contract providing arbitration terms.

Discovery would assist if the Court wants to make a finding as to which was signed last. Even if the Court denies this discovery, and decides that the RISC, unsigned by Defendant, was the last signed document by the Plaintiffs, arbitration is appropriate using that agreement. There is no question that the parties agreed to arbitrate. Therefore reconsideration is absolutely necessary.

II. The Order Contains Manifest Errors of Law and Fact

Defendant has made it clear that it never argued that the Court lacked jurisdiction to determine arbitrability. It simply argued that the agreement of the parties, as required by the Federal Arbitration Act, must be enforced. This Court, therefore, lacks jurisdiction to decide the merits of the case.

There are not two separate and contradictory sets of arbitration provisions. The Retail Installment Sales Contract has not come into effect because it was based on the condition precedent of credit approval. It also was never signed by Defendant, and therefore is not enforceable.

The Order also overlooks when the question is not whether the parties agreed to arbitrate, but what kind of arbitration proceeding they agreed to, that is a matter of contract interpretation

for the arbitrator to decide. See *Greentree Financial Corp. v Bazzle, et al*, 539 U.S. 444, 452-453 (2003). Finally, there were errors of fact and law in finding that there was not a meeting of the minds, not an agreement to arbitrate, nor that the agreement was unconscionable. All of these points were made in Defendant's original Motion to Alter or Amend.

III. Conclusion

This Court has the ability to reconsider its Order under South Carolina Rules 52(b) and 59(e). In the present case, federal preemption applies and arbitration is strongly favored. For all the reasons stated in Defendant's Motion, it respectfully requests that the Court reconsider its April 30, 2018 Order.

Respectfully submitted,

June 4, 2018

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STATE OF SOUTH CAROLINA)
) IN THE COMMON PLEAS COURT
COUNTY OF SPARTANBURG)

Donald and Carlee Simmons,)
) TRANSCRIPT OF RECORD
Plaintiffs,) 2017-CP-42-2072
)
-vs-)
)
Benson Hyundai, et al,)
) September 25, 2017
Defendants.) Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

E. WARREN MOISE, ESQUIRE
Attorney for the Plaintiff

BRADFORD NEAL MARTIN, ESQUIRE
LAURA TEER, ESQUIRE
Attorneys for the Defendants

Linda D. Moffitt
Circuit Court Reporter

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Motions -- page 3.

No sworn testimony; no exhibits entered into evidence.

THE COURT: All right. Simmons vs. Benson.

MR. MARTIN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. MARTIN: Brad Martin. Good to see you again.

THE COURT: Good to see you too.

MR. MOISE: Warren Moise, Your Honor, for the plaintiffs.

THE COURT: Good afternoon.

MR. MARTIN: It is my motion to compel arbitration.

THE COURT: Okay.

MR. MARTIN: So I want to make sure you don't have too much to do.

This is a standard car case, Your Honor. I represent Benson Hyundai. They're a little worried about what's going on in Korea, but right now they've got cars to sell, and hopefully there'll be more manufactured before anything big happens over there.

This case involves a couple that are apparently employed at Middle Georgia University, and they were checking the internet for good prices on Hyundais and found a price they liked, called the day before and made an appointment for 7:00 p.m. and drove up from Macon, Georgia. And they wanted to buy a Veloster.

They signed an agreement originally that was the price that they discussed on the phone, which was like $26,691 or

something like that.

Would you like a copy of that, or do you have it all on line?

THE COURT: Well, I should have everything on line.

MR. MARTIN: Would it help you just to have the documents to look at? It's whatever suits you.

THE COURT: Okay. Well, if you've got them there, I'll take them.

MR. MARTIN: Okay. Yes. So the first one was signed as a work order. It was signed by Mrs. Simmons, and the price was $26,691, which was the M.S.R.P.

They took forever to find a car they liked because they were worried about the payments. They'd find a car. They're try to get it financed. They'd come out with a payment. They said no, that's too high. They'd drive another car. And through this process the night went and got late, and finally they agreed on this twenty-six ninety-one, and she signed it, as you can see, on the bottom.

When they got to the closing office to close the deal, Benson made a mistake. And instead of having the $26,691, they reached for another deal where the price was nineteen six. And that's the second document that you have.

So, apparently, the husband realized there was a mistake and the wife told him to shush. And our fellow

didn't realize it. And they went ahead and they agreed to sell this car for nineteen six, which was even less than they paid for it. It only had four miles on it. So it was a huge loss to Benson by this mistake.

Nevertheless, when the document was signed the professor signed the document that said in case of credit sale the seller shall not be obligated to sell until a finance source approves this order and agrees to purchase a retail installment contract between the purchaser and the seller on this order.

Then she signed a document which said this vehicle delivered subject to credit approval by Financial Source and I authorize an investigation into my credit and employment history and the release of information about my credit.

So the next document that was signed was a retail installment sale contract with this lower price. And the retail installment sale contract had the language that said this is the agreement and gives them the right to try to get it financed by Hyundai Finance.

The problem was this was a car for the husband and he had blocked his credit. So because it was late at night, we said you can have the car, go home unblock the credit, because in the morning Hyundai Finance will need to see what your credit is before they can approve this car.

Well, the next morning came and they never did unlock their credit. And we kept sending them letters and Hyundai -- actually, Hyundai Finance declined it because of the fact they could not get his credit. We now have found out there was a good reason for it. He declared bankruptcy and didn't want us to know it.

But, in any event, the deal was never done. The retail installment contract was never accepted by Hyundai Finance. They sent letters to them, three or four letters to Macon, Georgia, saying that it's not approved. We kept calling them and calling them and saying, please, please, unlock your credit. It never happened.

But the next morning we also found out that we had made this $7,000 mistake in their favor. So we called them and said you signed the original work order, we agreed to the $26,691, we made a mistake in the evening, would you agree to let us sell the car at the $26,691. They refused. So we said, okay, we'll take the loss, we'll sell it at nineteen six. Took $7,000 loss. And no good deed goes unpunished, because here we are facing a lawsuit.

Now, after they signed the retail installment contract they signed a giant piece of paper. This is the actual size of it. And it is called Benson Arbitration Policies and Procedures. And it says, "Benson's policies and procedures are intended to provide exclusive means for

resolving all disputes as defined below which may arise between an individual and Benson. The consideration for their mutual promises, both parties by entering into this agreement give up the right to trial by court or by jury. This agreement evidences a transaction involving commerce under the Federal Arbitration Act, 9 U.S. Code, Section 1 through 16, and is subject to the F.A.A. In the event it is determined that the F.A.A. does not apply, the agreement shall be enforced under the South Carolina Arbitration Act.

Well, obviously interstate commerce applies here. We've got a car from Korea. We've got people from Georgia buying a car in Spartanburg, South Carolina.

And the most important language says, "Disputes subject to arbitration," which is paragraph two. "Disputes subject to arbitration or any claim or dispute, whether in contract, tort, statute or otherwise, including the interpretation and scope of this arbitration agreement and the arbitrability of the claim or dispute between customer and Benson or our employees, agents, successors or assigns which arise out of or relate to customer's credit application, purchase or condition of the vehicle, customer's purchase or financing contract or any resulting transaction or relationship."

So you can see that it was in big, bold letters. It said, "I agree to arbitrate any disputes and understand

that I am giving up my right to a jury and participate in a class action or group action." Signed by Carlee Simmons and Randall Simmons.

And then it says -- Donald Simmons. I'm sorry.

Then it says, "I agree that the following rules govern any arbitration between the parties." And signed, once again, by Carlee and Donald.

And these are folks that work at Middle Tennessee -- or Middle Georgia. So, obviously, they can read. And the affidavits show that she took actually 40 minutes to read these documents before she signed them.

The law in South Carolina clearly says -- the Munoz vs. Green Tree case says that you have an absolute duty to read what you sign. And you're bound by it.

So here we have clearly conspicuous agreement to arbitrate this agreement.

Now, they are claiming in their 25-page missive that there are conflicting arbitration agreements. And we agree that the second document signed, which is the retail installment contract, has an arbitration agreement on it. But it also has a place that says very clearly in big bold letters how this contract can be changed. "This contract contains the entire agreement between you and us relating to this contract. Any change in this contract must be in writing and we must sign it."

Well, right after they signed that they entered into a document where they changed it and said this is the arbitration agreement that controls, here are the policies and procedures. And this is the last document signed, and Brian Perry's affidavit clearly says this was the last document signed.

So what does it take to modify this one? A signed agreement by both parties, which it is, in order to require arbitration.

So there is no dispute between the arbitration clause here and the arbitration agreement here. This is what the parties agreed to, and it is clear under South Carolina law that if the parties agree to have separate documents under the Dodgeland case that they're not conflicting. And we simply look at this document.

So the Federal Arbitration Act just passed by Congress do greatly favor arbitration. As you know since the, AT&T Mobility vs. Concepcion case in 2011, the United States Supreme Court has spoken very loudly saying that if it's the F.A.A., if it falls within the F.A.A., then it shall be allowed unless there's some contractual reason to deny it.

And this arbitration agreement is clearly and unequivocally conspicuous. In fact, my friend in his memo agrees that it is conspicuous. There is absolutely no term in here that is untoward or unconscionable or that no

reasonable person would sign. Everything in here is totally mutual.

And we're here only to determine whether or not this arbitration agreement should be required. We're not here to argue about the relative merits of the case, whether the contract was a good contract or a bad contract, whether we had a right to repossess or not. That's for the arbitrator to decide.

We're simply here asking you, Your Honor, to compel arbitration under the Federal Arbitration Act in a very straightforward arbitration agreement for the purchase of the car.

And, basically, what happens is with people who don't have enough money to buy a car, they always want to finance, and they show up at 7:00 p.m. at night. Finance company is not open. We took it subject to, because the lady had good credit. We didn't know his credit, but she had good credit. And we took it on hopes that they would unblock his credit and get this thing approved.

The best thing, even though we're going to lose $7,000 on the deal, it was better for us just to take our lumps and get this car gone. But it's been almost a year.

They've hidden the car, literally hidden it, so we can't find. We haven't been able to repossess it.

And we actually brought an arbitration action. They

actually responded to the arbitration action and then filed a motion in that action saying they're going to come to court.

They then secondly filed this action in circuit court seeking actual and punitive damages and several causes of action. But it all arises out of this car deal. And the document clearly and unequivocally makes it clear that it is covered by arbitration.

So, to review, number one, they signed the retail buyer's order that said we agree that we can take this car subject to getting it approved by a lender.

Number two, it's undisputed that the lender never approved it. So the retail installment contract drops out.

Number three, if it doesn't get approved, we have a right to settle any dispute by arbitration, that they are very smart people, they're college people teaching in college.

They knew what they signed. They took 40 minutes to do it. There's absolutely no way in the world that this should not be enforced, and we're asking you to let us go and have this thing arbitrated as they agreed.

And I'll answer a reply if you need it or any questions that you may have, Your Honor.

THE COURT: Mr. Moise.

MR. MOISE: Thank you, Judge.

We oppose the referral of this case to arbitration. We have three grounds, Your Honor.

First is that there was no meeting of the minds between these various sets of documents in the arbitration clauses itself, so it ruled.

Also, the document, the deal, was an illusory contract. The deal was bound at no time from the beginning to the end because there's a provision in a document they had us sign at the same time we signed that buyer's order called special delivery agreement.

In the special delivery agreement the -- it states that the seller will attempt to assign the contract on terms satisfactory to the seller. The seller successfully doing so, buyer should be deemed, the vehicle will be deemed, delivered.

And it says it again. "If seller does not receive approval from Financial Source for assignment of contract on terms acceptable to seller."

The south Carolina Supreme Court has addressed this same issue in a case in 2004. That 13 years ago. And Benson is apparently still using this special delivery agreement together with the buyer's order, which makes the buyers think that they're bound by it. But dealer knows that he's not.

May I approach?

THE COURT: Yes.

MR. MOISE: Unfortunately, I underlined supervision. Mr. Martin is taking me to the woodshed over it.

THE COURT: You can continue.

MR. MOISE: Thank you, Judge.

So I was giving the three reasons why we believe the arbitration clause fails.

First one is no meeting of the minds of these various documents.

The second is that the deal was an illusory one, which I'll talk about a little bit more in a minute.

And the third is that we believe it was unconscionable -- the sales agreement.

What I'd like to do is tell you a little bit if I could about the facts from our perspective.

My client -- Mr. Martin did set forth that my clients went down to Benson to buy a vehicle. They wound up around midnight or after midnight for some reason before the deal was done.

They put down a good bit of money. They traded in Mr. Simmons' Saab, which the dealership still has. The dealership took money directly out of our account in a direct online transfer and also got other money from my client. So at that point we had, we believe we had, a contract. What we had though was the buyer's order and

that document.

After that my clients -- the arbitration clause did come up in the middle of these discussions because Mr. Simmons wanted to know what it was.

He was told by the finance and insurance manager, Mr. Perry, that this applied -- and I'm paraphrasing -- that this -- but don't worry about it, this applies to service issues, to someone who has a bad vacuum job or they aren't happy with how the oil was changed, you can come back and we'll do arbitration but nobody wants to get into an arbitration over some petty things like that. My client agreed.

However, he was under some pressure because, as the affidavits show, he had been -- both of them had been told by another manager there -- general sales manager -- that they had to sign that contract that night only because there was a rebate according to him of $3,750. They eventually got it. But he said you've got to sign this tonight. He had to sign the dotted line or that $3,750 goes away. So my clients signed. They signed the arbitration agreements.

We dispute what was signed last. We believe -- we have an affidavit. In fact, we believe the last document we signed was what I referred to as the sales and financing agreement. And we have that there with you.

I call it the sales and financing agreement rather than the retail installment sale contract for the reason that it also operates as a sale -- document as an -- essentially it's a bill of sale. Both of those operate to sell a vehicle. So I call it the sales financing agreement.

He signed that document, and that document on the back has its own arbitration clause. If you look on page four there's a very detailed arbitration provision setting forth certain rules.

THE COURT: Is that the last page of my document? I've got six pages.

MR. MOISE: Okay.

THE COURT: Five and six is arbitration provision? Is that --

MR. MOISE: Yeah, arbitration provision. That's right.

THE COURT: Okay.

MR. MOISE: All right. This was -- this also has its own set of rules. And I'll discuss this with you in a second a little bit further.

But not only did they sign this, but they also signed the document called -- that I referred to as Benson's rule, which is in a front and back on 95. Lengthy arbitration agreement with numerous, numerous rules in it that also

conflict with these rules, the sales and financing agreement rules.

In this document Benson adopts the entire federal rules of civil procedure and numerous -- I mean, obviously, they're going to be contradictions between that and this, and I will go over some of those in a second.

So he's adopting the entire federal rules of civil procedure, which most lawyers take a year to study and don't understand it still.

In this document the arbitration clause adopts the Triple A consumer rules for arbitration. So you have -- and that's 47 pages. I have that in memorandum that I've sent to you. It's Exhibit E. I don't think you really need to read it now, but I'm just representing to the Court it's over 40 pages of rules.

And so they signed these documents. The last document that they signed was this document. And as the affidavit shows, he wrapped it up -- the F and I manager wrapped it up, put it into an envelope, said let's go get you out of here, get your stuff and get you out of here, which they had the car.

So at that point what we have is two separate arbitration provisions mutually contradictory, which also had adopted two separate sets of rules, the federal rules and the Triple A rules.

Well, they signed those and they signed the conditional agreement and they went home.

Mrs. Simmons, I believe, stayed up all night that night and went to work. I know it's not important to your decision, but it was a long night, is what I'm saying.

So the next morning they began getting phone calls from some of the managers at the dealership saying this deal is no good, tear the contract up, you need to bring the car back to us, we sold it to you for too little money, we want more money, you gotta come and pay us more money. I'm paraphrasing.

And Mr. Simmons told the manager, he said, wait a minute, now, you put in there no cooling off period. You put that in our contract. And the car -- that really made him mad so he started --

MR. MARTIN: You're testifying.

This is not in the record, Your Honor. I don't know if you want to hear it, but it's not in the record, just like the fact that he's claiming that's the last document they signed. That's not in the record either. I hate to interrupt my friend, but he's just talking facts that are not in evidence.

THE COURT: That's not in an affidavit that was submitted?

MR. MARTIN: No, Your Honor.

MR. MOISE: It was.

MR. MARTIN: You can show me.

MR. MOISE: Yeah.

THE COURT: Well, I'll make my own notes and refer to it. If it's not in the record, I won't consider it.

Go ahead.

MR. MARTIN: Thank you, Your Honor.

MR. MOISE: Thank you.

All right. So they go home. And that's in -- it's in my memorandum. It's not in the affidavit. And eventually a -- they send a repo guy over there. They hire a lawyer in Georgia, eventually hired a lawyer in South Carolina, which was me, and we're off to the races on that.

Now, this fits what's called a yo-yo deal -- and, Your Honor, you may be familiar with this. I was not familiar with it before I started getting involved with consumer law, but it's something that goes on every day with car dealers.

And, basically, just like when I say yo-yo, you let the customer go thinking that the customer has -- has ownership of the car and then yank the customer back after you check around and see if you can get a better deal. And if you can't, then you sell it to the customer and get more money. That's not in the affidavit, but it is in the South Carolina Supreme Court case. And in that case, which is

Singleton vs. Stokes Motors, 2004 -- may I read a little bit to you?

THE COURT: Sure.

MR. MOISE: This is what the Supreme Court said: "Yo-yo sales are unlawful in at least seven states, and several other states have issued regulations and administrative interpretations on the subject. Such transactions are fundamentally unfair because they give all of the power to the dealer and none to the customer. On the one hand the customer drives the car off the lot. The customer is locked into the sale. The dealer does not want the consumer to think about the deal overnight. It wants the deal closed on the spot while the customer has undergone hours of sales pressure. On the other hand, the dealer wants to retain its options when the consumer drives off the lot with the car. It does not want to be rushed into a hasty deal. It wants time for the personnel to review the profit margin, the consumer's credit rating, and the chances of selling the vehicle to someone else. It wants time to reflect on whether it can squeeze more out of the consumer or whether it's better off just selling the vehicle to someone else.

"Usually" -- and this sort of sums up -- "the dealer will want to hide the one-sided nature of the transaction. It does not want customers to think that they can get out

of the deal just because the dealer can. So the dealer will not disclose that the deal from the dealer's point of view is not final."

So that's what the Supreme Court has identified as a yo-yo deal like the F.T.C. is really cracking down on these. And so from that point I'd like to talk to you about our three cases and end up giving you some background.

First is that we don't believe that there's a meeting of the minds because of the contradictory provisions in these different documents.

They looked like they were drafted by different companies. They look like whoever -- and this is my interpretation of it -- whoever has drafted one document is not looking at or talking to whoever has drafted another document. And that's why they're all contradictory.

This same type situation has been -- has occurred in other places. One, for example, the Florida Supreme Court in a case called Basulto vs. Hialeah -- that's B-A-S-U-L-T-O vs. H-I-A-L-E-A-H Auto -- for the court reporter -- and it deals with a situation where the judge, the trial judge, refused to enforce an arbitration agreement because of all of these conflicting provisions in the documents that the dealer presented.

It noted, the Court noted, that one of the clauses at

issue provided for the jury waiver. There's a waiver in here for Benson to go to small claims court, presumably trial in a court of law.

Another provision required arbitration by a single arbitrator. Another provision required arbitration by a panel of three arbitrations -- arbitrators.

In addition the methods for selecting arbitrators is conflicting. And the Court found as a matter of law that there was no meeting of the minds with respect to the terms by which the dealership intended parties be bound, and there accordingly is no valid agreement for the Court to enforce.

In a federal case in the Tenth Circuit Ragab vs. Howard, Tenth Circuit found the same way. It noted that the agreements contained conflicting arbitration provisions.

Suffice it to say, that the conflicts will control which rules govern, how the arbitrator will be selected, the notice required to arbitrate and who would be entitled to attorney's fees and on what ground. So the Tenth Circuit also in this situation refused to enforce the arbitration agreement.

So if I could give you some of the examples of the contradictions, because I know just any contradiction is not important. It has to be a material contradiction.

First, we have a conflict over which of the rules will apply. We contend that the last document was the sales and financing agreement. And we have that in our affidavit.

There's also the -- in the Benson's rules, that long agreement, also provides, rules, and there are also rules in the Triple A consumer rules and also in federal rules of civil procedure. So you have all of these different rules out there, and they conflict.

So another question is that is related by these documents, is who administers the arbitration, who is the administrator. Benson's rules set up Benson as the administrator, which we think is patently unfair having an adverse party as the administrator of the arbitration. But that's -- that's what's in his rules here.

However, the other set of arbitration rules in the sales and financing agreement on the back reference Triple A's consumer rules, and this -- this says that Triple A will administer the arbitration, or any other organization that they'll consent to. But Triple A is supposed to be the administrator, and they have rules on that.

How is arbitration initiated? Another critical issue in the case.

What are the filing fees? Well, according to the consumer rules, Benson has to pay between $1,700 and $2,200 in filing fees, plus $1,500 per arbitrator. This is in --

these are in the consumer rules. And that's rule -- consumer rule is on page 35 in my brief.

On the other hand, although the arbitrator -- the Triple A sets up between $1,700 and $2,200, plus another $1,500 that Benson is supposed to pay, their rules provide that we pay Benson $250. I didn't see anything in there that says that Benson has to pay anything to initiate arbitration. So we have a radically different set of filing fees that Benson -- on one Benson pays nothing, on the other it pays over $3,000.

Who pays the costs and in what amounts? Benson's rules say that Benson is liable for all of the costs, but under the sales financing agreement here on the back it limits Benson to $5,000. So you've got a different set of how many. And this is important to us, Your Honor, because a cap of $5,000 on costs and expenses, anything above that is coming out of our pocket.

And, finally, you have the Triple A consumer rules who say that Benson shall pay.

Also, there's a procedure set up for a review of the documents for due process. This is fairly common in arbitration and mediation.

Send it to Triple A. They'll look at it and see if there's -- if Benson's rules comply with due process and they're fair, and they'll approve it.

On the other hand, Benson never took that step and had his rules approved. None of the other provisions in the rules apply.

Then you've got the issue of appeals, how are appeals done. Well, under Benson's rules we have to choose a separate and new appellate arbitrator. And after the case is heard and a decision is rendered, it's appealed to the appellate arbitrator, whoever that might be.

On the other hand, the consumer rules don't deal really with -- with appeals. And the sales and financing agreement references the F.A.A. That's a whole different thing. The F.A.A., the appeal is directed, as I understand it, is to a circuit judge as opposed to hiring a new arbitrator.

And so those are the contradictions. I think they're pretty important contradictions in the different various sets of rules out there. So we don't think there's been any meeting of the minds, and for a judge to have to somehow make decisions on each one of those different provisions is going to be rewriting the contract.

Also, the issue of illusory contracts. And I've discussed that already at the beginning with you, Judge, and I can go through it again. It's just set to reference that this document, special delivery document, provides that Benson can get out of this thing at any time that they

want.

Now, these are the terms. Well, I've already read to you the terms. Judge, I am not going to do that again.

But let's -- now I'd like to go to my final argument, which is unconscionability, absence of a meeting of choice. There are a number of factors that deal with that.

We don't believe that they had a meaningful choice that night because had the car dealer, the general manager, saying that you -- you have this -- this rebate for $3,750 that you need to -- that you have to take advantage of tonight or it goes away.

On the other hand, we have the sales and finance manager telling Mr. Simmons that it only applies to service -- service disputes. So under those circumstances I don't think they had any meaningful choices. Otherwise, they'd lose a good bit of money.

Parties' sophistication. These parties are sophisticated in the sense that they're well-spoken and well-educated, but they aren't a part of the car industry and they don't work at a car dealership and there's been no allegations that they did.

The nature of the injury suffered by the plaintiffs. They've had to -- they continued to make payments, by the way, every month through a courier service to Benson.

Benson still has their Saab and Benson still has the

money that was downloaded that night, down payment into Benson's account, and some other credits.

So they've paid a substantial amount of money already. So are they -- are my clients a substantial business concern or is Benson? I think Benson is. It's pretty well known in the community that it's a pretty big series of dealerships and they've been there for a long time.

Conspicuousness of the clause. Yes. The Benson clause was conspicuous. They didn't know before they got there they were going to have to read two pages in small type. They were conspicuous in the sense that it was there by itself.

Dealer's remedies. Will not stay. The dealer had the right to take this to court, small claims court. I believe they have the right to a setoff. They have the right to a deficiency judgment. They have the right to a repossession.

I think they may have some equitable relief where they can stop off an injunction. Those things in the documents say either party can do it, but of course we're never going to repossess our own car ourselves in those things.

So, also the analysis looks at oppressive one-sided terms. These documents are strongly written. I think you'll see when you get a chance to read it, Judge, that these documents are strongly written in favor of the

dealership. They're adhesive contracts. I don't think Mr. Martin is going to argue with me on that.

So to summarize, we believe that the document, there was no meeting of the minds if the documents were illusory and that they're entitled to summary judgment.

I'll be happy to answer any questions you may have.

THE COURT: Mr. Martin.

MR. MARTIN: May it please the Court.

As far as reading, the Munoz case was Justice Moore, South Carolina Supreme Court, 2001. And it says, "A person who can read is bound to read an agreement before signing it." Citing Hood vs. Life and Casualty of Tennessee, which goes back to 1934. So for over 70 years that's the law of South Carolina.

And then in a footnote Justice Moore says, "This rule is consistent with federal cases holding that arbitration agreements governed by the F.A.A. will not be set aside on the ground that the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it."

Now, not only do we have a person who is educated, but the only evidence before you is an affidavit from Mr. Perry that says that she took 40 minutes to read these documents.

The second thing is there is absolutely only one agreement. If you look at the affidavit of Mr. Simmons --

Mrs. Simmons did not sign an affidavit, but Mr. Simmons signed an affidavit, and there's absolutely nowhere does he say what the last document was signed.

If you read that very carefully, and I've read it three times while I was here with my friend Warren talking, and there's nowhere in this document that Donald Simmons claims that the retail installment sale contract was the last document signed.

However, what you do have is you have the affidavit of Brian Perry who was the manager who has these documents, who does them hundreds of times a year, and he says the first thing we sign is the buyer's order, the second thing we sign is the retail installment sale contract, and the final document that we sign is a stand-alone arbitration agreement that clearly says any fussing, any fussing has to be arbitrated.

So it is clear that the only evidence before you is that the retail installment contract has a provision that says it can be revised in writing signed by both parties. And it's big, in fact -- fact, everyone can see it. It's very conspicuous.

They signed right underneath that. Both of them did. So they knew that it could be modified. Well, the fact that the buyer's order says this is all contingent on you folks getting that credit unblocked, and they didn't want

us to know the bankruptcy so they never did it, never got proof, they knew from day one. They knew they had the agreement. This falls out. But even if it doesn't fall out, it says you can have a subsequent signing where you agree. And they both signed two different times.

So we're not here to argue about the merits of the case. But we're here to argue about whether or not it should be arbitrated.

Now, he talked a lot about proceedings and procedures. Well, the United States Supreme Court has also talked about that in the Volt Info Sciences case vs. the Board of Leland Stanford Junior University, 489 U.S. 468 in which it said, "That there is no federal policy favoring arbitration under a certain set of procedural rules. The federal policy is simply to ensure that enforceability according to the terms of private agreements to arbitrate."

And then the Hooters case, Hooters of America vs. Phillips, which was a South Carolina Fourth Circuit Court of Appeals case said, "Objections to the nature of arbitral proceedings are generally for the arbitrator to decide. Only after arbitration may a party then raise a challenge to the procedures if they meet the narrow grounds set out in Nine U.S. Code, Section Ten, for vacating the award."

So what we have here is a clear agreement by smart people. They wanted this car. They got it for $7,100 less

than what they originally agreed to. They snookered the dealership. They got away with it. The dealer said you win, we'll lose money on the deal. They still haven't paid a penny for it.

We'll be glad to give them back. We still have their used car. It's been over a year, Your Honor. It's ridiculous.

We now have to go to arbitration to try to get our car back because they've literally hidden it in Macon somewhere. Hidden it.

So what we're saying is, is that this is a clear case where they agreed in writing, signing twice, that they would arbitrate from A to Z any problems beginning with their credit, with the financing of the thing or the purchase. We're glad to have a -- have a wonderful arbitration with my friend Warren. The United States Supreme Court says arbitration is good. It's cheaper; it's faster; it's something that two parties can agree to.

And in 1925 the Congress said we don't want state courts messing with our arbitration any more and we're going to make it required.

In 2011 AT&T. vs. Concepcion came out. And even our United States Supreme Court, which in the closing two cases that cases I'm involved with said that it was against public policy to knock out class action arbitration.

AT&T said, no, you can't do that. We are preempted, state law. So even if there's a policy-policy argument, that's how important arbitration is. It is totally favored. It's a high hurdle to overcome.

There's absolutely no evidence in the record that -- other than the fact that this was the last document signed. There's no conflict because, number one, the buyer's order said if you don't get financed, we don't have a deal.

So the retail installment contract was never assigned to Hyundai Finance. They never agreed to have it. This is the document that controls.

It is not oppressive and one sided. My friend said I wouldn't argue about that. I do argue about that. Everything is one hundred percent. Either party can do. It's totally mutual. There's not one provision in here favoring one side or the other.

Simpson case educated us lawyers, and we made sure that the arbitration agreement that my friend down in Columbia wrote would not be like the arbitration agreements that my dealers would use. And we have made it totally fair, totally mutual.

They knew what they were agreeing to. So we can fight about all of these issues in arbitration, but we just need to get to go there. And I'll be glad to answer any questions that you might have.

THE COURT: I don't have any.

I'll review the memorandums and the submissions and issue an order.

MR. MARTIN: Thank you, Your Honor.

MR. MOISE: Judge, may I?

The lack of that line in there that my clients signed the sales and finance agreement label was supposed to be in that affidavit. It's not. May I leave the record open until Monday to file an affidavit?

MR. MARTIN: I would object because it's the key issue, and now that he knows it's a problem --

THE COURT: Well, let me ask you this, Mr. Moise.

Are you saying that you neglected to put it in there, or are you saying it just was not prepared that way?

MR. MOISE: No. We discussed it, and we had several drafts of this. And I've been working at home sending drafts back and forth, and apparently the last one didn't get through.

THE COURT: Well, here's my position on that.

I'm happy for you to submit an additional affidavit if you're telling me that you had that information and you intended to include it in that affidavit and neglected to do so.

MR. MOISE: Yes, sir. That's the truth. I was talking about it with my client. I intended to. That's

what I was looking at. I thought it was in there. Maybe it went in the brief instead. May I take just one second?

THE COURT: Sure.

(Pause.)

MR. MOISE: Yes, sir. It is in the brief. It just for some reason didn't make it out.

THE COURT: Show that to Mr. Martin, because I think he didn't recall it being in the brief either.

MR. MARTIN: Well, what he says is plaintiff's affidavit, which is my affidavit, right?

MR. MOISE: No. I'm the plaintiff.

MR. MARTIN: You're the plaintiff. Okay. Yeah. I'm the plaintiff in the -- the plaintiff's affidavit shows that the last document signed was the sales financing, and it does not, which is the manager. So it's just not in there.

THE COURT: Well, I understand. But -- but what he's saying, I mean, what I'm saying is you're on notice that he believed it to be.

MR. MARTIN: Right.

THE COURT: So are you going to allow him to submit an additional affidavit or an amended affidavit, and then if you need to respond to it, you've got already got the opposing affidavit, I think.

MR. MARTIN: Right. I do, and I'd just like to say that he -- even if that was in play, we still have the original buyer's order that says this whole deal is subject to approval. And if it's not approval, we don't have a deal.

So the second arbitration agreement falls out as it's undisputed that it was never financed by Hyundai Finance. So the only one left is the one that we say was the last one signed. That's the only one left.

So we've got really three grounds as to why that falls, and that's the second ground. It doesn't have anything to do with his claim that it was the last one signed. And that's a disputed fact.

But I'm saying that even so, when they bought the car they said we understand that we need credit, we understand that if we don't get this thing assigned to another lender the deal's off. So the retail installment sales contract never got assigned to the finance company, falls out and there's no dispute, no conflict.

And the third argument is they're both arbitration. The issues of procedures are for the arbitrator to decide. He can decide which one applies or not applies.

The Supreme Court of the United States has spoken on that. The Fourth Circuit out of South Carolina has spoken on that. And the document that should control is get it to

arbitration, have all of your fusses about what procedures are right or wrong in the arbitration. We'll be glad to do that. Thank you.

MR. MOISE: Judge, may I respond?

THE COURT: Okay.

MR. MOISE: Three minutes or less.

The South Carolina Supreme Court has spoken on that issue of arbitrability also, and they said in Simpson vs. MSA that when the contract is attacked on the basis that it's unconscionable that it's the circuit judge who makes the decision. That's our Supreme Court that said it.

THE COURT: Okay. Thank you.

END OF REQUESTED TRANSCRIPT OF RECORD

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 25th day of September 2017.

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

February 28, 2019

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

Certificate of Counsel

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

19 June, 2019

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