

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

DERRICK POOLE,  
Appellant  
v  
NEVADA AUTO DEALERSHIP INVEST-  
MENTS, COREPOINT INSURANCE CO.  
Respondent,

No. 74808 Electronically Filed  
Jan 10 2018 11:08 a.m.  
**DOCKETING STATEMENT**  
**CIVIL APPEALS** Brown  
Clerk of Supreme Court

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 27  
County Clark Judge Hon. Nancy Alf  
District Ct. Case No. A-16-737120-C

**2. Attorney filing this docketing statement:**

Attorney George O. West III Telephone 702-318-6570  
Firm Law Offices of George O. West III  
Address 10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145

Client(s) Appellant, Derrick Poole

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Jeff Bendavid Telephone 702-384-8424  
Firm Moran, Brandon, Bendavid Moran  
Address 630 South 4th Street  
Las Vegas, NV 89101

Client(s) Respondent, NEVADA AUTO DEALERSHIP INVESTMENTS, CORPOINT INSURANCE COMPANY

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input checked="" type="checkbox"/> Summary judgment        | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

NONE

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

NONE

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This was an action primarily based upon statutory consumer fraud and deceptive trade practices under NRS 41.600 and Chapter 598 of the NRS involving the sale of a certified pre-owned Dodge Truck. Plaintiff alleged Defendant NEVADA AUTO failed to disclose to the Plaintiff material facts regarding the nature and extent of a previous accident to the vehicle at time of sale. Plaintiff also filed associated equitable claims pursuant to NRS 41.600(3)(b). Plaintiff also brought in the dealership's licensing bond company pursuant to NRS 482.345(7). Defendants filed a motion for summary judgment under Rule 56. The Court granted Defendants' motion as to all claims for relief.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Were there genuine issues of material fact with respect to Plaintiff's statutory consumer fraud claim involving Defendant NEVADA AUTO's failure to disclose material facts and making false and/or misleading statements to the Plaintiff involving the vehicle.
2. Did the Court err in making the determination of materiality, as a matter of law, with respect to the Defendant's non disclosure of material facts to the Plaintiff involving the vehicle at issue.
3. Was Plaintiff entitled to bring in Defendant COREPOINT INSURANCE COMPANY pursuant to NRS 482.345(7) who was the bond company who issued NEVADA AUTO's the vehicle licensing surety bond pursuant to NRS 482.345.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

NONE

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Pursuant to NRAP 17(b)(2) this is a civil appeal involving a monetary judgment of less than \$ 250,000 exclusive of fees and costs and interest. Consequently, this is presumptively within the purview of the Court of Appeals.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
NO

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** December 1, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** December 1, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59          Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** December 23, 2017

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is a civil appeal from the final order granting summary judgment in favor of all Defendants and all claims for relief. The entry of the summary judgment order disposed of all claims for relief leaving the Court with no other duties other than to enter final judgment in favor of all Defendants and all claims for relief.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

NONE

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Defendant WELLS FARGO DEALER SERVICES is not a party to this appeal as Plaintiff and said Defendant reached a separate settlement and mutual release and were dismissed via a stipulation for dismissal with prejudice from the action pursuant to Rule 41(a) prior to the appeal being taken.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

For Plaintiff/Appellant -- all disposed of on November 27, 2017

Statutory Consumer Fraud (NRS 41.600)

Rescission

Restitution

Equitable Estoppel, Declaratory Relief and Recovery under Dealer Bond

Recovery under Auto Dealership Bond

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Derrick Poole

Name of appellant

George O. West III

Name of counsel of record

January 10, 2018

Date

Signature of counsel of record

Clark County, NEVADA

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 10th day of January, 2018, I served a copy of this completed docketing statement upon all counsel of record:

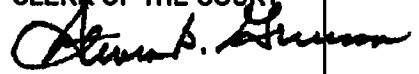
☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

JEFF BEN DAVID  
MURAN BRANSON  
630 SOUTH 6TH ST  
LV, NV 89101

Dated this 10th day of January, 2018

Signature



**ACOM**

GEORGE O. WEST III [SBN 7951]  
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(702) 318-6570  
(702) 664-0459 [fax]

Attorney for Plaintiffs  
**DERRICK POOLE**

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DERRICK POOLE,

Plaintiff,

v

NEVADA AUTO DEALERSHIP INVEST-  
MENTS LLC a Nevada Limited Liability  
Company d/b/a SAHARA CHRYSLER,  
JEEP, DODGE, WELLS FARGO DEALER  
SERVICES INC., COREPOINTE INSUR-  
ANCE COMPANY, and DOES 1 through 100,  
Inclusive,

Defendants,

CASE NO : A-16-737120-C  
DEPT : XXVII

**FIRST AMENDED  
COMPLAINT FOR DAMAGES  
AND EQUITABLE AND DECLARA-  
TORY RELIEF AND DEMAND FOR  
JURY TRIAL**

1. Consumer Fraud/Deceptive Trade Practices
2. Rescission
3. Equitable Estoppel
4. Restitution/Unjust Enrichment
5. Declaratory Relief
6. Recovery under Auto Dealership Bond

[Lodged Concurrently with Motion for  
Leave to File First Amended Complaint]

## COMMON ALLEGATIONS

1  
2           1.       The true names or capacities, whether individual, corporate, associate,  
3 governmental or otherwise of the Defendants DOES 1 through 100, and each of them,  
4 are unknown to Plaintiff at this time, who therefore sue said Defendants by such  
5 fictitious names. When the true names and capacities of said Defendants are  
6 ascertained, Plaintiff will amend this Complaint accordingly. Plaintiff is informed and  
7 believes and thereon allege that each of the Defendants designated herein as a DOE was  
8 negligent or in some other manner responsible for the events and happenings herein  
9 referred to, and by their conduct caused injury and damages proximately thereby to  
10 Plaintiff, as herein after alleged, either through their own conduct or omissions, through  
11 the conduct or omissions of their agents, servants or employees, or due to their design,  
12 owning, engineering, promotion, recommending, advertising, supplying, supervising,  
13 manufacturing, installing, maintaining, fabricating, assembling, renting, leasing,  
14 inspection, sale, applying, distribution, servicing, ownership, repair, use, possession,  
15 management, control, construction or entrustment of the instrumentalities causing the  
16 injury or damages hereinafter alleged or in some other manner.  
17  
18

19           2.       At all relevant times herein mentioned, Plaintiff is a resident of the State of  
20 Nevada, County of Clark.  
21

22           3.       At all relevant times herein mentioned, Defendant NEVADA AUTO  
23 DEALERSHIP INVESTMENT LLC d/b/a SAHARA CHRYSLER, JEEP DODGE  
24 ("SAHARA") limited liability company organized and existing under the laws of the  
25 State of Nevada and is authorized to conduct business in the State of Nevada, and is  
26 located in the City of Las Vegas State of Nevada, County of Clark, where the herein  
27 referenced Retail Installment Sales Contract ("RISC") was entered into, and the  
28 deceptive trade practices took place.

1           4. At all relevant times herein mentioned, Defendant WELLS FARGO  
2 DEALER SERVICES INC ("WFB") is believed to be a corporation organized and existing  
3 under the laws of California, and is authorized to do business in the State of Nevada,  
4 County of Clark, City of Las Vegas. Said Defendant was a previous "holder" and/or  
5 assignee of the Plaintiffs' Retail Installment Sale Contract ("RISC") a/k/a a "consumer  
6 credit contract," as hereinafter described, of which Plaintiff made payments to WFB  
7 based on the assignment of the RISC to WFB and it was WFB's capacity as a "holder" of  
8 the RISC in which those monthly payments were made, as hereinafter alleged.

10           5. At all relevant times herein mentioned, Defendant COREPOINTE  
11 INSURANCE COMPANY ("COREPOINTE") is a corporation organized and existing  
12 under the laws of the State of Michigan, and is authorized to do business in the State of  
13 Nevada, and was the bond company that issued and underwrote the licensing bond to  
14 Defendant SAHARA pursuant to the provisions of NRS 482.345.

16           6. At all relevant times herein mentioned, Defendant SAHARA was "dealer"  
17 and/or "new vehicle dealer" within the definition of NRS 482.020. Furthermore, at all  
18 relevant times, Plaintiff was a "consumer" as defined by 16 C.F.R. 433.1(b), and the  
19 RISC entered into between Plaintiff and SAHARA was a "purchase money loan" and  
20 "consumer credit contract" as defined by 16 C.F.R. 433.1(d) and (i).

21           7. On May 26, 2014, Plaintiff took delivery of and entered into a RISC a/k/a  
22 "consumer credit contract," with Defendant SAHARA for the financed purchase of a  
23 used 2013 *certified pre-owned* ("CPO") Ram 1500 Truck with 6,716 miles on it at time of  
24 sale ("vehicle"). The RISC called for Plaintiff to make 72 monthly payments in the  
25 amount of \$ 654.53. To date as of the filing of this Complaint, Plaintiff made all of his  
26 monthly payments to WFB, including payments under the initial RISC when the RISC  
27 was assigned to WFB from SAHARA shortly after Plaintiff purchased the vehicle from  
28

---

1 SAHARA. Plaintiff put down \$ 4,000.00 in trade for the vehicle, which was the agreed  
2 upon price of his trade in. After adding all other ancillary charges, including doc fees,  
3 gap insurance, tax, title, emissions and finance charges, and deducting the amount of  
4 the Plaintiff's trade in, the total aggregate amount of payments under the RISC was \$  
5 47,126.16. It is this amount Plaintiff was initially obligated to pay to Defendant WFB  
6 over the loan term under the RISC, per the hereinafter referenced assignment of the  
7 Plaintiffs' RISC from SAHARA to WFB.  
8

9 8. Shortly after the RISC was entered into with the Plaintiff, Defendant  
10 SAHARA assigned Plaintiffs' RISC to Defendant WFB, wherein WFB then became the  
11 assignee and "holder" of said RISC (a/k/a consumer credit contract), as well as the  
12 secured party under Article 9 of the UCC, to whom Plaintiff are is under an obligation to  
13 pay the balance on the contract. Said RISC had the following express contractual term  
14 as part of said RISC's terms and conditions :

15  
16 NOTICE : ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS  
17 ***SUBJECT TO ALL CLAIMS AND DEFENSES*** WHICH THE DEBTOR  
18 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.<sup>1</sup>

19 <sup>1</sup> It is noteworthy to point out that this language is mandated by 16 C.F.R. §§ 433.1 and 433.2,  
20 (commonly known as the FTC Holder Rule), to be in all consumer credit contracts' and therefore makes  
21 such terms and conditions a matter of state contract law. However it should be noted that Plaintiff has  
22 not plead a claim for relief based on the provisions of what is commonly known as the "FTC Holder Rule."  
23 These C.F.R. sections do not establish or confer a federal private claim for relief under their provisions.  
24 *See infra. It has been widely held that the mere mention, reference or even reliance on the*  
25 *provisions of the "FTC Holder Rule" in a Complaint does not confer federal question*  
26 *jurisdiction.* This is not only because such provisions do not create any type of private federal right of  
27 action, but the Plaintiff's underlying claims ***are solely based on state law.*** Plaintiff is merely using  
28 the FTC Holder Rule provisions solely for purposes of preserving and asserting *state law claims and*  
*remedies* against the subsequent assignee and/or "holder" of the RISC a/k/a a "consumer credit contract."  
*See Walker Motors Sales, Inc.* 162 F. Supp. 2d 786 (S.D. Ohio, 2000) [holding there is no private right  
of action under the "FTC Holder Rule" in an of itself without a state law derivative claim]; *Glovier v.*  
*Barton Homes, LLC*, 452 F. Supp. 2d 657, (W.D. La., 2006) [holding purchasers' action against holder  
did not arise under federal law for the Court to be able to be vested with federal-question jurisdiction,  
notwithstanding purchasers' reliance and mentioning of the FTC holder rule to bring in the  
assignee/holder]; *Mathis vs Gibson* 2008 WL 2330537 (D.S.C. 2008) [holding Federal District Court  
did not have federal question jurisdiction based on the assertion of state law claims, as permitted and  
preserved by the FTC Holder Rule, against a subsequent holder]; *Frichhorn vs Lake County Chrysler*  
2006 WL 2970236 (N.D. Ohio, 2006) [holding a complaint's reference to the FTC Holder Rule either to

9. By virtue of said expressly agreed to contractual term, as integrated into the terms and conditions of the RISC, WFB, (the holder of the RISC), has contractually agreed to be subject to any and all defenses **and** claims that Plaintiff could assert against Defendant SAHARA (the seller) with respect to the vehicle while it was the holder of the original RISC between Plaintiff and SAHARA.

10. At all relevant times Defendants were the partners, joint ventures, agents, employees, managers, supervisors, related companies, and servants, of each and every other Defendant herein, and were acting at all times within the scope, purpose and authority of said partnership, joint venture, agency, employment, and with the knowledge, consent, permission, acquiescence and ratification of their co-Defendants.

11. At all relevant times Plaintiff has complied with all of the terms and conditions under her RISC, except those which have been excused based on the deceptive trade practices of Defendant SAHARA, as hereinafter alleged.

## II

### FIRST CLAIM FOR RELIEF FOR DECEPTIVE TRADE PRACTICES

**AS AGAINST DEFENDANTS SAHARA AND WFB ONLY**

**[NRS 41.600(e); Statutory Consumer Fraud]**

12. Plaintiff herein incorporates by reference and herein realleges paragraphs 1 through 10.

provide the applicable standard of care or additional evidence of a state-law violation-does not create a federal question jurisdiction]; *Morales v. Medina v. Performance Auto. Grp., Inc.*, 841 F. Supp. 2d 1121 (E.D. Cal. 2012) [holding Federal removal jurisdiction could not be premised upon the Federal Trade Commission's (FTC) "Holder Rule with respect to Plaintiff pursuing claims against the assignee which were based upon state law].

It should also be expressly noted that Plaintiff is not making any affirmative claim for relief or seeking any remedies, relief or damages under any federal statute or regulation, but rather is only mentioning any federal statutes and/or regulations as further evidence that ***Defendant committed a deceptive trade practice under state law***, because a violation of a federal regulations or statute "relating to the sale of goods is" an independent and actionable deceptive trade practice under Nevada state law pursuant to the NDTPA and does not turn or seek to invoke any claim, remedies or actions based on the federal statute or regulation mentioned. *See NRS 598.0923(3).*



1        13. At all relevant times, Defendant SAHARA represented to the Plaintiff, both  
2 orally and in writing, and held out, and displayed for sale and represented that the  
3 vehicle to the Plaintiff as a CPO Dodge Ram 1500. Pursuant to the Chrysler Dodge CPO  
4 Inspection Standards between the manufacturer and a franchised dealership who  
5 participates in the Chrysler/Dodge CPO program, for a vehicle to qualify for the CPO  
6 program, the franchised dealer (SAHARA), must undertake and successfully complete a  
7 rigorous and comprehensive multistep certification process before it can advertise,  
8 represent, display or sell a vehicle to the community as a Chrysler/Dodge CPO vehicle.  
9

10        14. One of these important steps, prior to advertising, displaying or selling a  
11 Chrysler/Dodge CPO vehicle to the community is the strictly mandated requirement to  
12 have a Chrysler/Dodge certified technician conduct a comprehensive 125 point  
13 inspection on the vehicle, which also specifically includes and encompasses an inspection  
14 of the vehicle for any frame/unibody damage or other indicia or indications of a vehicle  
15 having been involved in significant prior collisions. Dealers are also required to run a  
16 Carfax on the vehicle. If these two critical steps are not undertaken by the dealership, a  
17 vehicle, including the Plaintiff's vehicle, cannot be advertised, displayed or listed for sale  
18 or actually sold as a Chrysler/Dodge "CPO" vehicle. Notwithstanding the content of any  
19 CarFax report, including the lack of any indication or an actual indication of a previous  
20 collision or accident to the vehicle on the Carfax report, SAHARA, at all times had an  
21 separate and independent duty to thoroughly inspect the vehicle to ensure it did not have  
22 any frame damage or other indicia that the vehicle had been in a significant collision or  
23 collisions, and to make full disclosure to any potential buyer regarding the findings on  
24 their inspection.  
25  
26  
27  
28

1           15.     Furthermore, under Chrysler/Dodge's own standards involving CPO  
2 vehicles, any vehicle that has sustained any frame damage are automatically ineligible to  
3 be sold as a Chrysler/Dodge CPO vehicle. Furthermore, when a vehicle that is going to  
4 be sold as a CPO vehicle has sustained a significant previous collision damage, the nature  
5 and extent of that previous collision and the damage and repairs related to that collision  
6 would be abundantly clear to the dealer given the dealer's obligations to have all CPO  
7 vehicles go through Chrysler/Jeep's comprehensive inspection process with a Chrysler  
8 certified technician.  
9

10           16.     Given the extent the of damage caused by the previous collision/accident to  
11 the vehicle, the nature and extent of that previous collision damage and the extent of the  
12 repairs to the vehicle would been abundantly evident and discovered at time of  
13 SAHARA's comprehensive CPO inspection process. As a CPO vehicle, such marketing  
14 and selling of a CPO is to give the consumer the piece of mind that the vehicle does not  
15 have any previous significant collision and/or frame damage, and to further induce  
16 consumers within the community to purchase a CPO vehicle at a higher price as  
17 compared to a comparable non CPO vehicle.  
18

19           17.     Nevertheless, given the extremely negative stigma consumers attach to  
20 vehicles that have been in significant previous collisions, this important fact, which was  
21 known to SAHARA, prior to the vehicle's sale to the Plaintiff, (as hereinafter alleged),  
22 was statutorily required to still be clearly disclosed to any consumer at time of sale,  
23 including the nature and extent of the previous collision if it was known or should have  
24 been known by SAHARA, prior to the sale of the vehicle to the Plaintiff.  
25

26           18.     Indeed, one of the primary reasons for selling a Chrysler Dodge CPO  
27 vehicle is to reduce the consumer's perception of the risk involved with purchasing a  
28 used with respect to the vehicle having and/or suffering significant previous collisions

---

1 and/or previous accidents, and the perceived safety issues and diminished value to the  
2 vehicle that previous collisions can cause to a vehicle in the mind of the consumer,  
3 including the Plaintiff. The consumer's reasonable expectation when purchasing a  
4 certified pre owned vehicle is that it does not have any significant previous collisions or  
5 accidents or frame damage or other conditions that will diminish its safety or value,  
6 which would be material and important to any reasonable consumer purchasing a CPO  
7 used vehicle. This expectation on the part of the consumer is specifically created in the  
8 advertising materials, brochures and other information that is disseminated to the  
9 community with respect to buying piece of mind when purchasing a Chrysler/Dodge CPO  
10 vehicle, which includes Chrysler/Dodge CPO vehicles.  
11

12 19. More specifically, it is advertised with respect Chrysler/Dodge CPO vehicles  
13 that :

- 14 A. When you have a Chrysler Group Certified Pre-Owned vehicle  
15 ("CPOV") you have far more then just a "used" vehicle. You have  
16 confidence. You have pride. You have a great vehicle that you can  
17 trust. You're certified.
- 18 B. Every Chrysler, Jeep, Dodge and Ram CPOV can be counted on to  
19 go the distance. Our CPO vehicles must pass a strident  
20 certification process ***that guarantees only the finest late  
21 model vehicles get certified.*** Every vehicle that passes is then  
22 subjected to a comprehensive 125 point inspection and a through  
23 reconditioning process using Authentic Mopar Parts.
- 24 C. What would you expect to pay to have a qualified technician give  
25 this vehicle such a thorough inspection ?
- 26 D. ***Only the finest late model vehicles we have are going to  
27 be certified to begin with, so the [CPO] vehicles you are  
28 checking out on the lot are the best.***

20. Moreover, a CPO vehicle, as compared to a comparable non CPO vehicle,  
will usually command and justify an increased selling price at least several hundreds of  
dollars higher then a comparable non CPO vehicle, sometimes more then \$ 1,500.00,

1 and consumer's are willing to pay that increased price for the piece of mind that is  
2 advertised to them about purchasing a Chrysler/Dodge CPO vehicle. Indeed, the  
3 aforementioned written and/or on line materials and advertisements which are  
4 disseminated to the community are there to provide a further inducement and incentive  
5 to the consumer to spend the extra money to purchase "piece of mind" and confidence  
6 with respect to a Chrysler/Dodge CPO certified vehicle.  
7

8 21. On or about May 6, 2014, SAHARA acquired the vehicle from a private  
9 party. That private party informed and specifically told SAHARA's used car manager,  
10 Joshua Grant, that the vehicle had been in a previous collision in March of 2014, and also  
11 gave Mr. Grant a copy of the body shop repair order relating to the repairs that were  
12 undertaken on the vehicle as a result of the previous collision. The body shop estimate,  
13 which was in Mr. Grant's possession, indicated the vehicle had \$ 4,088.00 in previous  
14 collision damage, and also disclosed the nature and extent of the previous damage  
15 caused by the accident, based upon the parts and components that were identified on the  
16 repair order and replaced or repaired on the vehicle as a result of the previous collision.  
17

18 22. That body shop estimate disclosed the following repairs to the vehicle,  
19 which included, but were not limited to : a replaced front front frame end bracket, a  
20 replaced radiator support, front bumper repaired, right inner and outer tie rods replaced,  
21 and the stabilizer link replaced, left front wheel repaired and left front quarter panel  
22 repainted.  
23

24 23. After briefly doing an initial visual assessment and inspection on the  
25 vehicle on May 6, 2014, Mr. Grant, at that point, made the initial decision and undertook  
26 the initial steps to resell the vehicle as a CPO certified vehicle. On or about May 8, 2017,  
27 (three days after the car logged into SAHARA's inventory and given a stock number), the  
28 vehicle was brought into SAHARA's service department by Mr. Grant to undergo the

---

1 comprehensive CPO inspection process with one of their Chrysler certified technicians.  
2 Mr. Grant did not inform anyone in the service department of the previous collision the  
3 vehicle was in or given the body shop estimate regarding the vehicle to anyone in the  
4 service department.

5         24. At the time of the technician's inspection, all of the aforementioned repairs  
6 and replaced parts and components to the vehicle that were present due to the previous  
7 collision the vehicle was involved in, and were all present and abundantly obvious to the  
8 trained eye, including SAHARA's certified technician. As part Chrysler/Dodge's  
9 comprehensive CPO inspection process, the technician is required to prepare and sign off  
10 on the comprehensive check list, which the technician did.

11         25. Notwithstanding, and knowing of and/or having should have known of all  
12 the aforementioned items being repaired or replaced on the vehicle, and also having a  
13 good idea of the nature and extent of the previous damage and collision to the vehicle,  
14 SAHARA's technician did not note any of these items were repaired or replaced, either in  
15 the specific enumerated items set forth on the report, or in the area where "additional  
16 information" could have been noted on the report. This, notwithstanding that  
17 SAHARA's mechanic and SAHARA's used car manager actually knew of the nature and  
18 extent of the previous collision, and also knew the car was going to be resold to the  
19 community as a CPO vehicle.

20         26. During the sales process, the SAHARA's salesperson was explaining the  
21 many advantages of buying a CPO vehicle, one of which was the comprehensive safety  
22 inspection the vehicle undergoes. After the deal was negotiated in the sale's department,  
23 Plaintiff was then brought into the F & I department to sign all the closing documents.  
24 One of the documents Plaintiff was presented with was a Carfax that indicated the  
25 vehicle had been in a previous accident. Plaintiff inquired about the accident and was  
26  
27  
28

---

1 concerned about the previous accident the vehicle had been involved in, which was not  
2 previously disclosed to him.

3 27. Plaintiff was then told that the vehicle had been through a comprehensive  
4 safety inspection and if the previous accident was serious or significant, it would not have  
5 been certified a CPO. Plaintiff was then presented and reviewed the CPO inspection  
6 report as well that was prepared by SAHARA's technician. Having been told the car had  
7 gone through a comprehensive inspection, having been assured that the accident was not  
8 significant, and not seeing any indication on the CPO inspection report of anything being  
9 replaced or repaired or damaged, Plaintiff's concerns regarding the accident were  
10 resolved and he went forward with the sale.  
11

12 28. Plaintiff not being made aware of nature and extent of the previous  
13 collision and repairs to the vehicle, it was in approximately mid May of 2015, Plaintiff  
14 first became aware of the nature and extent of the undisclosed damage to the vehicle, of  
15 which SAHARA had actual knowledge of prior to the time of sale, and did not disclose to  
16 him.  
17

18 29. This information would have been a material (important) fact any  
19 reasonable consumer, including the Plaintiff, would want to know about and would also  
20 deem important in making a decision to purchase a used vehicle, especially with respect  
21 to a CPO vehicle, given the purchase of a CPO vehicle is to take much of the risk out of  
22 purchasing a used vehicle vis-à-vis the vehicle being in a previous significant collision  
23 and/or having frame and/or unibody damage and excessive body damage. Had Plaintiff  
24 been informed of the nature and extent of the damage to the vehicle which was in the  
25 actual knowledge of SAHARA, he would not have purchased the vehicle and would not  
26 have entered into the RISC for the vehicle.  
27  
28

1        30. At all relevant times, SAHARA, as a vehicle dealer within this community,  
2 would know that any reasonable consumer, including the Plaintiff, associates a very  
3 negative stigma to vehicles which have been in a previous collision or collisions, both as  
4 to its safety and as to its value. Such a negative stigma is further heightened with respect  
5 to a CPO vehicle given it is the consumer's expectation when purchasing a  
6 Chrysler/Dodge certified vehicle that they are avoiding purchasing a vehicle that has any  
7 such damage. Furthermore, Defendant SAHARA, as a vehicle dealership who sells  
8 hundreds of CPO vehicles to the community, is fully aware of this expectation on the part  
9 of the consumer when they choose to decide to purchase a Chrysler/Dodge CPO vehicle.  
10 The information known to SAHARA relating to the nature and extent of the previous  
11 damage to the vehicle, in the mind of a reasonable consumer, would relate to the  
12 vehicle's safety and/or dramatically diminished its value, and would be important in  
13 making a determination in whether to purchase the vehicle. Consumers do not seek to  
14 purchase vehicles, especially CPO vehicles, with an accident history, and if an accident is  
15 disclosed to them and the dealer has actual knowledge of the nature and extent of that  
16 previous collision, SAHARA had the obligation to make full and complete disclosure to  
17 the Plaintiff relating to all information it had within its possession regarding the previous  
18 collision and the nature and extend of that accident, as it would have been material to  
19 Plaintiff's decision to purchase the vehicle.  
20  
21

22        31. Pursuant to NRS §§ 41.600(e), 598.0915, and 598.0923 Defendant  
23 SAHARA engaged in statutory consumer fraud/deceptive trade practices by knowingly  
24 engaging in certain prohibited conduct and/or omissions including but not limited to :  
25

- 26        A. Making a false representation as to the source, sponsorship,  
27        approval **or certification** of goods for sale. [NRS 598.0915(2) and  
28        NRS 41.600(e)]

- 1 B. Representing that goods for sale are of a particular standard, quality  
2 or grade ***if he knows or should know*** that they are of another  
3 standard, quality, grade, style or model. [NRS 598.0915(7) and NRS  
4 41.600(2)(e)]
- 5 C. Failing to disclose a material fact in connection with the sale of  
6 goods. [NRS 598.0923(2) and NRS 41.600(2)(e)]
- 7 D. Violating a federal or state statute or regulation relating to the sale of  
8 goods. [NRS 598.0923(3) and NRS 41.600(2)(e)]<sup>2</sup>
- 9 E. Making any other false representation in a transaction. [NRS  
10 598.0915(15) and NRS 41.600(2)(e)]

11 32. As a direct and proximate cause the deceptive conduct and/or omissions,  
12 as herein alleged, Plaintiff has been damaged.

13 33. Furthermore, Defendant SAHARA in engaging in the aforementioned  
14 deceptive trade practices, has acted willfully, intentionally, maliciously and fraudulently,  
15 with intent to deceive and defraud the Plaintiff, with great recklessness and carelessness  
16 in total disregard of the consequences of their intentional actions upon Plaintiff, thereby  
17 entitling the Plaintiff to an additional award of damages in the nature of punitive and/or  
18 exemplary damages in a sum subject to proof at time of trial.

## 19 II

### 20 **SECOND CLAIM FOR RELIEF FOR RESCISSION OF CONTRACT**

#### 21 **AS AGAINST DEFENDANTS SAHARA AND WFB ONLY**

#### 22 **[NRS 41.600(3)(b) and Common Law]**

23 34. Plaintiffs herein incorporate by reference and hereby reallege paragraphs 1  
24 through 32

25 35. Based on the aforementioned deceptive trade practices, as herein alleged,  
26 Plaintiff is entitled to rescission and/or cancellation of their RISC, (including WFB as

27 <sup>2</sup> See 16 C.F.R. § 455.1(a)(1), a federal regulation relating to the sale of goods which states : "It is a  
28 deceptive act or practice for any used vehicle dealer when that dealer sells or offers for sale a used vehicle  
... to misrepresent the mechanical condition of a used vehicle."



1 the assignee/holder of the RISC).

2 **III**

3 **THIRD CLAIM FOR RELIEF FOR EQUITABLE ESTOPPEL**  
4 **AS AGAINST DEFENDANTS SAHARA AND WFB ONLY**

5 **[NRS 41.600(3)(b) and Common Law]**

6 36. Plaintiff hereby incorporates by reference and herein realleges paragraphs  
7 1 through 35

8 37. At all relevant times herein mentioned, Defendant SAHARA was a  
9 franchised Chrysler/Dodge dealership and participant in the Chrysler/Dodge CPO  
10 program. By virtue of its status as a franchised Chrysler/Dodge dealer who was a  
11 participant in the Chrysler/Dodge CPO program, and given the rigorous undertakings  
12 and requirements the dealer has to go through to properly certify a Dodge as a CPO  
13 under the CPO program, SAHARA had vastly superior knowledge about the condition of  
14 the vehicle, as herein alleged. This was based on the purported mandatory CPO  
15 inspection undertaken on the vehicle, and as such had a duty to disclose the true and  
16 accurate condition of the vehicle to the Plaintiff, which SAHARA knew, or should have  
17 known about.

19 38. At all relevant times herein mentioned, Defendant SAHARA intended for  
20 the Plaintiff to act upon the Defendant's omissions/misrepresentations, (as herein  
21 alleged), in conducting the sale, delivery and inspection of the vehicle as a CPO vehicle,  
22 and Defendant SAHARA had a duty to speak given the dealer had superior knowledge  
23 with respect to the vehicle's condition based upon it's purported CPO inspection, which  
24 would have also had to have been conducted in accordance with Chrysler/Dodge's CPO  
25 standards involving CPO inspections.

27 39. At all relevant times herein mentioned, the Plaintiff was unaware of the  
28 vehicle's deficiencies as herein described. <sup>14</sup> Furthermore, Plaintiff detrimentally relied

---

and/or acted upon on Defendant's omissions with respect to the vehicle being a CPO vehicle.

**40.** Based on the aforementioned deceptive conduct and affirmative engagement in deceptive trade practices and/or consumer fraud, Defendant SAHARA has acted unconscionably and has unclean hands, and by virtue of said conduct, Defendants SAHARA and WFB, (as the initial assignee and previous “holder” of the RISC), are estopped from claiming the RISC is valid and/or otherwise enforceable, or any other subsequent contract with WFB involving the vehicle.

## IV

**FORTH CLAIM FOR RELIEF FOR RESTITUTION/UNJUST ENRICHMENT AGAINST DEFENDANT SAHARA WFB ONLY**

**[NRS 41.600(3)(b) and Common Law]**

41. Plaintiff hereby incorporates by reference and herein realleges paragraphs 1 through 40.

**42.** Based on the aforementioned deceptive trade practices, as herein alleged, Defendant SAHARA and WFB has been unjustly enriched to the detriment to the Plaintiff, and Plaintiffs are entitled to the return of his down (the agreed amount of his trade in), and monthly payments under the RISC, and said Defendants hold said funds as constructive trustee for the benefit of the Plaintiff.

## V

**FIFTH CLAIM FOR RELIEF FOR DECLARATORY**  
**RELIEF AS AGAINST DEFENDANT SAHARA AND WFB ONLY**

43. Plaintiff hereby incorporates by reference and herein realleges paragraphs 1 through 42

44. An actual controversy has arisen and now exists between Plaintiff and the Defendants with regard to the validity, enforceability and/or violability of the

aforementioned RISC entered into with SAHARA and then assigned to WFB, and Plaintiffs' right to Rescission and/or Restitution. Plaintiff contends the RISC is void ab initio and/or voidable and that they are entitled to rescission and restitution. Defendants contend the RISC is valid and enforceable and that Plaintiff is not entitled to Rescission and/or Restitution under the RISC, and that Plaintiff are still obligated to pay the remaining balance in the agreed upon monthly payments to WFB, under the initial RISC assigned to WFB and under any other subsequent contract entered into with WFB relating to the financing of the vehicle.

45. Plaintiff desires and seeks a judicial determination as to voidability and/or enforceability of the aforementioned RISC relating to the vehicle.

46. A judicial declaration is necessary and appropriate at this time under the circumstances in order for the parties to be able to ascertain their rights, obligations and remedies under the aforementioned RISC.

## VI

### **SIXTH CLAIM FOR RELIEF FOR RECOVERY UNDER AUTO DEALERSHIP**

**SURETY BOND AS AGAINST DEFENDANT COREPOINTE ONLY**

**[NRS 482.345(7)]**

47. Plaintiff hereby incorporates by reference and herein realleges paragraphs 1 through 46

48. At all relevant times herein mentioned, Defendant COREPOINTE is the issuer of a dealership licensing surety bond issued to Defendant SAHARA pursuant to the licensing provisions of NRS 482.345, of which said bond was in effect at the time of the sale of the vehicle to the Plaintiff, as well as at the time this Complaint was filed.

49. Plaintiff, as alleged herein, has been damaged by the deceptive trade practices of Defendant SAHARA as set forth herein, who is a "dealer" as referenced and

1 defined by NRS 482.345, of which said damages or losses and equitable relief, as alleged  
2 herein, were all caused and/or necessitated by SAHARA's owners, principals, employees  
3 and/or managers who were all working within the scope of their employment.

4 **WHEREFORE**, Plaintiff, prays for judgment against Defendants, as follows:

5 **On First Claim for Relief:**

- 6  
7 1. For actual damages,  
8 2. For exemplary damages as against SAHARA only, according to proof, and  
9 3. For prejudgment interest, and  
10 4. For all incidental/consequential losses and/or damages, and  
11 5. For reasonable attorneys fees, and  
12 6. For costs of suit incurred herein, and  
13 7. For such other and further relief as the Court deems just and proper.

14 **On Second Claim for Relief:**

- 15 1. For a judicial declaration estopping Defendant from enforcing the  
16 contract, and  
17 2. For reasonable attorneys fees, and  
18 3. For costs of suit incurred herein, and  
19 4. For such other and further relief as the Court deems just and proper.

20 **On Third Claim for Relief:**

- 21 1. For a judicial declaration voiding/rescinding the RISC and for restitution  
22 of all amounts tendered to Defendants, and;  
23 2. For all incidental/consequential losses and/or damages, and  
24 3. For reasonable attorneys fees, and  
25 4. For costs of suit incurred herein, and  
26 5. For such other and further relief as the Court deems just and proper.

27 **On Forth Claim for Relief :**

- 28 1. For restitution of all amounts paid to Defendants by Plaintiff, and  
2. For reasonable attorneys fees, and  
3. For costs of suit incurred herein, and  
4. For such other and further relief as the Court deems just and proper.

**On Fifth Claim for Relief :**

1. For a judicial declaration estopping Defendants from asserting the RISC or any other financing contract is valid or otherwise enforceable, and,
3. For a judicial declaration rescinding the RISC, and,
4. For a judicial declaration entitling Plaintiff to restitution, and
5. For all incidental losses and/or damages, and
6. For reasonable attorneys fees, and
7. For costs of suit incurred herein, and
8. For such other and further relief as the Court deems just and proper.

**On Sixth Claim For Relief**

1. For actual damages, and
2. For prejudgment interest, and
3. For all incidental/consequential losses and/or damages, and
4. For reasonable attorneys fees, and
5. For costs of suit incurred herein, and
6. For such other and further relief as the Court deems just and proper

**PLAINTIFF HEREBY DEMANDS JURY**

Dated this 17<sup>th</sup> day of March, 2017

*By/s/ George O. West III*  
**GEORGE O. WEST III**  
Attorney for Plaintiff  
**DERRICK POOLE**

*Steven D. Grierson*

1 **NEO**  
2 **JEFFERY A. BENDAVID, ESQ.**  
3 Nevada Bar No. 6220  
4 **STEPHANIE J. SMITH, ESQ.**  
5 Nevada Bar No. 11280  
6 **MORAN BRANDON BENDAVID MORAN**  
7 630 South 4<sup>th</sup> Street  
8 Las Vegas, Nevada 89101  
9 (702) 384-8424  
10 j.bendavid@moranlawfirm.com  
11 s.smith@moranlawfirm.com  
12 *Attorney for Defendants, Nevada Auto*  
13 *Dealership Investments LLC d/b/a Sahara*  
14 *Chrysler and Corepointe Insurance Co.*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 **DERRICK POOLE,**

13 **Plaintiff,**

14 **v.**

15 **NEVADA AUTO DEALERSHIP**  
16 **INVESTMENTS LLC, a Nevada Limited**  
17 **Liability Company d/b/a SAHARA**  
18 **CHRYSLER; JEEP, DODGE, WELLS**  
19 **FARGO DEALER SERVICES INC.,**  
20 **COREPOINTE INSURANCE**  
21 **COMPANY; and DOES 1 through 100,**  
22 **Inclusive,**

23 **Defendant.**

**Case No.: A-16-737120-C**  
**Dept. No.: XXVII**

23 **NOTICE OF ENTRY OF DECISION AND ORDER GRANTING DEFENDANTS'**  
24 **MOTION FOR SUMMARY JUDGMENT**

25 Please take notice that the FINDINGS OF FACT AND CONCLUSIONS OF LAW  
26 ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT was entered in the above  
27 entitled case by the Honorable Nancy L. Allf on the 27<sup>th</sup> day of November, 2017.  
28



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

1 A TRUE AND CORRECT COPY of the above referenced document is attached  
2 hereto as Exhibit A.

3 DATED this 1<sup>st</sup> day of December, 2017.

4 MORAN BRANDON BENDAVID MORAN

5 /s/ Jeffery A. Bendavid

6 JEFFERY A. BENDAVID, ESQ.

7 Nevada Bar No. 6220

8 STEPHANIE J. SMITH, ESQ.

9 630 South 4th Street

10 Las Vegas, Nevada 89101

11 Attorney for Defendants, Nevada Auto

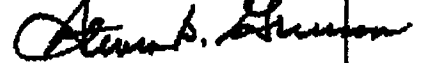
12 Dealership Investments LLC d/b/a Sahara

13 Chrysler and Corepointe Insurance Co.



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DERRICK POOLE

CASE NO.: A-16-737120-C  
DEPT NO.: 27

PLAINTIFF(S)

VS.

NEVADA AUTO DEALERSHIP  
INVESTMENTS, LLC; WELLS FARGO  
DEALER SERVICES, INC.;  
COREPOINTE INSURANCE  
COMPANY

DEFENDANT(S)

**DECISION & ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

These matters having come on for hearing on November 9, 2017; George O. West III, Esq. and Craig B. Friedberg, Esq. appearing for Plaintiff Derrick Poole ("Poole"); Jeffery A. Bendavid, Esq. and Stephanie J. Smith, Esq. appearing for Defendants Nevada Auto Dealership Investments LLC d/b/a Sahara Chrysler, Jeep, Dodge, and Corepointe Insurance Company ("Defendant(s)"), and the Court having heard arguments of counsel, and being fully advised in the premises, COURT FINDS after review:

This case arises out of a sale of a Certified Pre-Owned ("CPO") truck purchased on or about May 26, 2014. Defendants Nevada Auto Dealership LLC and Corepointe Insurance Co. filed a Motion for Summary Judgment on October 2, 2017, and a hearing was held November 9, 2017. The Court took the matter under advisement and set a Status Check for November 21, 2017 for the Court to release a written decision.



1 When Plaintiff purchased his CPO 2013 Dodge Ram from Defendant, Defendant  
2 disclosed that the vehicle was in a prior accident. It is undisputed that Defendant produced a  
3 CarFax vehicle history report that listed the vehicle was in a prior accident, and the sales  
4 representative indicated the same. Plaintiff drove the vehicle for a year, at which point he  
5 discovered the vehicle had frame damage. Plaintiff kept driving the vehicle. Plaintiff now  
6 contends that Defendants' disclosure of the previous accident at the time of sale was  
7 insufficient because Defendants had an Allstate Collision Estimate of Record ("ACE") that  
8 stated the nature, extent, and repair cost of the damage from the previous collision.  
9

10 Defendant moves for summary judgment under NRCP 56. "Summary judgment is  
11 appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories,  
12 admissions, and affidavits, if any, that are properly before the court demonstrate that no  
13 genuine issue of material fact exists, and the moving party is entitled to judgment as a matter  
14 of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).  
15

16 Plaintiff argues that each of his claims arise from Defendant's failure to disclose material  
17 facts, namely the nature and extent of the damage from the previous collision. Defendant  
18 contends that the material fact here is that the vehicle was in a prior accident, not the extent of  
19 the damage from that accident.  
20

21 NRS 598.0923 only requires the disclosure of material facts. Here, the material fact is that  
22 the vehicle was in a prior accident. The duty to disclose under NRS 598.0923 does not extend to  
23 the entire effect of the accident, such as a price breakdown of every part and service provided as  
24 listed in the ACE. It is undisputed that Defendant disclosed the prior accident to Plaintiff. There  
25 is no indication in the record that Plaintiff inquired about the parts and services used to repair the  
26 vehicle as provided in the ACE, and such information was then withheld. Plaintiff relied on the  
27  
28

1 CPO report, which the undisputed evidence shows would only have notated frame damage if a  
2 repair, if any, was not up to standard.

3 To the extent Plaintiff argues Defendant made false representations as to the certification of  
4 truck, or that the truck was of a particular quality or standard, this argument is flawed. The  
5 vehicle went through and passed a 125-point Certified Pre-Owned Vehicle Inspection. Given this  
6 certification, Plaintiff cannot argue that Defendant misrepresented that the vehicle was CPO  
7 certified, as it was. The sufficiency of the CPO inspection standards is not at issue for this  
8 argument, but rather the fact that the vehicle was ultimately certified as pre-owned.  
9

10 Plaintiff conceded at the hearing that if the claim for deceptive trade practices fails, the  
11 remaining claims for equitable relief must also fail. This Court agrees. Defendant disclosed the  
12 material facts about the vehicle, and Plaintiff purchased the vehicle, driving it for at least two  
13 years. Thus, there are no grounds to grant equitable relief for Plaintiff.  
14

15 THEREFORE, COURT ORDERS for good cause appearing and after review Defendants'  
16 Motion for Summary Judgment is hereby GRANTED. The hearing on Motions in Limine set for  
17 December 21, 2017 at 10:30 a.m. on Motions Calendar and the Jury Trial set to begin January 8,  
18 2018 at 10:00 a.m. are hereby VACATED.  
19

20 DATED November 22, 2017  
21

22  
23   
24 NANCY ALLF  
25 DISTRICT COURT JUDGE  
26  
27  
28


1  
2 **CERTIFICATE OF SERVICE**

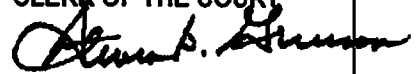
3 I hereby certify that on or about the date signed I caused the foregoing document  
4 to be electronically served pursuant to EDCR 8.05(a) and 8.05(f) through the Eighth  
5 Judicial District Court's electronic filing system, with the date and time of the electronic  
6 service substituted for the date and place of deposit in the mail to and/or by fax and mail to:

6 Jeffery Bendavid, Esq.  
7 Stephanie Smith, Esq.  
8 MORAN BRANDON BENDAVID MORAN

8 George West III, Esq.  
9 LAW OFFICES OF GEORGE O. WEST, III

10 Craig Friedberg, Esq.  
11 LAW OFFICES OF CRAIG B. FRIEDBERG, ESQ.

12   
13 \_\_\_\_\_  
14 Karen Lawrence  
15 Judicial Executive Assistant  
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Amy F. Sorenson, Esq.  
Nevada Bar No. 12495  
Nathan G. Kanute, Esq.  
Nevada Bar No. 12413  
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[asorenson@swlaw.com](mailto:asorenson@swlaw.com)  
[nkanute@swlaw.com](mailto:nkanute@swlaw.com)  
*Attorneys for Defendant*  
**WELLS FARGO DEALER SERVICES, INC.**

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DERRICK POOLE,

Plaintiffs,

vs.

NEVADA AUTO DEALERSHIP  
INVESTMENTS LLC, a Nevada Limited  
Liability Company d/b/a SAHARA  
CHRYSLER, JEEP, DODGE; WELLS  
FARGO DEALER SERVICES INC.;  
COREPOINTE INSURANCE  
COMPANY; and DOES 1 through 100,  
Inclusive,

Defendants.

Case No: A-16-737120-C

Dept. No. XXVII

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER OF DISMISSAL WITH  
PREJUDICE AS TO WELLS FARGO  
DEALER SERVICES**

PLEASE TAKE NOTICE that the Stipulation and Order of Dismissal with Prejudice as to Wells Fargo Dealer Services was filed with this Court on December 28, 2017, a copy of which is attached as Exhibit 1.

Dated: December 29, 2017

SNELL & WILMER L.L.P.

By: /s/ Nathan G. Kanute

Amy F. Sorenson, Esq.  
Nathan G. Kanute, Esq.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

*Attorneys for Defendant*  
**WELLS FARGO DEALER SERVICES, INC.**

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER OF DISMISSAL WITH PREJUDICE AS TO WELLS FARGO DEALER SERVICES** by the method indicated:

    X     Court's Electronic Filing System  
           U.S. Mail  
           Facsimile Transmission  
           Overnight Mail  
           Federal Express  
           Hand Delivery

to the following:

George O. West III  
Law Offices of George O. West III  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145  
gowesq@cox.net

Jeff Bendavid  
j.bendavid@moranlawfirm.com

DATED this 29<sup>th</sup> day of December, 2017.

/s/ Lara J. Taylor  
An Employee of Snell & Wilmer LLP

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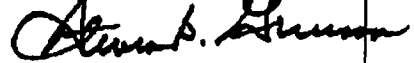
Exhibit List

1. Order granting stipulation of dismissal with prejudice as to Wells Fargo Dealer Services

4 pages

# EXHIBIT 1 - Order Granting Stipulation

EXHIBIT 1 - Order Granting Stipulation



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Nevada Bar No. 12413  
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*Attorneys for Defendant*  
7 **WELLS FARGO DEALER SERVICES**

8  
9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11  
12 **DERRICK POOLE,**

13 **Plaintiffs,**

14 **vs.**

15 **NEVADA AUTO DEALERSHIP**  
16 **INVESTMENTS LLC, a Nevada Limited**  
17 **Liability Company d/b/a SAHARA**  
18 **CHRYSLER, JEEP, DODGE; WELLS**  
19 **FARGO DEALER SERVICES INC.;**  
**COREPOINTE INSURANCE**  
**COMPANY; and DOES 1 through 100,**  
**Inclusive,**

20 **Defendants.**

**Case No: A-16-737120-C**

**Dept. No. XXVII**

**STIPULATION AND ORDER OF  
DISMISSAL WITH PREJUDICE AS TO  
WELLS FARGO DEALER SERVICES**

21 **IT IS HEREBY STIPULATED AND AGREED, pursuant to Nev. R. Civ. P. 41(a)(1), by**  
22 **and between Plaintiff Derrick Poole ("Plaintiff") and Defendants Wells Fargo Dealer Services, a**  
23 **division of Wells Fargo Bank, N.A. ("Wells Fargo"), Nevada Auto Dealership Investments LLC**  
24 **D/B/A Sahara Chrysler, Jeep, Dodge, and Corepointe Insurance Company, by and through their**  
25 **respective counsel of record, that: (i) Plaintiff and Wells Fargo have settled the dispute amongst**  
26 **themselves in good faith and the provisions of NRS 17.245 shall apply to that settlement; and (ii)**  
27 **Plaintiff's claims against Wells Fargo in the above matter shall be dismissed with prejudice with**  
28 **Plaintiff and Wells Fargo each bearing their own attorney's fees and costs, as against each other.**



1 Dated: December \_\_, 2017

SNELL & WILMER L.L.P.

2  
3 By: /s/ Nathan G. Kanute

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*Attorneys for Defendant Wells Fargo Dealer  
Services*

4  
5  
6  
7 Dated: December 20, 2017

LAW OFFICES OF GEORGE O. WEST III

8  
9 By: /s/

George O. West III, Esq. (NV Bar No. )  
10161 Park Run Dr., Suite 150  
Las Vegas, NV 89145  
*Attorney for Plaintiff Derrick Poole*

11  
12  
13 Dated: December \_\_, 2017

MORAN BRANDON BENDAVID MORAN

14  
15 By: /s/

Jeffery A. Bendavid, Esq.  
Stephanie J. Smith, Esq.  
630 South 4<sup>th</sup> Street  
Las Vegas, NV 89101  
*Attorneys for Defendants Nevada Auto  
Dealership Investments LLC d/b/a Sahara  
Chrysler and Corepointe Insurance Co.*

16  
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19  
20 **ORDER**

21 IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

22  
23  
24 \_\_\_\_\_  
DISTRICT COURT JUDGE

1 Dated: December \_\_, 2017

SNELL & WILMER L.L.P.

2  
3 By: /s/ Nathan G. Kanute  
Amy F. Sorenson, Esq.  
Nathan G. Kanute, Esq.  
3883 Howard Hughes Parkway, Suite 1100  
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Attorneys for Defendant Wells Fargo Dealer  
Services

4  
5  
6  
7 Dated: December 20, 2017

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9 By: /s/  
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10161 Park Run Dr., Suite 150  
Las Vegas, NV 89145  
Attorney for Plaintiff Derrick Poole

11  
12 Dated: December 20, 2017

MORAN BRANDON BENDAVID MORAN

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14 By: /s/  
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Stephanie J. Smith, Esq.  
630 South 4<sup>th</sup> Street  
Las Vegas, NV 89101  
Attorneys for Defendants Nevada Auto  
Dealership Investments LLC d/b/a Sahara  
Chrysler and Corepointe Insurance Co.

15  
16  
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19  
20 ORDER

21 IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

22  
23  
24 DISTRICT COURT JUDGE

Dated: December 21, 2017

SNELL & WILMER L.L.P.

By: /s/ [Signature] NV Bar 12-24760  
Amy F. Sorenson, Esq.  
Nathan G. Kanute, Esq.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
*Attorneys for Defendant Wells Fargo Dealer Services*

Dated: December \_\_, 2017

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George O. West III, Esq. (NV Bar No. )  
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Las Vegas, NV 89145  
*Attorney for Plaintiff Derrick Poole*

Dated: December \_\_, 2017

MORAN BRANDON BENDAVID MORAN

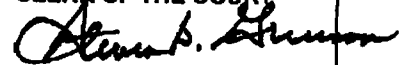
By: /s/  
Jeffery A. Bendavid, Esq.  
Stephanie J. Smith, Esq.  
630 South 4<sup>th</sup> Street  
Las Vegas, NV 89101  
*Attorneys for Defendants Nevada Auto Dealership Investments LLC d/b/a Sahara Chrysler and Corepointe Insurance Co.*

**ORDER**

IT IS SO ORDERED this 27 day of Dec, 2017

[Signature]  
DISTRICT COURT JUDGE

AY



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DERRICK POOLE

CASE NO.: A-16-737120-C  
DEPT NO.: 27

PLAINTIFF(S)

VS.

NEVADA AUTO DEALERSHIP  
INVESTMENTS, LLC; WELLS FARGO  
DEALER SERVICES, INC.;  
COREPOINTE INSURANCE  
COMPANY

DEFENDANT(S)

**DECISION & ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

These matters having come on for hearing on November 9, 2017; George O. West III, Esq. and Craig B. Friedberg, Esq. appearing for Plaintiff Derrick Poole ("Poole"); Jeffery A. Bendavid, Esq. and Stephanie J. Smith, Esq. appearing for Defendants Nevada Auto Dealership Investments LLC d/b/a Sahara Chrysler, Jeep, Dodge, and Corepointe Insurance Company ("Defendant(s)"), and the Court having heard arguments of counsel, and being fully advised in the premises, COURT FINDS after review:

This case arises out of a sale of a Certified Pre-Owned ("CPO") truck purchased on or about May 26, 2014. Defendants Nevada Auto Dealership LLC and Corepointe Insurance Co. filed a Motion for Summary Judgment on October 2, 2017, and a hearing was held November 9, 2017. The Court took the matter under advisement and set a Status Check for November 21, 2017 for the Court to release a written decision.

1 When Plaintiff purchased his CPO 2013 Dodge Ram from Defendant, Defendant  
2 disclosed that the vehicle was in a prior accident. It is undisputed that Defendant produced a  
3 CarFax vehicle history report that listed the vehicle was in a prior accident, and the sales  
4 representative indicated the same. Plaintiff drove the vehicle for a year, at which point he  
5 discovered the vehicle had frame damage. Plaintiff kept driving the vehicle. Plaintiff now  
6 contends that Defendants' disclosure of the previous accident at the time of sale was  
7 insufficient because Defendants had an Allstate Collision Estimate of Record ("ACE") that  
8 stated the nature, extent, and repair cost of the damage from the previous collision.  
9

10 Defendant moves for summary judgment under NRCP 56. "Summary judgment is  
11 appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories,  
12 admissions, and affidavits, if any, that are properly before the court demonstrate that no  
13 genuine issue of material fact exists, and the moving party is entitled to judgment as a matter  
14 of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).  
15

16 Plaintiff argues that each of his claims arise from Defendant's failure to disclose material  
17 facts, namely the nature and extent of the damage from the previous collision. Defendant  
18 contends that the material fact here is that the vehicle was in a prior accident, not the extent of  
19 the damage from that accident.  
20

21 NRS 598.0923 only requires the disclosure of material facts. Here, the material fact is that  
22 the vehicle was in a prior accident. The duty to disclose under NRS 598.0923 does not extend to  
23 the entire effect of the accident, such as a price breakdown of every part and service provided as  
24 listed in the ACE. It is undisputed that Defendant disclosed the prior accident to Plaintiff. There  
25 is no indication in the record that Plaintiff inquired about the parts and services used to repair the  
26 vehicle as provided in the ACE, and such information was then withheld. Plaintiff relied on the  
27  
28

1 CPO report, which the undisputed evidence shows would only have notated frame damage if a  
2 repair, if any, was not up to standard.

3 To the extent Plaintiff argues Defendant made false representations as to the certification of  
4 truck, or that the truck was of a particular quality or standard, this argument is flawed. The  
5 vehicle went through and passed a 125-point Certified Pre-Owned Vehicle Inspection. Given this  
6 certification, Plaintiff cannot argue that Defendant misrepresented that the vehicle was CPO  
7 certified, as it was. The sufficiency of the CPO inspection standards is not at issue for this  
8 argument, but rather the fact that the vehicle was ultimately certified as pre-owned.  
9

10 Plaintiff conceded at the hearing that if the claim for deceptive trade practices fails, the  
11 remaining claims for equitable relief must also fail. This Court agrees. Defendant disclosed the  
12 material facts about the vehicle, and Plaintiff purchased the vehicle, driving it for at least two  
13 years. Thus, there are no grounds to grant equitable relief for Plaintiff.  
14

15 THEREFORE, COURT ORDERS for good cause appearing and after review Defendants'  
16 Motion for Summary Judgment is hereby GRANTED. The hearing on Motions in Limine set for  
17 December 21, 2017 at 10:30 a.m. on Motions Calendar and the Jury Trial set to begin January 8,  
18 2018 at 10:00 a.m. are hereby VACATED.  
19

20 DATED November 22, 2017  
21

22  
23 Nancy L. Allf  
24 NANCY ALLF  
25 DISTRICT COURT JUDGE  
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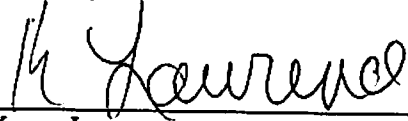
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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on or about the date signed I caused the foregoing document  
4 to be electronically served pursuant to EDCR 8.05(a) and 8.05(f) through the Eighth  
5 Judicial District Court's electronic filing system, with the date and time of the electronic  
6 service substituted for the date and place of deposit in the mail to and/or by fax and mail to:

6 Jeffery Bendavid, Esq.  
7 Stephanie Smith, Esq.  
8 MORAN BRANDON BENDAVID MORAN

8 George West III, Esq.  
9 LAW OFFICES OF GEORGE O. WEST, III

10 Craig Friedberg, Esq.  
11 LAW OFFICES OF CRAIG B. FRIEDBERG, ESQ.

12   
13 \_\_\_\_\_  
14 Karen Lawrence  
15 Judicial Executive Assistant  
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