

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK POOLE,

Appellant,

Supreme Court Case No: 74808

v

District Court Case No.:
A-16-737120-C

NEVADA AUTO DEALERSHIP
INVESTMENTS LLC a Nevada
Limited Liability Company d/b/a
SAHARA CHRYSLER, JEEP,
DODGE, and COREPOINTE
INSURANCE COMPANY,

Respondents,

Appeal from the Eighth Judicial District Court, Clark County.
The Honorable Nancy Alff, District Court Judge

APPELLANT'S APPENDIX VOLUME 2

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1 **Q.** And as a general manager now, is that
 2 something that you instill into all of your
 3 departments with respect to sales of used
 4 vehicles to persons within the community,
 5 truthful, honest, and accurate disclosures?
 6 **MR. TERRY:** Are you talking CPOs or any
 7 vehicle?
 8 **MR. WEST:** Any vehicle.
 9 **THE WITNESS:** Yes.
 10 **BY MR. WEST:**
 11 **Q.** Would the obligation and responsibility
 12 to make truthful, honest, and accurate
 13 disclosures to a car buyer be more important in
 14 the CPO realm than it would in the non-CPO realm?
 15 **A.** **Not necessarily, no.**
 16 **Q.** Why?
 17 **A.** **Disclosure would be the same regardless**
 18 **of the certification.**
 19 **Q.** Well, there is no certification on a
 20 non-CPO vehicle, correct?
 21 **A.** **Right.**
 22 **Q.** So in the CPO process, because one of
 23 the selling points or benefits for a CPO vehicle
 24 is that the vehicle is going through a
 25 comprehensive rigorous and thorough 125-point
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1 inspection by a certified technician --
 2 **A.** **Right.**
 3 **Q.** -- certain disclosures, additional
 4 disclosures, need to be made to a person buying a
 5 CPO vehicle versus a non-CPO vehicle as far as
 6 the inspection is concerned, true?
 7 **A.** **I don't follow you. What types of**
 8 **disclosures?**
 9 **Q.** Well, you are familiar with the types
 10 of disclosures the 125-point inspection sheet
 11 that is used for CPO vehicles, correct?
 12 **A.** **Yes.**
 13 **Q.** That sheet is not used in non-CPO
 14 sales, correct?
 15 **A.** **That's correct.**
 16 **Q.** And the inspection that is undertaken
 17 for non-CPO vehicles is not as comprehensive and
 18 rigorous as the 125-point CPO inspection, true?
 19 **A.** **That's correct.**
 20 **Q.** So the inspection of a CPO vehicle
 21 entails a much more comprehensive and rigorous
 22 inspection than a non-CPO vehicle, correct?
 23 **A.** **Yes.**
 24 **Q.** In fact, the manufacturer requires a
 25 much more rigorous inspection for a vehicle to
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1 become a Dodge CPO vehicle, true?
 2 **A.** **They require and provide it, yes.**
 3 **Q.** And because a consumer is putting more
 4 trust in the value and safety and confidence and
 5 peace of mind into a CPO vehicle, given they are
 6 paying more money generally than a non-CPO
 7 vehicle, would it be -- do you believe that in
 8 the CPO context, that being truthful, honest, and
 9 accurate is even more important with respect to
 10 the CPO inspection and the disclosures that need
 11 to be made to the consumer?
 12 **MR. TERRY:** Objection. Speculation.
 13 Assumes facts not in evidence.
 14 **BY MR. WEST:**
 15 **Q.** Based on your experience.
 16 **A.** **In that regard, I do not see it being**
 17 **more important in the CPO realm, no.**
 18 **Q.** Why is that?
 19 **A.** **Because we are truthful and honest with**
 20 **all of the vehicles we sell.**
 21 **Q.** In either case, whether it is a CPO or
 22 a non-CPO vehicle sale from Sahara Dodge, it is
 23 important to make full disclosure to a used car
 24 buyer involving things that might affect the
 25 vehicle's value, safety, desirability, or
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1 marketability, true?
 2 **A.** **Read that back, please.**
 3 **Q.** Sure.
 4 (Record read as follows:
 5 "Q. In either case, whether it is
 6 a CPO or a non-CPO vehicle sale
 7 from Sahara Dodge, it is important
 8 to make full disclosure to a used
 9 car buyer involving things that
 10 might affect the vehicle's value,
 11 safety, desirability, or
 12 marketability, true?")
 13 **THE WITNESS:** I would say that's true.
 14 **BY MR. WEST:**
 15 **Q.** Why are those things important to a
 16 consumer to know about and be disclosed by Sahara
 17 Dodge when buying a used vehicle within the
 18 community?
 19 **A.** **We prefer to be as upfront and honest**
 20 **as possible; legally, ethically, morally.**
 21 **Q.** Let's shift gears here a little bit.
 22 Let's start talking about this particular
 23 transaction and your knowledge regarding this
 24 particular transaction and what is done in the
 25 ordinary course of a similar transaction
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<p style="text-align: right;">66</p> <p>1 involving the vehicle at issue in this case.</p> <p>2 In May of 2015, you were the used car</p> <p>3 manager at Sahara Dodge, correct?</p> <p>4 A. Yes.</p> <p>5 Q. When a vehicle came in from another</p> <p>6 consumer within the community for a trade-in</p> <p>7 and -- strike that.</p> <p>8 When a consumer [sic] came in from</p> <p>9 another private consumer within the community as</p> <p>10 a trade-in, what was the standard operating</p> <p>11 procedure then with respect to making the</p> <p>12 decision or choice as to whether Sahara Dodge</p> <p>13 would seek to resell that vehicle to the</p> <p>14 community?</p> <p>15 A. They would look at certain factors;</p> <p>16 year, mileage, condition, desirability, price.</p> <p>17 Q. What was the normal custom and</p> <p>18 practice? Take me through your typical Joe Blow</p> <p>19 comes in, wants to buy a new vehicle, here is my</p> <p>20 trade.</p> <p>21 A. Okay.</p> <p>22 Q. What's the process by which the first</p> <p>23 thing that is done in assessing whether or not</p> <p>24 the dealership is going to take that trade-in; do</p> <p>25 you go there, do you have a salesperson go there,</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>	<p style="text-align: right;">68</p> <p>1 happen?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Yes?</p> <p>4 A. Yes.</p> <p>5 Q. Is that something that you instilled in</p> <p>6 all of the used car salespeople to make sure that</p> <p>7 that question was asked?</p> <p>8 A. Sometimes we try to instill in them to</p> <p>9 make sure it was asked, yes.</p> <p>10 MR. WEST: Let's go off the record real</p> <p>11 quick.</p> <p>12 (Discussion held off the record.)</p> <p>13</p> <p>14 MR. WEST: We are back on the record.</p> <p>15 I have my PC with me today. I previously</p> <p>16 produced an advertisement off the internet</p> <p>17 regarding CPO sales, which I understand the</p> <p>18 witness has seen, and I will ask him questions</p> <p>19 regarding this advertisement to confirm that.</p> <p>20 And I'll ask for that question if he wants to see</p> <p>21 it more than one time, we can play it more than</p> <p>22 one time.</p> <p>23 MR. TERRY: This is the one you sent me</p> <p>24 last night?</p> <p>25 MR. WEST: Yes.</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>
<p style="text-align: right;">67</p> <p>1 is there an intake sheet, what is generated?</p> <p>2 Those types of things.</p> <p>3 MR. TERRY: Objection. Relevance.</p> <p>4 BY MR. WEST:</p> <p>5 Q. You can answer.</p> <p>6 A. We would appraise the vehicle.</p> <p>7 Q. Who would be responsible for doing</p> <p>8 that?</p> <p>9 A. Myself or one of the two other</p> <p>10 managers.</p> <p>11 Q. And was there a specific appraisal</p> <p>12 sheet or a form that you used to do that?</p> <p>13 A. Yes.</p> <p>14 Q. What happened next?</p> <p>15 A. We would inspect the vehicle partially</p> <p>16 and start it, drive it, some of the electrical</p> <p>17 stuff, check it, pop the hood, you feel for</p> <p>18 damages, check tires, things of that nature.</p> <p>19 Q. Would you ask the person or inquire</p> <p>20 with the person who is trading the car in if the</p> <p>21 car had been in a previous accident or collision?</p> <p>22 A. The salesperson would.</p> <p>23 Q. Is that standard practice?</p> <p>24 A. Yes.</p> <p>25 Q. Is that what you would expect to</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>	<p style="text-align: right;">69</p> <p>1 MR. TERRY: At whatever it was last</p> <p>2 night, then, yes, I did show it to him.</p> <p>3 MR. WEST: And we will play it. The</p> <p>4 reporter doesn't need to try to get the</p> <p>5 commercial because this will be attached to the</p> <p>6 exhibit.</p> <p>7 (A video was played to the witness.)</p> <p>8 MR. WEST: Would you like to see that</p> <p>9 again?</p> <p>10 THE WITNESS: No, thank you.</p> <p>11 MR. WEST: I am going to take the DVD</p> <p>12 out of my disc drive from which that was played</p> <p>13 on and I will have that marked as Plaintiff's</p> <p>14 Exhibit 3, and I will ask the reporter to attach</p> <p>15 that to the transcript.</p> <p>16 MR. TERRY: What I would recommend is</p> <p>17 that you leave it in your machine while you ask</p> <p>18 him questions in case I do have to refer him to</p> <p>19 it again. After that, pop it over to her, no</p> <p>20 problem.</p> <p>21 MR. WEST: Fair enough. Good idea.</p> <p>22 BY MR. WEST:</p> <p>23 Q. Sir, you have had the opportunity to</p> <p>24 review a particular internet advertisement</p> <p>25 involving Chrysler Dodge CPO vehicles. Were you</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>

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1 **A. Yes.**
2 **Q.** Is it -- is the appraiser actually
3 identified anywhere on Exhibit 4 on the appraisal
4 form?
5 **A. Not on Exhibit 4, no.**
6 **Q.** Do you know based on the writing on
7 here who that could be?
8 **A. Not based on the writing on here, no.**
9 **Q.** It is not your writing, correct?
10 **A. No, it is not.**
11 **Q.** So if it wasn't you that filled in this
12 form, the contents, who could it have been at
13 that time frame in May of 2014?
14 **A. That filled what I see here out?**
15 **Q.** Yes.
16 **A. Tony.**
17 **Q.** Was any of the information based on
18 your experience, if you know, put in by an
19 appraiser? Because Tony wasn't an appraiser, he
20 was just a salesperson, correct?
21 **A. Correct.**
22 **Q.** So Tony was supposed to hand over
23 Exhibit 4, the appraisal form, to an appraiser?
24 **A. Yes.**
25 **Q.** And what was the appraiser supposed to
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1 do with this form?
2 **A. He was to verify the equipment and he**
3 **was going to -- he would go around the vehicle**
4 **and check for damages and things that needed to**
5 **be repaired to make it saleable.**
6 **Q.** And you see on the right-hand column,
7 it says paint, body, frame, unibody, that type of
8 thing?
9 **A. Yes.**
10 **Q.** Is that what the appraiser is supposed
11 to fill in?
12 **A. If they saw something that needed to be**
13 **fixed, they could assess values to that for what**
14 **they thought, yeah.**
15 **Q.** But was it standard practice and
16 procedure that they saw any entries that might be
17 related to paint and body, frame, unibody, they
18 were supposed to fill those items in while on
19 their initial inspection?
20 **A. Or they could make a notation over in**
21 **this other column.**
22 **Q.** In the left column?
23 **A. Yep.**
24 **Q.** Where the car is?
25 **A. Uh-huh.**
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1 **Q.** Yes?
2 **A. Yes.**
3 **Q.** I'm sorry. I am not trying to be rude.
4 **A. I know, I know. I am mumbling.**
5 **Q.** It is human nature. I get it. We all
6 do it.
7 So where it says, "Check options
8 included on vehicle," do you see all of those
9 boxes?
10 **A. Yes.**
11 **Q.** Would the appraiser be responsible for
12 filling those in?
13 **A. No.**
14 **Q.** What portion of this initial appraisal
15 report would be the responsibility of the
16 appraiser versus the salesperson?
17 **A. The salesperson would fill it out down**
18 **to that line, and the appraiser would do**
19 **everything underneath it.**
20 **Q.** So everywhere under where it says
21 Customer Signature is the appraiser's
22 responsibility, and everything above where it
23 says Customer Signature on Exhibit 4 is the
24 salesperson's responsibility?
25 **A. Yes.**
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1 **Q.** So whoever wrote in "small accident"
2 and then "has title, NV," it was the appraiser
3 that wrote that in, correct?
4 **A. No. On this particular case, that was**
5 **Tony because the customer had told him of those**
6 **things, so he noted them down.**
7 **Q.** As you sit here today with respect to
8 this particular vehicle identified on this
9 particular form --
10 **A. Uh-huh.**
11 **Q.** As you sit here today, do you have an
12 independent recollection of this particular
13 vehicle being traded in on that day over almost
14 two years ago?
15 **A. Yes.**
16 **Q.** Why?
17 **A. Because I was the appraiser.**
18 **Q.** What was it about this that stuck out
19 in your mind? With all of the vehicles that you
20 have looked over as a used car manager, looked
21 over appraisal reports, what was it about this
22 back in May of 2000 -- May 5, 2014 that as you
23 sit here today made this stick out in your mind
24 or remember this particular transaction?
25 **A. I don't know.**
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- 1 Q. No estimate, no idea as to what --
- 2 A. As to why I remember this rather than a
- 3 different one, I don't know.
- 4 Q. Well, would you have remembered the one
- 5 right after this one?
- 6 A. Possibly.
- 7 Q. Well, as you sit here today, was there
- 8 anything unique about Mr. Hinton, anything about
- 9 the truck, anything he said, something you had in
- 10 common with him, freaky weather that day,
- 11 anything you can put your mind on that would have
- 12 allowed you out of the hundreds of cars that you
- 13 looked at and appraised during this time period,
- 14 anything that would make this stand out that you
- 15 would remember this particular transaction
- 16 involving this particular vehicle as you sit here
- 17 today?
- 18 A. Well, I interacted with the customer, I
- 19 had conversations about as to why he was --
- 20 Q. What did Mr. Hinton look like?
- 21 A. I don't recall.
- 22 Q. Do you have any recollection as to what
- 23 he looked like?
- 24 A. He was taller than me.
- 25 Q. Other than that, anything else, any

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- 1 more specific?
- 2 A. No.
- 3 Q. You just testified that it was
- 4 conversations you had with him. I am assuming
- 5 you had a conversation with him for a little
- 6 while. Other than being taller than you, do you
- 7 have any recollection of what Mr. Hinton looked
- 8 like who turned this car in on that day that
- 9 would help you recollect?
- 10 A. No.
- 11 Q. Was he white, was he black?
- 12 A. I don't remember.
- 13 Q. Did he have hair?
- 14 A. I don't know.
- 15 MR. TERRY: Object. Asked and
- 16 answered.
- 17 MR. WEST: It goes to his ability to
- 18 recollect events, Counsel.
- 19 MR. TERRY: I know, you asked, and he
- 20 said he doesn't remember anything about the
- 21 person.
- 22 BY MR. WEST:
- 23 Q. Did he have any facial hair?
- 24 A. I don't remember.
- 25 Q. Do you remember the color of his hair?

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- 1 A. I don't.
- 2 Q. So what was it about Mr. Hinton that
- 3 stood out that you can recall this particular
- 4 transaction involving this particular truck when
- 5 there was no litigation for almost a year and a
- 6 half, as you sit here today, that you actually
- 7 remember this particular truck on this day? What
- 8 was it?
- 9 A. My memory is very visual, seeing
- 10 documents and things that help me recollect
- 11 times, places. I am good with cars. I remember
- 12 cars.
- 13 Q. If you have a visual mind, would you
- 14 agree that you should be able to visually
- 15 remember the person you were talking to?
- 16 A. Possibly. But I don't, so.
- 17 Q. What was it that stuck out in your mind
- 18 that makes you be able to have a specific
- 19 recollection involving this truck? Tell me what
- 20 it was.
- 21 A. When I spoke with him --
- 22 Q. Are you talking Mr. Hinton?
- 23 A. Yes. He had told us about -- I went
- 24 around the truck doing my appraisal and I feel on
- 25 the body lines and that's how you can tell if a

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- 1 vehicle has been painted. Part of it had been,
- 2 and I asked him about it. He told me about the
- 3 accident that the vehicle had been in, and he had
- 4 some documents from the body shop where it was
- 5 repaired and we reviewed them together.
- 6 Q. So he brought them with him ready to
- 7 show somebody at the dealership?
- 8 A. He did, yes.
- 9 Q. So what was the standard practice with
- 10 respect to after the salesperson has a trade-in?
- 11 Did they bring this sheet to you and say, hey,
- 12 I've got a trade-in, can you come look at the
- 13 car?
- 14 A. Yes.
- 15 Q. That is what happened here, correct?
- 16 A. Uh-huh.
- 17 Q. Yes?
- 18 A. Yes.
- 19 Q. So then you came out?
- 20 A. Yes.
- 21 Q. And you met with Mr. Hinton?
- 22 A. Uh-huh.
- 23 Q. Is that yes?
- 24 A. Yes. That's correct.
- 25 Q. You introduced yourself?

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1 **A. Yes.**

2 **Q. Did he volunteer the car was in an**

3 **accident or did you ask him specifically?**

4 **A. He volunteered that to Tony. And as I**

5 **am walking around and checking things, he then**

6 **told me yes.**

7 **Q. Was it standard practice back then**

8 **while you were the used car manager to have your**

9 **salespeople or yourself or anyone else within**

10 **your department when you had a trade-in vehicle**

11 **that you -- that Sahara Dodge was maybe going to**

12 **hang on to and resell to the community to ask the**

13 **person trading it in if the car had ever been in**

14 **a previous accident?**

15 **A. Yes.**

16 **Q. In fact, that's one of the questions on**

17 **Exhibit 4, it says, "Has this vehicle ever been**

18 **in an accident? Yes/no."**

19 **A. Yes.**

20 **Q. Why is that question asked?**

21 **A. Because I would like to know if it has.**

22 **Q. Why would you like to know?**

23 **A. Because it affects the value.**

24 **Q. Does it affect the safety?**

25 **A. It could.**

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1 **Q. What was the reason why Mr. Hinton was**

2 **coming into the dealership that day, was it to**

3 **buy a new car?**

4 **A. I don't believe so, no.**

5 **Q. He just wanted to turn in his car and**

6 **have you guys pay it -- strike that.**

7 **A. Yes.**

8 **Q. Mr. Hinton just wanted to come in and**

9 **sell you his car?**

10 **A. Correct.**

11 **Q. And he wanted a valuation from you guys**

12 **and depending on what that was, he would make the**

13 **decision as to whether or not he would sell it to**

14 **you?**

15 **A. Correct.**

16 **Q. Did he state the reason why he wanted**

17 **to sell it?**

18 **A. I don't believe so.**

19 **Q. That never came up in the discussion?**

20 **A. Not that I recall.**

21 **Q. Did you ask him?**

22 **A. I don't remember.**

23 **Q. You mentioned -- okay. So anything**

24 **else other than after you ran your finger under**

25 **the, I think it was the front quarter panel, you**

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1 discovered that it had been in a previous

2 accident, you said Mr. Hinton brought you some

3 documents?

4 **A. Yes.**

5 **Q. What were those documents that he**

6 **brought to you that day on the 5th of May**

7 **of 2014?**

8 **A. They were the documents from the body**

9 **shop where he had the vehicle repaired after the**

10 **accident.**

11 **Q. The body shop estimate?**

12 **A. No. It was the repair bill, a**

13 **breakdown of what they had actually done with the**

14 **vehicle.**

15 **Q. Did he also present to you pictures?**

16 **A. No.**

17 **Q. Did he give you a description of what**

18 **the accident was about?**

19 **A. Yes.**

20 **Q. What did he say?**

21 **A. It was involving the front bumper and**

22 **quarter panel of the vehicle.**

23 **Q. But did he say what kind of accident,**

24 **like was it involving another vehicle, was it**

25 **involving a stationary object, anything like**

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1 that?

2 **A. I don't know. He may have.**

3 **Q. Would it have been something that you**

4 **had interest in asking him to find out what the**

5 **nature and extent of the accident was to make a**

6 **determination if you were going to buy the**

7 **vehicle for resale to the community?**

8 **A. I may have.**

9 **Q. Would that have been standard policy**

10 **and practice and procedure for you to do based**

11 **upon your experience?**

12 **A. No.**

13 **Q. Why not?**

14 **A. Because it may not have been relevant.**

15 **Q. Why wouldn't -- strike that.**

16 **As a used car vehicle manager who is**

17 **concerned about value and safety of a car that is**

18 **going to be resold to the community, why wouldn't**

19 **it have been your custom, policy, and practice**

20 **that if you had knowledge of a vehicle being in a**

21 **previous accident not to try and find out as much**

22 **information from the person selling that vehicle**

23 **about the nature and extent of that accident?**

24 **A. That's not what I am telling you. What**

25 **I am telling you is what he hit was irrelevant to**

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1 **A. Yes.**
2 **Q.** And one of the ways of doing that is to
3 go into specifics with respect to the person
4 selling the car, if he's got knowledge, you want
5 to get specifics as to the nature and extent of
6 the accident, if you are able to do it, correct?
7 **A. Yes.**
8 **Q.** You get what you can, correct?
9 **A. Yes.**
10 **Q.** Did you get what you could in this
11 particular situation from Mr. Hinton as to the
12 nature and extent of the accident?
13 **A. I believe so.**
14 **Q.** What was the nature and extent of the
15 previous accident?
16 **A. The front bumper and the quarter panel.**
17 **Q.** That's all he said?
18 **A. That's what was outlined in the**
19 **documents, yes.**
20 **Q.** When you say the documents, you are
21 talking about the body shop repair order estimate
22 breaking everything down?
23 **A. Yes.**
24 **Q.** Yes?
25 **A. Yes.**
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1 **Q.** You reviewed that?
2 **A. Yes.**
3 **Q.** With Mr. Hinton?
4 **A. Yes.**
5 **Q.** Did you pass that body shop estimate on
6 to the sales department before the certified
7 technician did their inspection on that car to
8 have it certified pre-owned certified?
9 **A. It's possible.**
10 **Q.** Would that have been standard practice
11 and policy for you to do if you had actual
12 documentation of previous repairs undertaken on a
13 vehicle, you had made the decision that this
14 vehicle is going to try and be certified as CPO,
15 would you think that might be important for you
16 to pass that information on to the service
17 department before the technician actually did his
18 comprehensive 125-point safety inspection?
19 **A. Would it have been the standard policy,**
20 **no.**
21 **Q.** Do you think it might have been a good
22 idea to put the certified technician who was
23 going to do the inspection on that car on
24 heightened awareness or particular notice that
25 this car was in a previous accident so that he
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1 could really do a good eyeball on it to ensure
2 what the nature and extent of the damage was on
3 that car, especially given that it was going to
4 be a CPO car?
5 **A. Do I think it would have been a good**
6 **idea?**
7 **Q.** Yeah.
8 **A. Is that your question?**
9 **Q.** Yes.
10 **A. In retrospect? Is that your question?**
11 **Q.** No. My question is did you think it
12 was a good idea at the time? Everybody looks
13 back in retrospect. So let's re-ask the
14 question. My question involves, did you think it
15 was a good idea at the time.
16 Would you please re-ask the question?
17 (Record read as follows:
18 "Q. Do you think it might have
19 been a good idea to put the
20 certified technician who was going
21 to do the inspection on that car on
22 heightened awareness or particular
23 notice that this car was in a
24 previous accident so that he could
25 really do a good eyeball on it to
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1 ensure what the nature and extent
2 of the damage was on that car,
3 especially given that it was going
4 to be a CPO car?")
5 THE WITNESS: It might have been a good
6 idea, yes.
7 BY MR. WEST:
8 **Q.** As you sit here today, do you know if
9 you did that?
10 **A. I don't know, no.**
11 **Q.** Looking back at retrospect, is that
12 something if it wasn't done that should have been
13 done?
14 **A. No.**
15 **Q.** Why not?
16 **A. Technicians are trained by the**
17 **manufacturer to look for accident damages and**
18 **things of that nature, along with other**
19 **mechanical problems that go with the car.**
20 **Q.** So is it your belief, as you sit here
21 today, that if you as a used car manager at
22 Sahara Dodge had specific, articulable,
23 identifiable information relating to a body shop
24 estimate that would reflect the nature and extent
25 of the damage to that car, that it was not
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1 something that you otherwise would have
2 considered giving to the service department
3 before the inspection was done?

4 **A. Read that back to me. That was a**
5 **pretty long question.**

6 (Record read as follows:

7 "Q. So is it your belief, as you
8 sit here today, that if you as a
9 used car manager at Sahara Dodge
10 had specific articulable,
11 identifiable information relating
12 to a body shop estimate that would
13 reflect the nature and extent of
14 the damage to that car, that it was
15 not something that you otherwise
16 would have considered giving to the
17 service department before the
18 inspection was done?")

19 **THE WITNESS: No.**

20 BY MR. WEST:

21 **Q. No?**

22 **A. No.**

23 **Q. How often in your experience at Sahara**
24 **Dodge did you or your department actually receive**
25 **a body shop estimate of previous damage of a car**

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1 that was going to be sold to the community from
2 the original seller?

3 **MR. TERRY: Let me interpose a**
4 **objection. Mischaracterizes his prior testimony.**

5 **THE WITNESS: That it is very rare to**
6 **get those kinds of things.**

7 BY MR. WEST:

8 **Q. But when those rare opportunities**
9 **occur, those opportunities are ones that you**
10 **really should capitalize on for purposes of when**
11 **you have that additional information to give to**
12 **the service department so that they know and can**
13 **look at it in their expertise and assessment when**
14 **they are doing their inspection. Would that be**
15 **reasonable to assume?**

16 **MR. TERRY: Objection. Asked and**
17 **answered.**

18 **THE WITNESS: One more time.**

19 (Record read as follows:

20 "Q. But when those rare
21 opportunities occur, those
22 opportunities are ones that you
23 really should capitalize on for
24 purposes of when you have that
25 additional information to give to

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1 the service department so that they
2 know and can look at it in their
3 expertise and assessment when they
4 are doing their inspection. Would
5 that be reasonable to assume?")

6 **THE WITNESS: Sure.**

7 BY MR. WEST:

8 **Q. Would that be yes?**

9 **A. Yes. I didn't say no.**

10 **Q. Other than the -- strike that.**

11 **MR. WEST: Go ahead and attach that. I**
12 **am going to have this identified as Exhibit**
13 **Number 5.**

14 (Deposition Exhibit 5 marked.)

15 BY MR. WEST:

16 **Q. Sir, I have handed you Exhibit**
17 **Number 5, which has been identified. It has four**
18 **pages, just for clarity. I only -- this document**
19 **actually has eight pages total, but the reason I**
20 **put four on there is because all of the other**
21 **four pages were just gobbledygook and had nothing**
22 **to do with the actual breakdown of things that**
23 **were done on the car.**

24 **Looking at Exhibit 5, does this look**

25 **familiar to you with respect to Pages 1 through**

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1 4?

2 **A. Yes.**

3 **Q. Is this the body shop estimate that you**
4 **testified to that was given to you by Mr. Hinton**
5 **on May 5, 2014?**

6 **MR. TERRY: Objection.**

7 **Mischaracterizes prior testimony.**

8 **THE WITNESS: Yes.**

9 BY MR. WEST:

10 **Q. If you look on Exhibit 5, if you look**
11 **at the middle of the page on Page 1 of Exhibit 5**
12 **where it says Vehicle.**

13 **A. Uh-huh.**

14 **Q. Do you see where it says VIN?**

15 **A. Yes.**

16 **Q. Do the last six numbers of the VIN on**
17 **Page 1 of Exhibit 5 match the VIN numbers written**
18 **down on Exhibit 4?**

19 **A. I don't have Exhibit 4 anymore.**

20 **MR. TERRY: I've got it right here.**

21 **THE WITNESS: Yes, they do.**

22 BY MR. WEST:

23 **Q. Is the vehicle identified on Exhibit 5**
24 **the same vehicle identified on Exhibit 4 on the**
25 **initial intake appraisal form?**

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1 **A. Yes.**
 2 **Q.** Is there any reason, as you sit here
 3 today, to believe that Exhibit 5 is not the -- is
 4 there any reason, as you sit here today, given
 5 what you have seen in comparing Exhibit 5 and
 6 Exhibit 4, that Exhibit 5 is not the body shop
 7 estimate you received from Mr. Hinton on May 5,
 8 2014?
 9 **A. Is there any reason to believe it is**
 10 **not the same estimate?**
 11 **Q.** Correct.
 12 **A. I don't believe so.**
 13 **Q.** As you sit here today, do you have a
 14 reasonably confident belief that Exhibit 5, with
 15 respect to Pages 1 through 4, is the body shop
 16 estimate that you testified to in receiving on
 17 May 5, 2014 from Mr. Hinton?
 18 **A. I have reason to believe it is, yes.**
 19 **Q.** Do you have reason to believe that it
 20 is the same one?
 21 **A. Yes.**
 22 **Q.** And you thoroughly reviewed this,
 23 correct, Exhibit 5?
 24 MR. TERRY: Are you talking today?
 25 MR. WEST: Good point.
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1 BY MR. WEST:
 2 **Q.** On May 5, 2014 when you received this
 3 in Mr. Hinton, did you thoroughly review
 4 Exhibit 5, the body shop estimate?
 5 **A. Yes.**
 6 **Q.** What particular things were you looking
 7 for in the body shop estimate to make a
 8 determination as to whether or not you were going
 9 to seek to resell this car to the community as a
 10 certified pre-owned?
 11 **A. As it would relate to the certified**
 12 **pre-owned, frame damage.**
 13 **Q.** Anything else?
 14 **A. Not particularly.**
 15 **Q.** Would frame damage be your only
 16 concern?
 17 **A. For a CPO, yes. From a body shop**
 18 **estimate, yes.**
 19 **Q.** Did you also run a CarFax that day on
 20 the vehicle?
 21 **A. Yes, I did.**
 22 **Q.** Was that standard policy and practice
 23 and procedure within your department?
 24 **A. Yes.**
 25 **Q.** To run a CarFax on every single used
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1 vehicle that came in either as a trade or as a
 2 resale to the community?
 3 **A. Yes.**
 4 **Q.** Why was that done?
 5 **A. Title checks.**
 6 **Q.** Anything else?
 7 **A. Odometer issues, potential odometer**
 8 **issues, salvage titles, things of that nature.**
 9 **Q.** Previous accidents?
 10 **A. Yes.**
 11 MR. WEST: I will have this marked as
 12 Exhibit 6.
 13 (Deposition Exhibit 6 marked.)
 14 BY MR. WEST:
 15 **Q.** Exhibit 6 contains a total of four
 16 pages, which is a copy of the CarFax that was
 17 produced by the Defendant in this case in their
 18 initial disclosures.
 19 Sir, I would like you to take a look at
 20 that CarFax?
 21 MR. TERRY: Let me interpose an
 22 objection that it is one of the CarFaxes that has
 23 been produced by the Defendant.
 24 MR. WEST: Correct. It is one of the
 25 CarFaxes. This one appears to be obtained and
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1 ran on May 5th, but I will confirm that with the
 2 witness.
 3 BY MR. WEST:
 4 **Q.** Sir, I would like you to take a look at
 5 Exhibit 6. Does that look familiar to you?
 6 **A. Yes, it looks familiar to me.**
 7 **Q.** This particular CarFax, if you look at
 8 the last page, Page 4, it appears to have been
 9 run on May 5, 2014, at about 6:00 o'clock p.m.,
 10 Eastern standard time, which would have made it
 11 3:00 o'clock Nevada time. Would you agree with
 12 that?
 13 **A. Would I agree with the time and the**
 14 **date that it was ran?**
 15 **Q. Yes.**
 16 **A. Yes.**
 17 **Q.** Is there any reason as you sit here
 18 today that you would disagree with that date and
 19 time when that is reflected on this CarFax?
 20 **A. No.**
 21 **Q.** Do you have a specific recollection as
 22 you sit here today of running this CarFax?
 23 **A. A specific recollection, yes.**
 24 **Q.** So you actually remember running this
 25 particular CarFax as opposed to knowing it was
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1 run because that was your custom and practice?

2 A. Yes.

3 Q. And if you will look at Page 3 of
4 Exhibit 6 on 3/28 of '14, it reflects there was
5 an accident reported on the vehicle?

6 A. Yes.

7 Q. It says vehicle towed. Do you see
8 that?

9 A. Yes.

10 Q. So you had in your possession, as the
11 used car vehicle sales manager involving the
12 vehicle at issue in this case, two items of
13 information that clearly indicated to you that
14 the vehicle at issue was involved in a previous
15 accident, and according to CarFax, that vehicle
16 was towed, correct?

17 A. Yes.

18 Q. Did you -- was it custom and practice
19 for you to then bring the CarFax at Exhibit 6
20 over to the service department to allow them to
21 look at it before they did their certified
22 inspection?

23 A. Was it custom and practice? No.

24 Q. Did you do it?

25 A. I don't recall.

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1 Q. Do you think it might have been a good
2 idea?

3 A. Didn't really get the question.

4 Q. My question was: At the time you had
5 this CarFax, knowing this vehicle was in a
6 previous accident and that it was towed, before
7 the CPO inspection was going to occur on this
8 car, do you think it might have been a good idea
9 on that day to have given the CarFax over to the
10 sales department before the technician did his
11 inspection on the car for certified pre-owned
12 purposes?

13 A. No.

14 Q. Any reason why not?

15 A. No.

16 Q. Would that be information you would
17 want to impart on the service department before
18 they did their inspection?

19 A. Possibly.

20 Q. Why would you want to do that, impart
21 information that the vehicle had been in a
22 previous accident?

23 A. So they can check it.

24 Q. Check what?

25 A. The car.

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1 Q. For what?

2 A. Anything.

3 Q. To confirm the nature and extent of the
4 previous accident?

5 A. Sure.

6 Q. Would that have been something
7 important in your mind in making the
8 determination as to whether or not you should
9 resell this car to the community as a certified
10 pre-owned, the nature and extent of the accident?

11 A. No.

12 Q. Why not?

13 A. Because I don't see how the CarFax
14 would do that for them.

15 Q. Well, was it standard practice for your
16 department to transmit the CarFax to the sales
17 department on a CPO inspection as a matter of
18 course?

19 A. No.

20 Q. Did Sahara Dodge, at the time when this
21 particular vehicle came in to be resold to the
22 community, at that time after you received
23 information that the car had been in a previous
24 accident -- strike that.

25 At what point in time did you, as the

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1 used car manager at Sahara Dodge, make the
2 decision or choice to resell this car to the
3 community as a certified pre-owned vehicle?

4 A. At what point did we make the decision
5 to sell it as a certified vehicle? Is that what
6 you are asking?

7 Q. Yes.

8 A. When it went through the CPO safety
9 inspection and it was cleared through Chrysler's
10 system as eligible.

11 Q. Was that the car connect system?

12 A. The Dealer Connect, yes.

13 Q. Dealer Connect. Are you familiar with
14 that system?

15 A. Yes.

16 Q. Are you the one that when -- well,
17 strike that.

18 To know even if a car, you are going to
19 make a decision as to whether or not a car can be
20 eligible for a Dodge CPO, you have to go through
21 the Dealer Connect system, correct?

22 A. Yes.

23 Q. What is the Dealer Connect system?

24 A. It is Chrysler's website for their --

25 how they communicate with their dealers back and

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<p style="text-align: right;">106</p> <p>1 forth.</p> <p>2 Q. It is a web portal, for lack of a</p> <p>3 better term, for the dealership to be able to use</p> <p>4 to input certain information to see if a</p> <p>5 particular vehicle is eligible for CPO</p> <p>6 certification, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you are familiar with that system</p> <p>9 you said, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Were you the one that initiated the</p> <p>12 first query into that system as the used car</p> <p>13 manager?</p> <p>14 A. More than likely.</p> <p>15 Q. That would have been custom and</p> <p>16 practice?</p> <p>17 A. Yes.</p> <p>18 Q. So making the decision to connect with</p> <p>19 the Dealer Connect system for purposes of a CPO</p> <p>20 vehicle, that was the first point in time where</p> <p>21 you made the decision to see if this car could be</p> <p>22 sold as a CPO vehicle initially?</p> <p>23 A. Yes.</p> <p>24 Q. And when you go through Dealer Connect</p> <p>25 as set forth in the CPO manual, and we will get</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>	<p style="text-align: right;">108</p> <p>1 you first were going to resell this car was to</p> <p>2 see if it was eligible for a CPO, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And then the rest of it relied on the</p> <p>5 service department to make a determination if it</p> <p>6 passed 100 percent of the comprehensive</p> <p>7 inspection, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Because if the car didn't pass</p> <p>10 inspection, it would not have been CPO certified,</p> <p>11 true?</p> <p>12 A. Correct.</p> <p>13 Q. Is a CarFax specifically ran on the car</p> <p>14 to otherwise show to the prospective buyer of a</p> <p>15 car that CarFax before they purchase the vehicle?</p> <p>16 A. Could you read that back, please?</p> <p>17 Q. Let me rephrase it.</p> <p>18 Is a CarFax, as a custom and practice,</p> <p>19 ran and showed to a prospective buyer within the</p> <p>20 community on a CPO vehicle prior to them buying</p> <p>21 the vehicle?</p> <p>22 A. Yes.</p> <p>23 Q. And that's part of the practice and is</p> <p>24 required within the CPO manual, correct?</p> <p>25 A. Yes.</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>
<p style="text-align: right;">107</p> <p>1 to that in a minute, there are initial steps that</p> <p>2 you have to go through at the dealer to find out</p> <p>3 initially if the car is even eligible through the</p> <p>4 web portal system, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you are the one that usually does</p> <p>7 that, correct?</p> <p>8 A. I was at the time, yes.</p> <p>9 Q. And you probably would have done it on</p> <p>10 this vehicle, correct?</p> <p>11 A. More than likely.</p> <p>12 Q. And part of the process of that web</p> <p>13 portal system, the Dealer Connect, is to obtain a</p> <p>14 CarFax, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And the CPO inspection manual from</p> <p>17 Chrysler and Dodge specifically says thoroughly</p> <p>18 review the CarFax, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then it also says after you</p> <p>21 thoroughly review the CarFax, then turn the</p> <p>22 vehicle over to the service department for their</p> <p>23 comprehensive safety inspection, correct?</p> <p>24 A. Yes.</p> <p>25 Q. So it was your intent at the time that</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>	<p style="text-align: right;">109</p> <p>1 Q. You are familiar with the CPO process</p> <p>2 and the manual, correct?</p> <p>3 A. Yes.</p> <p>4 Q. As the used car sales manager, is it</p> <p>5 custom and practice for -- strike that.</p> <p>6 Did Sahara Chrysler -- did Sahara Dodge</p> <p>7 in May of 2014 have a custom and practice of</p> <p>8 attempting to CPO vehicles that it knew were in</p> <p>9 previous accidents?</p> <p>10 A. Yes.</p> <p>11 Q. Why is that?</p> <p>12 A. Because an accident doesn't disqualify</p> <p>13 a vehicle from certification.</p> <p>14 Q. Does a previous accident concern you as</p> <p>15 the used car manager at all that it may create</p> <p>16 some complications or issues with respect to the</p> <p>17 CPO process if you know a vehicle has been in a</p> <p>18 previous accident?</p> <p>19 A. Possibly.</p> <p>20 Q. Would it raise any red flags in your</p> <p>21 mind as the used car sales manager at Sahara</p> <p>22 Dodge who is the one who is making the decision</p> <p>23 as to whether or not to try and CPO a car for</p> <p>24 resale to the community?</p> <p>25 A. Concerns, maybe.</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>

<p style="text-align: right;">110</p> <p>1 Q. Why?</p> <p>2 A. Because you may put that one into the</p> <p>3 service department and it not be eligible.</p> <p>4 Q. Anything else?</p> <p>5 A. You have to know that going in.</p> <p>6 Q. Anything else?</p> <p>7 A. No.</p> <p>8 Q. Looking at Exhibit 6, the CarFax, if</p> <p>9 you compare the last six of the VIN and the</p> <p>10 description of the vehicle on Exhibit 6, is it</p> <p>11 the same vehicle that is identified in Exhibit 4,</p> <p>12 which is the initial appraisal form?</p> <p>13 A. Yes.</p> <p>14 Q. Just for authentication purposes, is</p> <p>15 Exhibit 4, the appraisal form, a true and</p> <p>16 accurate copy of the original?</p> <p>17 A. No.</p> <p>18 Q. It is not?</p> <p>19 A. No.</p> <p>20 Q. What's different about the original as</p> <p>21 opposed to this copy?</p> <p>22 A. The appraiser's notes and ACV and</p> <p>23 signature have been deleted.</p> <p>24 Q. Why?</p> <p>25 MR. TERRY: I don't know if it has been</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>	<p style="text-align: right;">112</p> <p>1 deposition. That is why I asked if this was the</p> <p>2 one we disclosed, because it looks like it is</p> <p>3 just a very light copy and I do have a dark copy.</p> <p>4 MR. WEST: Can I see it?</p> <p>5 MR. TERRY: Of course.</p> <p>6 MR. WEST: I would rather use this copy</p> <p>7 for the purposes of the deposition, rather than</p> <p>8 the one that we have -- we can exchange, we can</p> <p>9 interpose the exhibit and switch it out for 4 --</p> <p>10 substitute it in for 4.</p> <p>11 MR. TERRY: That's good with me.</p> <p>12 MR. WEST: Because this is actually a</p> <p>13 true and correct copy. Could we go ahead and get</p> <p>14 a copy of that and do that now just so we don't</p> <p>15 screw it up?</p> <p>16 MR. TERRY: You got it.</p> <p>17 MR. WEST: Thank you.</p> <p>18 MR. TERRY: You can have this one.</p> <p>19 I've made a couple copies. Thinking this may be</p> <p>20 an issue, I made a few copies.</p> <p>21 MR. WEST: Okay. So what we are going</p> <p>22 to do is -- Mr. Terry has handed me a more</p> <p>23 legible, complete copy of what has been</p> <p>24 identified as Exhibit 4 in this deposition.</p> <p>25 Because of copying issues, some</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>
<p style="text-align: right;">111</p> <p>1 deleted. You can see how it is a light -- it</p> <p>2 looks like the copy didn't get it. Do you see</p> <p>3 the circles at the bottom?</p> <p>4 MR. WEST: That was kind of my</p> <p>5 question, because I did see that. And that's one</p> <p>6 of the things is authentication of documents here</p> <p>7 too.</p> <p>8 BY MR. WEST:</p> <p>9 Q. So Exhibit 4 is missing some content?</p> <p>10 A. Yes.</p> <p>11 Q. What content is Exhibit 4 missing? Can</p> <p>12 you be specific?</p> <p>13 A. When I appraised the vehicle, I wrote</p> <p>14 next to the AutoCheck line that it had been in an</p> <p>15 accident. I had signed it and the ACV is</p> <p>16 missing.</p> <p>17 Q. So the only thing that is missing from</p> <p>18 this is the right column ACV and your signature</p> <p>19 on the lower right-hand column?</p> <p>20 A. Yes.</p> <p>21 MR. WEST: Brian, do you have a copy of</p> <p>22 that original?</p> <p>23 MR. TERRY: I do -- I don't know if it</p> <p>24 is a copy of the original. I know I have a copy</p> <p>25 from our file that when we were preparing for the</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>	<p style="text-align: right;">113</p> <p>1 information was inadvertently left out and so we</p> <p>2 are going to substitute and I am going to have</p> <p>3 the reporter, with everybody's consent, put her</p> <p>4 exhibit stamp on this substituted Exhibit 4 and</p> <p>5 have it marked as Exhibit 4 and this will be</p> <p>6 Exhibit 4.</p> <p>7 Is everyone in agreement?</p> <p>8 MR. KANUTE: That's fine.</p> <p>9 MR. TERRY: Agreed.</p> <p>10 MR. WEST: I will have this marked as</p> <p>11 Exhibit 7.</p> <p>12 (Deposition Exhibit 7 marked.)</p> <p>13 BY MR. WEST:</p> <p>14 Q. Sir, I have handed you what has been</p> <p>15 marked as Exhibit 7, which contains eight pages.</p> <p>16 It is a purported copy of a second CarFax that</p> <p>17 was ran, it looks like, by Sahara Dodge.</p> <p>18 Are you familiar with this CarFax, sir?</p> <p>19 Does it look familiar?</p> <p>20 A. Yes.</p> <p>21 Q. Does this CarFax, in comparison to</p> <p>22 Exhibit 6, when you compared the VIN numbers and</p> <p>23 the description of the vehicle, is it the same</p> <p>24 vehicle?</p> <p>25 MR. TERRY: Hold on. Go ahead and</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>

1 A. No.
 2 Q. Why not?
 3 A. It is not a point on the inspection
 4 checklist for them to find that, so it wouldn't
 5 be an expectation. They would have more than
 6 likely discovered it and brought it to our
 7 attention. But from an expectation standpoint,
 8 no.
 9 Q. Okay. Fair enough.
 10 Would Sahara Dodge concede that given
 11 the extensive and comprehensive 125-point CPO
 12 inspection on a vehicle, given it is undertaken
 13 by a certified technician in Sahara Dodge's
 14 service department, would you concede that Sahara
 15 Dodge has vastly superior knowledge about the
 16 condition of that vehicle as opposed to the
 17 consumer at time of sale?
 18 MR. TERRY: When you say the consumer,
 19 the purchaser or potential purchaser?
 20 MR. WEST: Yes.
 21 Would you like her to re-read the
 22 question.
 23 THE WITNESS: No. I am pondering it.
 24 I suppose that would be a case-by-case basis.
 25 ///

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1 BY MR. WEST:
 2 Q. Based on what?
 3 A. Some people have extensive car
 4 knowledge that would be further than engineers,
 5 people of that nature, yeah. They might know
 6 more about it than Sahara would.
 7 Q. Other than the people that might have
 8 extensive knowledge with automotive repair, would
 9 you agree with that statement?
 10 A. Yeah, I would agree with that.
 11 Q. Yes?
 12 A. Yes.
 13 Q. I mean, that's one of the reasons why a
 14 125 comprehensive inspection -- 125-point
 15 inspection is done, so that the dealer can
 16 acquire knowledge about any issues that might
 17 relate to that vehicle that could affect the
 18 vehicle's safety, value, or reliability, correct?
 19 A. Yes.
 20 Q. Would you concede that a car buyer
 21 within the community has every right to rely on
 22 the contents and accuracy and truthfulness of a
 23 vehicle inspection report that is prepared by
 24 Sahara Dodge in Exhibit 9?
 25 A. I would say that they have that right,

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1 yes.
 2 Q. And as the used car manager -- let's go
 3 off the record real quick.
 4 (Discussion held off the record.)
 5 BY MR. WEST:
 6 Q. And as part of the sales process
 7 involving a CPO vehicle at Sahara Dodge, sales
 8 staff in your department were trained to
 9 emphasize the comprehensiveness of the 125-point
 10 CPO inspection as part of the sales process,
 11 true?
 12 A. Yes, that's true.
 13 Q. That was a selling point, correct?
 14 A. Yes, it was.
 15 Q. As the used car sales manager and as
 16 the person designated on behalf of Sahara Dodge,
 17 would you concede that a car buyer in the
 18 community has -- strike that.
 19 As the person on behalf of Sahara Dodge
 20 here today and the used car sales manager at
 21 Sahara Dodge at the time, would you concede that
 22 the certified pre-owned checklist at Exhibit 9 is
 23 an important document that a car buyer within the
 24 community would rely upon in making a decision to
 25 purchase a CPO vehicle?

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1 MR. TERRY: Objection. Speculation.
 2 BY MR. WEST:
 3 Q. Based on your experience.
 4 A. Sure.
 5 Q. Yes?
 6 A. Yes.
 7 Q. Why is that?
 8 A. It outlines what our mechanical shop
 9 found and the standards that it brought it up to.
 10 Q. One of the purposes for -- strike that.
 11 Would you concede that one of the
 12 purposes for giving and requiring a certified
 13 pre-owned vehicle checklist in Exhibit 9 is to
 14 give the car buyer peace of mind?
 15 A. Yes.
 16 Q. Would you agree and concede that the
 17 certified pre-owned vehicle checklist, Exhibit 9,
 18 is a document that a consumer has every right to
 19 expect is truthful, honest, and accurate?
 20 A. Yes. They could have that expectation.
 21 Q. Do you think that is a reasonable
 22 expectation based upon your experience in selling
 23 15,000 used cars to the community?
 24 A. I believe that's reasonable, yes.
 25 Q. Does Sahara Dodge consider it important

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1 for the car buyer to be able to make an informed
 2 choice when purchasing a used vehicle?
 3 MR. TERRY: I'm sorry. Could you read
 4 that back?
 5 (Record read as follows:
 6 "Q. Does Sahara Dodge consider it
 7 important for the car buyer to be
 8 able to make an informed choice
 9 when purchasing a used vehicle?")
 10 THE WITNESS: Yes.
 11 BY MR. WEST:
 12 Q. And that includes a CPO vehicle as
 13 well?
 14 A. Yes.
 15 Q. Does Sahara Dodge consider it important
 16 for a car buyer to be able to make an informed
 17 choice when purchasing a CPO Dodge vehicle that
 18 has gone through the comprehensive and rigorous
 19 125-point inspection?
 20 MR. TERRY: Objection. Asked and
 21 answered.
 22 THE WITNESS: I missed the question.
 23 MR. TERRY: Read it back.
 24 (Record read as follows:
 25 "Q. Does Sahara Dodge consider it
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1 important for a car buyer to be
 2 able to make an informed choice
 3 when purchasing a CPO Dodge vehicle
 4 that has gone through the
 5 comprehensive and rigorous
 6 125-point inspection?"
 7 THE WITNESS: Yes.
 8 BY MR. WEST:
 9 Q. And to help ensure that a car buyer
 10 within the community can make an informed choice,
 11 is it important for Sahara Dodge to be completely
 12 truthful, honest, and accurate with the car buyer
 13 and make full disclosure to the car buyer who is
 14 thinking of purchasing a CPO vehicle?
 15 A. As it relates to this case or just
 16 general?
 17 Q. In general.
 18 A. Could you read that to me one more
 19 time, please?
 20 (Record read as follows:
 21 "Q. And to help ensure that a car
 22 buyer within the community can make
 23 an informed choice, is it important
 24 for Sahara Dodge to be completely
 25 truthful, honest, and accurate with
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1 the car buyer and make full
 2 disclosure to the car buyer who is
 3 thinking of purchasing a CPO
 4 vehicle?")
 5 THE WITNESS: To the best of our
 6 ability, yes.
 7 BY MR. WEST:
 8 Q. And does Sahara Dodge believe that full
 9 disclosure would include items of issues
 10 involving a CPO vehicle that might affect its
 11 safety or value to be important to a car buyer's
 12 decision in whether to purchase a used CPO car?
 13 A. Yeah, to the best of our ability.
 14 Q. And full disclosure is an important
 15 rule for Sahara Dodge to follow, especially when
 16 it comes to CPO vehicles, true?
 17 A. Full disclosure is not possible with a
 18 used car. Yeah, that's --
 19 Q. That's a good point. How about full
 20 disclosure with respect to all of the items that
 21 are on the certified checklist with respect to
 22 Exhibit 9, that is required, correct?
 23 A. Yes.
 24 Q. You would agree with that?
 25 A. That, I would agree with, yes.
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1 Q. Why is making full disclosure to the
 2 car buyer with respect to the CPO checklist at
 3 Exhibit 9 so important?
 4 A. It tells the customer what we have
 5 taken a vehicle through so that they can make
 6 that educated decision.
 7 Q. And the rule of making full disclosure
 8 in CPO sales, that is a rule that Sahara Dodge
 9 follows, correct?
 10 A. With regards to this, yes.
 11 Q. Without exception?
 12 A. Yes.
 13 Q. That is something that based on your
 14 experience is instilled into your staff all the
 15 way from the general manager down?
 16 A. Yes.
 17 Q. That's what you would expect of your
 18 staff, correct?
 19 A. That's correct, yes.
 20 Q. Is it ever acceptable for Sahara Dodge
 21 to not make full disclosure to a consumer
 22 involving certain items on a car that might
 23 affect a vehicle's value or safety?
 24 A. In regards to this sheet?
 25 Q. Just in general. Is it ever acceptable
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1 Q. Okay.

2 A. The technician went through, checked
3 that, and they were. The fact that it was
4 replaced has nothing to do with how it is
5 operating.

6 Q. So as you sit here today, you believe
7 that it is only the proper operation of those
8 components listed on the inspection report that
9 need to be disclosed as opposed to whether
10 certain components were replaced or repaired?

11 A. In regards to the check sheet, yes.

12 Q. Turn to Page 9 of Exhibit 2. Do you
13 have that in front of you?

14 A. Yes.

15 Q. If you look down at the second
16 paragraph, it says, "Every Chrysler, Jeep, Dodge,
17 and Ram CPOV can be counted on to go the
18 distance." It further says, "Our CPO vehicles
19 must pass a strident certification process that
20 guarantees only the finest late model vehicles
21 get certified."

22 Do you see that, sir?

23 A. Yes.

24 Q. Is there anything confusing or
25 ambiguous about that statement or directive,

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1 "only the finest late model vehicles get
2 certified"?

3 A. No. It is pretty straightforward.

4 Q. Is that something that Sahara Dodge
5 follows with respect to reselling CPO vehicles to
6 the community, that only the finest vehicles
7 within their inventory will be CPO'd?

8 A. Yes.

9 Q. Do you believe, as the designated
10 witness from Sahara Dodge to testify about CPO
11 sales, that Sahara Dodge would consider a vehicle
12 as being part of the group of "only the finest
13 late model vehicles" if that vehicle at the time
14 of sale had a repaired front frame end bracket, a
15 replaced radiator support, a repaired front
16 quarter panel, a shifted non-aligned frame
17 mounting bolt, repaired front bumper, the rear
18 bed shifted to one side, a replaced inner tie
19 rod, a replaced outer tie rod, and a replaced
20 stabilizer link?

21 A. I would.

22 Q. Why?

23 A. If they were fixed at a proper
24 collision shop that knows how to fix those kind
25 of things and fix them back to manufacturer

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1 standards, yeah, I don't see a problem with that.

2 Q. So is it your belief as you sit here
3 today that if a vehicle is in a previous accident
4 and Sahara Dodge is selling a CPO vehicle to a
5 consumer within the community, that if something
6 was repaired on the car from a previous accident,
7 that those repairs or replaced components don't
8 need to be disclosed to the buyer?

9 A. Yes, I agree with that.

10 Q. And in your mind, those types of things
11 would not be important to a CPO buyer before they
12 sign the contract, true?

13 A. They may or may not. That is up to the
14 buyer.

15 Q. Well, if some consumers might find them
16 important, wouldn't it be important to make
17 disclosure to everybody just to make sure that
18 those consumers that might find that important
19 actually found out about it?

20 A. No.

21 Q. Why not?

22 A. Not a requirement.

23 Q. That's the only reason, it is not a
24 requirement under the manufacturer's standards,
25 correct?

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1 A. Yes.

2 Q. And it is not a requirement or a custom
3 or policy or practice of Sahara Dodge to do so,
4 true?

5 A. Correct.

6 Q. Other than those two reasons, is there
7 any other reason not to make disclosure?

8 A. No.

9 Q. That's only based upon the lack of the
10 policy to do it, correct?

11 A. Lack of requirement to do so would be a
12 better term there than "policy."

13 Q. So you would not consider it making
14 full disclosure to a consumer if you -- strike
15 that.

16 Making full disclosure to a consumer
17 involving an item on a CPO vehicle that might
18 affect its value or safety, it would not include
19 any of those things that I just listed?

20 A. No.

21 Q. Okay. Almost there.

22 Based on your experience with respect
23 to Exhibit 9, is it generally the technician that
24 signs off on the CPO inspection report?

25 A. Generally, yes.

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EXHIBIT 10

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,)	
)	
Plaintiff,)	
)	
vs.)	No. A-16-737120-C
)	Dept. No. XXVII
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 .)	

VIDEOTAPED DEPOSITION OF NOAH GRANT

Taken on Tuesday, September 19, 2017
By a Certified Court Reporter
At 1:32 p.m.
At Moran Brandon Bendavid Moran
630 South 4th Street
Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

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1 giving sworn testimony in this case here today as
 2 if we were in front of a judge and jury, it is
 3 important for you to understand each and every
 4 question that I ask of you. If there is
 5 something about the question, a term within the
 6 question that you find confusing or don't
 7 understand, please let me know that, I don't know
 8 what you mean by X, Y or Z, or I don't understand
 9 your question.

10 Why is that important? Because if you
 11 answer a question, everyone will assume you've
 12 understood it. So if you legitimately don't
 13 understand a question, please let me know and I
 14 will be more than happy to rephrase the question
 15 or have the reporter repeat it to you.

16 Will you do that for me?

17 **A. Yes.**

18 **Q.** Do you want to reserve signing under
 19 oath?

20 **MS. SMITH:** Yeah, I think I want to
 21 review it.

22 **BY MR. WEST:**

23 **Q.** The court reporter will go ahead and
 24 duly note that, that the transcript will be
 25 reserved for signing under oath.

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1 What that just means is at the
 2 conclusion of this proceeding here today, the
 3 reporter is going to prepare a transcript. It is
 4 going to read like a play. It is going to come
 5 in a booklet form. You will have the
 6 opportunity, if you choose to do so, to actually
 7 make changes to your testimony later in time
 8 after you receive the transcript.

9 However, I must caution you. Because
 10 your counsel has reserved the right for you to
 11 changes to that transcript, material changes,
 12 what us lawyers call important changes, material
 13 changes, such as changing an answer from yes to
 14 no or something that totally changes the whole
 15 nature of your response, could reflect poorly on
 16 your believability or credibility at the time of
 17 trial. That is why it is very important for you
 18 to give your best and most accurate testimony
 19 here today. Okay?

20 **A. Okay.**

21 **Q.** Before we close out the record, if
 22 there is a question -- excuse me, if there is an
 23 answer you want to add to, that you want to
 24 modify before we close out the record, that's the
 25 time to do it.

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1 **A. Okay.**

2 **Q.** Not afterwards with respect to the
 3 transcript. Nonmaterial things such as spelling
 4 or other things that don't change the nature of
 5 your answer are not what we are talking about.

6 **A. Okay.**

7 **Q.** With whom are you currently employed?

8 **A. Sahara Dodge Chrysler Jeep.**

9 **Q.** And what is your current position?

10 **A. New car sales manager.**

11 **Q.** Also, I forgot to tell you, you are not
 12 nailed to that chair. You can take a break. I
 13 like taking a break every hour or so. There is
 14 one exception to that rule. I am entitled to
 15 your answer on a pending question. So if you
 16 need to go to the restroom, need a cup of coffee,
 17 just need a break in general, please alert me to
 18 that and I will be more than happy to accommodate
 19 that request. Okay?

20 **A. Okay.**

21 **Q.** You said you are the new car sales
 22 manager at Sahara?

23 **A. Yes.**

24 **Q.** If I use the term "Sahara," as opposed
 25 to "Sahara Dodge," we will be talking about

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13

1 Sahara Dodge. Okay?

2 **A. Yes.**

3 **Q.** Is that okay with you?

4 **A. That's okay.**

5 **Q.** How long have you been the new car
 6 sales manager at Sahara?

7 **A. Approximately two years.**

8 **Q.** Prior to being the new car sales
 9 manager, what was your position at Sahara Dodge?

10 **A. Finance manager.**

11 **Q.** How long did you hold that position,
 12 approximately?

13 **A. At Sahara?**

14 **Q.** Yes.

15 **A. Since it was opened, so from the moment
 16 it opened. I'd say approximately two years.**

17 **Q.** And that's another thing, too. You may
 18 not have a specific recollection of certain
 19 things and you may very well not because you
 20 don't have any personal recollections of what the
 21 transaction was that day, but answers like this,
 22 estimates, you don't know the exact day when you
 23 became employed, you don't know the exact day
 24 when you changed positions, but if you have an
 25 estimate, I am entitled to an estimate if you've

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14

1 got one. Okay?

2 A. Okay, yeah.

3 Q. Yes?

4 A. Yes.

5 Q. Okay. Thanks.

6 So were you the finance manager --

7 actually, were you a finance manager at Sahara

8 Dodge in May of 2014?

9 A. Yes.

10 Q. Prior to being the finance manager at

11 Sahara Dodge, where were you employed?

12 A. Avondale Mazda and Avondale Dodge

13 Chrysler Jeep.

14 Q. Where was that located?

15 A. Arizona.

16 Q. What was your position at Avondale

17 Dodge?

18 A. Finance manager, assistant sales

19 manager, salesman.

20 Q. When you say "sales manager," was that

21 sales of both new and used vehicles?

22 A. Assistant sales manager. Yes, both new

23 and used.

24 Q. And how long did you hold that position

25 at Avondale Dodge, approximately?

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1 A. Assistant sales manager?

2 Q. A finance manager.

3 A. Finance manager, approximately a year.

4 Q. How long total have you been in the car

5 dealership industry, approximately?

6 A. Approximately eight years.

7 Q. Other than the positions we have talked

8 about at Avondale and Sahara Dodge, what other

9 positions did you hold throughout those eight

10 years within the car dealership industry?

11 A. Detail.

12 Q. Is that also known as recon?

13 A. No.

14 Q. What is the difference?

15 A. It is new vehicle delivery and service

16 delivery, so like car wash.

17 Q. What else?

18 A. That's it. Salesman, detail.

19 Q. So you started from pretty much the

20 bottom up?

21 A. Yes.

22 Q. And was Avondale Dodge the last

23 employer you work for before coming to Sahara

24 Dodge?

25 A. Actually, Avondale Mazda. I worked for

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16

1 Avondale Dodge and Avondale Mazda and then

2 Sahara.

3 Q. I'm sorry.

4 How long did you work for Avondale

5 Dodge?

6 A. From the moment I got into the car

7 business until probably, let's see --

8 Q. Best estimate.

9 A. Four years, approximately, I'd say.

10 Q. As you sit here today, do you feel you

11 have a pretty good understanding on Dodge

12 products?

13 A. Yes.

14 Q. Is that based upon your vast intimate

15 experience working within the Dodge dealership

16 industry?

17 A. Yes.

18 Q. Were you also familiar with the Dodge

19 or Chrysler certified pre-owned program since the

20 time you were a finance manager or salesperson at

21 Avondale Dodge?

22 A. I was familiar with it in sales, yes.

23 Q. Did you receive training or in sales

24 meetings with respect to certified pre-owned

25 Dodges when you were at Avondale Dodge?

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17

1 A. Say that again. Sorry.

2 Q. I will have her repeat it.

3 (Record read as follows:

4 "Q. Did you receive training or in

5 sales meetings with respect to

6 certified pre-owned Dodges when you

7 were at Avondale Dodge?")

8 THE WITNESS: Yes.

9 BY MR. WEST:

10 Q. What were you taught about certified

11 pre-owned sales when you were at Avondale Dodge?

12 A. They would give us a certified

13 pre-owned brochure so it would tell us the

14 warranty that comes with that vehicle.

15 Q. Would they inform you or teach you

16 about selling techniques about the advantages of

17 buying a certified pre-owned Dodge versus a

18 noncertified pre-owned Dodge?

19 A. Yes.

20 Q. What were the things that they taught

21 you?

22 A. It would be inspected by a mechanic and

23 then it would come with a powertrain warranty up

24 to 100,000 miles and 3 months/3,000 miles

25 manufacturer warranty for the mechanical side.

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18

1 Q. And did they also teach you to relay
2 this type of information to consumers within the
3 community who might be interested in buying a
4 certified pre-owned Dodge?
5 MS. SMITH: Objection. Form.
6 THE WITNESS: Yes.
7 BY MR. WEST:
8 Q. And just so you know as to objections,
9 unless she instructs you not to answer a
10 question, it is okay to answer the question, if
11 you understand it. Okay?
12 A. Okay.
13 MS. SMITH: Just a little lawyer back
14 and forth.
15 MR. WEST: We both have to do our jobs.
16 THE WITNESS: I understand.
17 BY MR. WEST:
18 Q. Has it been your experience based on
19 your knowledge and familiarity within the Dodge
20 product line as far as certified pre-owned sales
21 are concerned that a certified pre-owned vehicle
22 can sell for more than a non-certified pre-owned
23 vehicle of a comparable make, model, and year?
24 A. I am not involved with that, so I don't
25 know.

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19

1 Q. Okay. Fair enough.
2 You know what, if you don't know the
3 answer to a question legitimately, that is a
4 perfectly legitimate answer.
5 A. Yes.
6 Q. As long as that is the truth, so that
7 is perfectly fine.
8 So did you also -- strike that.
9 And with respect to your sales
10 experience in the Dodge environment, did it also
11 carry through in your experiences in the finance
12 department?
13 A. Say that one more time. I'm sorry.
14 Q. That's okay.
15 (Record read as follows:
16 "Q. And with respect to your sales
17 experience in the Dodge
18 environment, did it also carry
19 through in your experiences in the
20 finance department?")
21 MS. SMITH: Objection. Form.
22 THE WITNESS: As far as the vehicles,
23 or I don't understand your question.
24 BY MR. WEST:
25 Q. Fair enough.

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20

1 With respect to what certified pre-owns
2 are all about, the consumer's expectations, those
3 types of things.
4 A. Yes.
5 Q. Based upon your vast familiarity within
6 the Dodge vehicle sales industry, with respect to
7 certified pre-owned sales to the community, have
8 you acquired an understanding of the things that
9 are important to a consumer within the community
10 with respect to making a decision to buy a used
11 car?
12 MS. SMITH: Objection. Form.
13 Ambiguous.
14 THE WITNESS: I would -- I don't
15 understand. I guess --
16 BY MR. WEST:
17 Q. Let me lay a little bit more
18 foundation.
19 How many Dodge cars were you involved
20 directly in the sale of when you were working
21 down at Avondale Dodge?
22 A. I can't even count. A lot.
23 Q. More than a hundred?
24 A. Yes.
25 Q. More than five hundred?

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21

1 A. Yes.
2 Q. Somewhere between five hundred and a
3 thousand?
4 A. Yes.
5 Q. That's a fair estimate?
6 A. That's a fair estimate.
7 Q. Based upon your intimate familiarity
8 with selling somewhere between five hundred to a
9 thousand Dodges to the community, based on that
10 experience, did you acquire an understanding of
11 what the expectations were of what was important
12 to a consumer within the community when buying a
13 used car?
14 A. Yes.
15 Q. And what are some of those things that
16 a consumer within the community would consider
17 important based upon your experience in buying a
18 used vehicle?
19 A. Safety, reliability, affordability.
20 Q. Price?
21 A. Affordability. Yes, price.
22 Q. Desirability?
23 A. Yes.
24 Q. Based upon your intimate familiarity
25 and experience in selling hundreds of cars to the

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1 community within the Dodge environment, have you
 2 acquired an understanding with respect to what
 3 consumers within the community would find
 4 concerning about buying a used car?
 5 MS. SMITH: Objection. Ambiguous.
 6 Calls for speculation.
 7 THE WITNESS: Yes.
 8 BY MR. WEST:
 9 Q. What are the types of negative things
 10 that a consumer within the community would
 11 associate with buying a used car, negative stigma
 12 type things?
 13 A. **Things that would break down, that is**
 14 **not reliable, just because of mechanical failure.**
 15 Q. Based on your familiarity and
 16 experience in selling hundreds of Dodge cars to
 17 the community, do consumers associate a negative
 18 stigma with previous accidents to vehicles?
 19 MS. SMITH: Objection. Calls for
 20 speculation.
 21 THE WITNESS: Yes.
 22 BY MR. WEST:
 23 Q. Do you know why that is based on your
 24 experience?
 25 A. **Safety concerns.**
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1 Q. In your experience in selling hundreds
 2 of vehicles to the community within the Dodge
 3 environment, have you ever had a consumer that
 4 ever inquired with you as a salesman specifically
 5 looking for any cars that have had previous
 6 accidents?
 7 A. **Looking for vehicles with accidents?**
 8 Q. Yes.
 9 A. **No, not that I can remember.**
 10 Q. Have you ever heard that happening?
 11 A. **Me?**
 12 Q. Yes.
 13 A. **Not to me, no.**
 14 Q. Not in your experience?
 15 A. **Not in my experience.**
 16 Q. So given that consumers based upon your
 17 experience within the Dodge framework associate a
 18 negative stigma with a car that has an accident
 19 history, would disclosing to the consumer a car
 20 has an accident be an important thing that a
 21 consumer within the community might find
 22 important before they make a decision on buying a
 23 car?
 24 MS. SMITH: Objection. Form.
 25 Ambiguous. Calls for speculation.
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24

1 THE WITNESS: Yes.
 2 BY MR. WEST:
 3 Q. You mentioned that previous accidents
 4 could be a sign of a potential safety problem in
 5 the mind of a consumer within the community based
 6 upon your experience, correct?
 7 A. **Repeat that for me.**
 8 Q. She will repeat it.
 9 (Record read as follows:
 10 "Q. You mentioned that previous
 11 accidents could be a sign of a
 12 potential safety problem in the
 13 mind of a consumer within the
 14 community based upon your
 15 experience, correct?")
 16 THE WITNESS: Yes, I agree.
 17 MR. WEST: When she reads the question,
 18 it sounds so much better. Unfortunately, she
 19 can't take the deposition.
 20 BY MR. WEST:
 21 Q. And given the fact that a previous
 22 accident history would be important to a consumer
 23 within the community buying a used car, it would
 24 be important for the dealership based upon your
 25 experience to disclose if the dealer knew that
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25

1 the car was in a previous accident prior to the
 2 consumer actually buying that car, true?
 3 A. **Yes.**
 4 MS. SMITH: Objection. Form.
 5 BY MR. WEST:
 6 Q. Was that a yes?
 7 A. **Yes.**
 8 Q. **And given that it is important to --**
 9 **based on your experience, given that it is**
 10 **important to disclose to the consumer a previous**
 11 **accident history that a used vehicle may have**
 12 **had, would it be equally important to disclose to**
 13 **that consumer within the community the nature and**
 14 **extent of that accident if the dealership knew**
 15 **what the nature and extent of that accident was?**
 16 MS. SMITH: Objection. Form. Calls
 17 for speculation. Ambiguous.
 18 **THE WITNESS: Could be, yes.**
 19 BY MR. WEST:
 20 Q. And in May of 2014 when this vehicle
 21 was sold to Mr. Poole, were you aware of any
 22 customs, policies or practices or procedures,
 23 whether written or oral, that the dealership had
 24 a policy to inform consumers purchasing used cars
 25 that the dealer knew what the nature and extent
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1 of the previous accident was, that Sahara Dodge
 2 would disclose that information with respect to
 3 the nature of the accident to the consumer?
 4 MS. SMITH: Objection. A pretty long
 5 narration.
 6 THE WITNESS: It would disclose that
 7 there was an accident, yes.
 8 BY MR. WEST:
 9 Q. And I understand that that was a policy
 10 to always disclose accidents, correct?
 11 A. Yes.
 12 Q. My question was more specific.
 13 Based on your experience working at the
 14 dealership at the time in May of 2014, if the
 15 dealership actually had knowledge about the
 16 actual nature and extent of the accident, meaning
 17 they knew what parts were replaced, what parts
 18 were repaired, the amount of the previous
 19 accident in a damage collision, would those
 20 things be important to a consumer who is buying a
 21 certified preowned Dodge?
 22 MS. SMITH: Objection. Form. Calls
 23 for speculation.
 24 THE WITNESS: Yes.
 25 ///

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1 BY MR. WEST:
 2 Q. Is that yes?
 3 A. Yes.
 4 Q. Is that based on your experience?
 5 A. Based on my experience, yes.
 6 MS. SMITH: I am going to pause for a
 7 second.
 8 Again, like George said, you know,
 9 unless I instruct you not to answer a question,
 10 you can go ahead and answer it, but try to pause
 11 just so I can get my objection on the record and
 12 make it easier for the court reporter.
 13 THE WITNESS: Yes. Sorry.
 14 MS. SMITH: No problem. Human nature.
 15 BY MR. WEST:
 16 Q. Was that something that in May of 2014
 17 that was communicated or you were taught to do or
 18 instructed to do by Sahara Dodge when selling a
 19 certified pre-owned vehicle to a consumer within
 20 the community?
 21 MS. SMITH: Objection.
 22 THE WITNESS: Disclose the accident?
 23 BY MR. WEST:
 24 Q. Disclose the nature and extent of the
 25 accident if the dealership knew about the nature

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1 and extent of the accident.
 2 A. That wasn't my job, no.
 3 Q. No one told you to do that?
 4 A. No.
 5 Q. And certainly on the day in question on
 6 May 25th of 2014, you don't have any recollection
 7 one way or the other as to whether or not --
 8 strike that.
 9 In May of 2000 -- strike that.
 10 In May -- on May 25, 2014, based on
 11 your review of the documents that you reviewed in
 12 the deal file, as you sit here today, are you
 13 reasonably certain that you were the finance
 14 manager with respect to Mr. Poole's purchase from
 15 Sahara Dodge?
 16 A. Yes, I was.
 17 Q. Based upon your experience in the
 18 finance F&I department of Sahara Dodge, and this
 19 is based upon how you would normally do things in
 20 the normal custom and practice of closing deals,
 21 on that particular day, May 25, 2014, if you knew
 22 the vehicle had sustained \$4,088.70 in previous
 23 damage based on a previous accident, would you
 24 have disclosed that to Mr. Poole that day?
 25 A. As a finance manager?

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1 Q. Yes.
 2 A. No.
 3 Q. Even if you knew that information to be
 4 true?
 5 A. I wasn't involved in that part of the
 6 sale.
 7 Q. I understand that you were not involved
 8 in the sales. My question was more specific.
 9 Based upon the normal custom and
 10 practices of the way you close deals, if you came
 11 into receipt of information that the vehicle that
 12 you were closing with Mr. Poole on that day, that
 13 you came into the information prior to him
 14 signing the contract that the vehicle had
 15 \$4,088.70 in damage to it based upon a previous
 16 accident, would you have disclosed that to him if
 17 you had knowledge of that fact?
 18 MS. SMITH: Objection. Form. Calls
 19 for speculation.
 20 THE WITNESS: If I had knowledge of
 21 that fact, yes, I would want to. I don't know
 22 that I would ever gain knowledge of that being in
 23 the role that I was in. I have never received
 24 that kind of information.
 25 ///

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1 BY MR. WEST:
 2 Q. And I totally understand that.
 3 Your testimony here today is based upon
 4 your normal custom, policy, and practice of how
 5 you would normally do things in closing deals in
 6 the F&I department in May of 2014?
 7 A. Yeah.
 8 Q. But my question is more specific with
 9 respect to things that are important to a
 10 consumer when buying a used car.
 11 I understand that you may not be in the
 12 position given your finance background and that
 13 you are on the back end of the deal. My question
 14 is based upon the way you do business, the way
 15 you were taught, the way in which things are
 16 disclosed, if you have that information, you
 17 would disclose it to Mr. Poole, true?
 18 A. If I knew it was important to
 19 Mr. Poole, yes.
 20 Q. Based upon your familiarity with
 21 selling hundreds of Dodges to the community,
 22 which would include CPO's, certified pre-owns,
 23 would that be based on your experience an
 24 important fact that a person buying a certified
 25 pre-owned in the community would want to know

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1 about before they purchase the car?
 2 MS. SMITH: Objection. Calls for
 3 speculation.
 4 THE WITNESS: Well, we did disclose
 5 accidents.
 6 BY MR. WEST:
 7 Q. Correct. We will get into the
 8 documents in a second, and that's one of the
 9 reasons why I am asking.
 10 It is important to disclose accidents
 11 to a person who is buying a certified pre-owned,
 12 correct?
 13 A. Correct.
 14 Q. And the reason it is important to
 15 disclose accidents is because in the mind of a
 16 person who is buying a certified pre-owned or a
 17 used car, a previous accident might be a
 18 concerning safety issue to them, correct?
 19 A. Might, yes.
 20 Q. Given that an accident in the mind of a
 21 consumer within the community based on your
 22 experience might associate a safety issue with a
 23 previous accident, do you believe that the nature
 24 and extent of that accident would also be
 25 important information to relay to the buyer

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1 before they bought the car?
 2 MS. SMITH: Objection. Calls for
 3 speculation. Ambiguous. Narrative.
 4 THE WITNESS: Yes.
 5 BY MR. WEST:
 6 Q. Why?
 7 A. Like you mentioned, if a customer for
 8 safety issues, it may be important for them to
 9 know the damage and what happened to the vehicle.
 10 MR. WEST: We will go ahead and have
 11 this marked as Exhibit 1, which is a copy of an
 12 Allstate Fire and Casualty Insurance damage
 13 estimate which contains eight pages. I am trying
 14 to find the date on here. That is dated
 15 3/31/2014.
 16 (Deposition Exhibit 1 marked.)
 17 BY MR. WEST:
 18 Q. Sir, I placed in front of you
 19 Exhibit 1, which is a copy of an Allstate
 20 collision report which was produced in this case
 21 through discovery.
 22 I will have this marked as Exhibit 2,
 23 which is a copy of one of the CarFaxes that was
 24 produced in this case. It contains a total of
 25 four pages.

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1 (Deposition Exhibit 2 marked.)
 2 MS. SMITH: Let the record reflect it
 3 looks like the CarFax is just the first 4 of 8.
 4 MR. WEST: Correct. I am going to get
 5 the next one.
 6 I will have this marked as Exhibit 3,
 7 which is the second part of the CarFax which goes
 8 with Exhibit 2, but I separated them for a
 9 reason.
 10 (Deposition Exhibit 3 marked.)
 11 MR. WEST: Just for the record,
 12 Exhibit 3 is the continuation of the final four
 13 pages of Exhibit 2, internal page consistency
 14 with respect to the pages.
 15 BY MR. WEST:
 16 Q. I would like for you to take a look at
 17 Exhibit 1, 2, and 3. I would like for you to
 18 take a look at Exhibit 1 and compare the VIN
 19 number identified on Exhibit 1 with the VIN
 20 number identified on Exhibit 2, the CarFax. Tell
 21 me when you are done.
 22 A. I am done.
 23 Q. Is the VIN number associated and
 24 identified on Exhibit 1 the Allstate Fire and
 25 Casualty Insurance collision damage estimate the

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EXHIBIT 11

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,)	
)	
Plaintiff,)	
)	
vs.)	No. A-16-737120-C
)	Dept. No. XXVII
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.)	
<hr style="border-top: 1px dashed black;"/>		

VIDEOTAPED DEPOSITION OF RAY GONGORA

Taken on Wednesday, December 14, 2016
By a Certified Court Reporter
At 2:18 p.m.
At Thorndal, Armstrong
1100 East Bridger
Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

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1 inspection? Please take your time and look at
 2 it.
 3 **A. Yes.**
 4 **Q. Are some of the things, the components**
 5 **and parts set forth in the body shop estimate,**
 6 **Exhibit 2, are those the same or would those be**
 7 **inclusive and be covered by some of the subject**
 8 **areas in the inspection report, Exhibit 1?**
 9 **A. Yes.**
 10 **Q. Would this have been important**
 11 **information based on your experience and being a**
 12 **conscientious automotive technician, Exhibit 2,**
 13 **would you have wanted to have this in your**
 14 **possession before you did the inspection?**
 15 **A. Yes.**
 16 **Q. If this was given to you -- strike**
 17 **that.**
 18 **At any point in time while you were**
 19 **doing a CPO inspection, at any point in time**
 20 **while you were at Sahara Dodge, did you ever**
 21 **receive, for any car, any previous body shop**
 22 **estimate relating to an accident that vehicle had**
 23 **been in before you started your inspection?**
 24 **A. I am going to try to remember right**
 25 **now. There were so many cars I did. Probably**
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1 **one or two. Probably one or two.**
 2 **Q. Would it have been an unusual event if**
 3 **it happened?**
 4 **A. Not necessarily, no.**
 5 **Q. Out of the ones that you did, do you**
 6 **know if this vehicle on Exhibit 1, the 1500 Dodge**
 7 **Ram Big Horn, did you receive Exhibit 2, the body**
 8 **shop estimate, before you conducted your**
 9 **inspection?**
 10 **A. I don't remember.**
 11 **Q. Had you received Exhibit 2 before you**
 12 **conducted the inspection on the vehicle at issue**
 13 **in this case in Exhibit 1, would you have looked**
 14 **at the various different components that might be**
 15 **listed on Exhibit 2, the body shop estimate, that**
 16 **overlapped some of the same components and areas**
 17 **in the inspection report?**
 18 **A. Yes.**
 19 **Q. And that would have been the prudent,**
 20 **conscientious thing to do, correct?**
 21 **A. Yes.**
 22 **Q. If you look at Exhibit 2, which is the**
 23 **body shop inspection, according to the top where**
 24 **it says under Estimate of Record, it says,**
 25 **"Written by Fred Cunningham," and the date is**
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1 3/31/2004. Do you see that?
 2 **A. Yes.**
 3 **Q. And it says the work will probably take**
 4 **about seven days down there a little bit to the**
 5 **right below that, seven days from 3/31. So if we**
 6 **assume that they started work on this vehicle on**
 7 **3/31 and they completed the work in seven days,**
 8 **then we can assume that -- assuming that, then**
 9 **the work was completed on this body shop estimate**
 10 **about the end of the first week of April. Would**
 11 **that be a fair assessment?**
 12 **MR. TERRY: Objection. Speculation.**
 13 **MR. KANUTE: Join.**
 14 **MR. WEST: I will re-ask the question.**
 15 **BY MR. WEST:**
 16 **Q. Let me ask a foundational question.**
 17 **Is the last six of the VIN number on**
 18 **Exhibit 2, does that match the last six of the**
 19 **VIN number on Exhibit 1?**
 20 **A. Yes.**
 21 **Q. Is the general description of both of**
 22 **the vehicles as being a 2013 Dodge Ram Big Horn,**
 23 **does that match both documents?**
 24 **A. Yes.**
 25 **Q. Does it appear from your review of both**
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1 documents, Exhibit 1, Exhibit 2, that we are
 2 dealing with the same vehicle?
 3 **A. Yes.**
 4 **Q. So going back to the Exhibit 2, which**
 5 **is the body shop estimate, at the top, assuming**
 6 **the date is accurate, this was written on**
 7 **March 31, 2014. Do you agree that that is what**
 8 **it says?**
 9 **A. Yes.**
 10 **Q. And looking down at the right, it says**
 11 **days to repair, it says seven?**
 12 **A. Yes.**
 13 **Q. Assuming, and we don't know for sure,**
 14 **but we are making assumptions here. Assuming the**
 15 **work got done immediately, started on 3/31, and**
 16 **the work was done timely and they took seven**
 17 **days, the work would have been completed about**
 18 **the end of the first week of April, correct?**
 19 **A. If that's what they say, that is what**
 20 **they are writing.**
 21 **Q. Certainly at a bare minimum, if the**
 22 **date is correct on Exhibit 2, March 31st, that**
 23 **was approximately five weeks before you conducted**
 24 **the inspection on the vehicle at issue in this**
 25 **case that is set forth in Exhibit Number 1,**
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EXHIBIT 12

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,)	
)	
Plaintiff,)	
)	
vs.)	No. A-16-737120-C
)	Dept. No. XXVII
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 .)	

VIDEOTAPED DEPOSITION OF TRAVIS SPRUELL

Taken on Wednesday, September 20, 2017
By a Certified Court Reporter
At 9:35 a.m.
At Moran Brandon Bendavid Moran
630 South 4th Street
Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

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1 consumer would find a previous accident history
 2 on a used car important in making a decision to
 3 buy that car, true?
 4 A. Yes.
 5 Q. So if informing them of just an
 6 accident occurred, if the dealer knew the nature
 7 and extent of that previous accident, no matter
 8 what it was, whether it was a small accident or a
 9 big accident, and the dealer had information
 10 relating and knew exactly what the nature of that
 11 accident was and the extent of that accident, if
 12 they had the obligation to tell the consumer
 13 about the accident in the first place, would the
 14 dealer based on your experience also have the
 15 same obligation to tell the consumer oh, this
 16 accident involved X, Y, and Z?
 17 MS. SMITH: Objection to form.
 18 THE WITNESS: I would assume so, yes.
 19 BY MR. WEST:
 20 Q. Why would you assume that?
 21 A. Like I said, I have never seen an
 22 accident report on any vehicle on any CPO or
 23 pre-owned vehicle that gave me a rundown of how
 24 much damage had been done.
 25 Q. Based on your experience in selling
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1 hundreds of vehicles, CPO vehicles to the
 2 community and based upon you interacting and
 3 talking with potential buyers of CPO cars within
 4 the community, does the consumer have an
 5 expectation that they are getting significant
 6 additional value and peace of mind in purchasing
 7 a Dodge CPO vehicle?
 8 MS. SMITH: Objection. Calls for
 9 speculation.
 10 THE WITNESS: Yes.
 11 BY MR. WEST:
 12 Q. And would you also agree that buying a
 13 certified pre-owned Dodge vehicle as opposed to a
 14 noncertified pre-owned Dodge vehicle, a
 15 comparable vehicle, brings more peace of mind to
 16 that consumer?
 17 MS. SMITH: Objection. Calls for
 18 speculation. Leading.
 19 THE WITNESS: I don't know about peace
 20 of mind, but it does have a warranty in there.
 21 So yes, I guess that would be peace of mind.
 22 BY MR. WEST:
 23 Q. And that peace of mind includes all of
 24 the extras you were talking about, a CarFax, a
 25 125-certified inspection?
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1 A. Yes.
 2 Q. Extra warranty coverage, XM radio, that
 3 type of thing?
 4 A. Yes.
 5 Q. Those things you don't get in a regular
 6 non-CPO car, correct?
 7 A. True.
 8 Q. Is that correct?
 9 A. Yes.
 10 Q. So in your mind, is the consumer
 11 getting an additional value based on your
 12 experience in buying a CPO car versus a
 13 comparable non-CPO car?
 14 A. Yes.
 15 Q. Based on your four years of working at
 16 Sahara Dodge in selling certified pre-owned
 17 vehicles to the community, does a consumer in the
 18 community have a right to expect when purchasing
 19 a CPO car that they can assume it's safe?
 20 MS. SMITH: Objection. Form.
 21 THE WITNESS: Yes.
 22 BY MR. WEST:
 23 Q. And as a general matter of practice, it
 24 is important -- is it important to you as a
 25 salesperson to make sure that unsafe vehicles are
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1 not driving on the streets and highways of the
 2 community that are sold to consumers within the
 3 community by the dealership?
 4 A. Yes.
 5 Q. Why is that important?
 6 A. It is important all the way around. We
 7 don't want people getting hurt.
 8 Q. So the safety of the community is
 9 important to you?
 10 A. Yes.
 11 MS. SMITH: Let me clarify. When you
 12 say "you," are you talking about Mr. Spruell
 13 personally or --
 14 MR. WEST: Yes. This isn't a 30(b)(6)
 15 depo at all. Correct.
 16 MS. SMITH: I just want to clarify.
 17 BY MR. WEST:
 18 Q. You are here today because you were
 19 identified on some documents as being the
 20 salesperson involved with a particular sale of a
 21 certified pre-owned 2013 Dodge Ram to a
 22 Mr. Derrick Poole. As you sit here today --
 23 strike that.
 24 That transaction happened May 25, 2014.
 25 As you sit here today, do you have any personal
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1 exactly. Three months, four months, before they
 2 offered me the job at Sahara.
 3 Q. And you were a salesperson at Gaudin,
 4 correct?
 5 A. Uh-huh, yes.
 6 Q. And prior to Gaudin, where did you
 7 work?
 8 A. Fairway Chevrolet.
 9 Q. Mr. Heinrich.
 10 A. Uh-huh. Good dude.
 11 Q. He doesn't like me too much.
 12 How long did you work at Fairway,
 13 approximately?
 14 A. About a year.
 15 Q. With Mr. Hoisington?
 16 A. Uh-huh.
 17 Q. Terry?
 18 A. Yes. Now him, we can talk about.
 19 Q. We can talk about a lot of things over
 20 at Fairway after we finish the depo, let me tell
 21 you.
 22 And you were a salesperson there?
 23 A. Yes.
 24 Q. How long have you been in the auto
 25 dealership industry with respect to sales of
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1 vehicles to the community, approximately?
 2 A. Approximately top of '09 to first of
 3 2010.
 4 Q. So about eight years?
 5 A. Yes.
 6 Q. And while you were at Fairway as a
 7 salesman, were you involved in selling certified
 8 pre-owned Chevy vehicles to the community?
 9 A. Yes.
 10 Q. And while you were at Gaudin, were you
 11 involved with selling certified pre-owned Ford
 12 vehicles to the community?
 13 A. Yes.
 14 Q. And since you have been at Sahara in
 15 internet sales, have you been involved in selling
 16 certified pre-owned Dodge Chrysler Jeep vehicles
 17 to the community?
 18 A. Yes.
 19 Q. Can you give me a rough estimate of how
 20 many used cars you have sold to consumers within
 21 the community?
 22 A. No.
 23 Q. Would it be more than a thousand?
 24 A. I wouldn't be able to even give a
 25 guesstimate on it. I am not even sure.
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1 Q. More than five hundred?
 2 A. I don't know.
 3 Q. No estimate whatsoever?
 4 A. A lot. I mean, it is not like -- I
 5 mean.
 6 Q. Let's try to take it scientifically.
 7 What is your average sales volume that you are
 8 responsible for in a month's period in a year
 9 over at --
 10 A. At Sahara?
 11 Q. Yeah.
 12 A. We have to -- twelve.
 13 Q. Twelve a month?
 14 A. Yeah.
 15 Q. Average?
 16 A. Average.
 17 Q. For you?
 18 A. Three-month average, yeah.
 19 Q. Taking a twelve-month average, that
 20 would be 144 vehicles a year, correct?
 21 A. Uh-huh.
 22 Q. Yes?
 23 A. Yes.
 24 Q. Is that a number you feel comfortable
 25 with?
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1 A. No, because it is not always about used
 2 cars. We do more new, you know. It kind of just
 3 kind of floats in and out. That is why I am not
 4 really sure. If you had to know a number, I
 5 probably could figure it out or go back and look
 6 for you.
 7 Q. Let me ask you this: Your employer
 8 keeps records of how many cars you are
 9 responsible for selling in a given period of
 10 time, correct?
 11 A. Yes.
 12 Q. And your employer keeping those records
 13 has to keep those records with respect for you to
 14 get paid your commissions, correct?
 15 A. Yes.
 16 Q. What was the last yearly sales estimate
 17 that you had with respect to how many units you
 18 sold to the consuming public at Sahara Dodge?
 19 A. I don't pay attention to units. It is
 20 not -- I mean, it is -- I put out there, I
 21 work -- put my head down and make things happen
 22 the best I can. It is not about a number of cars
 23 that I put out.
 24 Q. I understand that might be a personal
 25 business ethos of yours, which is a very good and
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<p style="text-align: right;">18</p> <p>1 admirable one to have. But when you are selling</p> <p>2 vehicles to the community, and I am talking about</p> <p>3 used vehicles, including certified pre-owned</p> <p>4 vehicles, the internet sales department deals</p> <p>5 with both used and new vehicles, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And do you sell both of those, used and</p> <p>8 new vehicles, to the community at Sahara Dodge?</p> <p>9 A. Yes, I do.</p> <p>10 Q. With respect to certified pre-owned</p> <p>11 vehicles at Sahara Dodge, your department covers</p> <p>12 certified pre-owns in addition to noncertified</p> <p>13 pre-owned cars, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Is it your understanding that only</p> <p>16 Chrysler Jeep Dodge vehicles can be sold as</p> <p>17 certified pre-owned vehicles at Sahara Chrysler?</p> <p>18 A. Yes.</p> <p>19 Q. And in your sales meetings, training</p> <p>20 sessions, or any other materials you may have</p> <p>21 received as a salesperson in the internet</p> <p>22 department, did you get training or education or</p> <p>23 information relating to certified pre-owned sales</p> <p>24 to the community?</p> <p>25 A. Yes.</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>	<p style="text-align: right;">20</p> <p>1 dealership business in the sales part of it for</p> <p>2 about eight years selling cars to the community,</p> <p>3 have you acquired an understanding of what things</p> <p>4 are important to a used car buyer when making</p> <p>5 decisions to buy a used vehicle?</p> <p>6 MS. SMITH: Objection. Calls for</p> <p>7 speculation.</p> <p>8 THE WITNESS: Say that again. I don't</p> <p>9 know.</p> <p>10 MR. WEST: I will have her repeat it.</p> <p>11 (Record read as follows:</p> <p>12 "Q. Given your four years at</p> <p>13 Sahara Chrysler and having been</p> <p>14 involved in the auto dealership</p> <p>15 business in the sales part of it</p> <p>16 for about eight years selling cars</p> <p>17 to the community, have you acquired</p> <p>18 an understanding of what things are</p> <p>19 important to a used car buyer when</p> <p>20 making decisions to buy a used</p> <p>21 vehicle?")</p> <p>22 BY MR. WEST:</p> <p>23 Q. Based upon you being involved in the</p> <p>24 sales department for four years at Sahara</p> <p>25 Chrysler Dodge and being involved in the auto</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>
<p style="text-align: right;">19</p> <p>1 Q. What did that entail?</p> <p>2 A. What comes with the certified</p> <p>3 warranties and, you know, what a certified CPOV</p> <p>4 is.</p> <p>5 Q. What based on your vast experience does</p> <p>6 a certified pre-owned vehicle mean?</p> <p>7 A. Just that it has got -- it comes with</p> <p>8 extras, put it that way. Like a 125-point</p> <p>9 inspection, it has got better warranties with it,</p> <p>10 5 years -- sorry, 7 years/100,000 mile powertrain</p> <p>11 warranty, 3 year/36 -- this is wonderful. I</p> <p>12 can't get that out. Either way. You get the</p> <p>13 additional, what is it, 3 months/3,000 miles.</p> <p>14 Q. I'm sorry. 3 months --</p> <p>15 A. -- 3,000 miles along with those, you</p> <p>16 know, car rental allowances.</p> <p>17 Q. And are you instructed and trained to</p> <p>18 point these other additional advantages out to</p> <p>19 consumers within the community who might be</p> <p>20 considering buying a certified pre-owned vehicle?</p> <p>21 A. Yes.</p> <p>22 Q. Yes?</p> <p>23 A. Yes.</p> <p>24 Q. Given your four years at Sahara</p> <p>25 Chrysler and having been involved in the auto</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>	<p style="text-align: right;">21</p> <p>1 dealership sales industry for eight years as a</p> <p>2 salesperson, have you acquired an understanding</p> <p>3 of what things are important to a used car buyer</p> <p>4 when making a decision to buy a used vehicle?</p> <p>5 MS. SMITH: Same objection.</p> <p>6 THE WITNESS: I wouldn't know what they</p> <p>7 want exactly. I am there to give them all of the</p> <p>8 information, so I can tell them what it is, I can</p> <p>9 show them the benefits of having that. What they</p> <p>10 actually want has nothing to do with me.</p> <p>11 BY MR. WEST:</p> <p>12 Q. I am not asking you to get into the</p> <p>13 mind of the consumer. I am asking you based upon</p> <p>14 your interactions with hundreds of consumers who</p> <p>15 have purchased used cars, have you acquired an</p> <p>16 understanding of things that might be important</p> <p>17 to a buyer with respect to purchasing used cars?</p> <p>18 A. Well, any buyer would like to have a</p> <p>19 warranty, so I guess.</p> <p>20 Q. Let's go through some of the list.</p> <p>21 Since you can't give me one, we will go through a</p> <p>22 list.</p> <p>23 Is price important to a consumer buying</p> <p>24 a used car?</p> <p>25 A. Is price important? It depends on the</p> <p style="text-align: right;">HUEBNER COURT REPORTING, INC. (702) 374-2319</p>

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1 **consumer, actually. I know a lot of consumers**
 2 **that bought way over what they -- just because**
 3 **they want that car.**
 4 Q. So are you saying the price is not
 5 important to a consumer?
 6 A. **At times, no.**
 7 Q. At times, it is though?
 8 A. **Yes.**
 9 Q. Okay. So you would agree that price is
 10 a factor that could be important to a consumer in
 11 buying a used car?
 12 A. **Yes.**
 13 Q. Okay. How about mileage?
 14 A. **Yes. It would be -- it could be a**
 15 **factor, yes.**
 16 Q. And it could be a factor advantage-wise
 17 or negatively, correct?
 18 A. **Yes.**
 19 Q. Same thing with price, some people
 20 might want to buy a more expensive car, some
 21 people might want to buy a cheaper car, correct?
 22 A. **Yes.**
 23 Q. How about mechanical condition of a
 24 car?
 25 A. **They would like to know that it was**
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1 **checked.**
 2 Q. Would that be something based upon your
 3 experience in selling hundreds of cars to the
 4 community in the used car setting, the mechanical
 5 condition of the car might be important to a
 6 consumer's decision in buying a car?
 7 A. **Yes, it might be.**
 8 Q. Okay. How about the value of a car,
 9 would that might be important?
 10 A. **Yeah, it might be.**
 11 Q. That is based on your experience,
 12 correct?
 13 A. **Correct.**
 14 Q. And all of the things I am talking
 15 about with you are things that you have had
 16 experience with in selling used cars to consumers
 17 and talking with them with respect to what might
 18 be important to them in buying a used car, true?
 19 A. **Yes.**
 20 Q. How about a vehicle's safety?
 21 A. **Yes.**
 22 Q. That might be an important factor that
 23 a consumer might take into account in buying a
 24 used vehicle?
 25 A. **Yes.**
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24

1 Q. And again, that is based on your
 2 experience?
 3 A. **You are asking me to get into the**
 4 **brains of my customers. I have a product, I show**
 5 **them the product, I tell them the benefits, I**
 6 **tell them the goods and the bads, and we go from**
 7 **there.**
 8 Q. Actually, I am not asking you to get
 9 into the brain of consumers. I am asking you to
 10 give me information that you have acquired by
 11 what consumers have told you in the process of
 12 buying a used car, the hundreds of used cars that
 13 you sold to the community. At points in time
 14 with those vehicles, have consumers raised an
 15 issue that safety is important to them when
 16 buying a used car?
 17 A. **Yes.**
 18 Q. So I want to dispel any issues that I
 19 expect you to try to figure out what the consumer
 20 is thinking. I just want to get answers from you
 21 based upon your knowledge. Again, what you
 22 heard, what you have talked about, what people
 23 told you, okay, so just we have an understanding.
 24 How about previous accidents to a
 25 vehicle, is that something important that you
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1 found out in selling hundreds of cars to the
 2 community that a consumer within the community
 3 would want to have information relating to that
 4 before they purchased a used car?
 5 A. **Yes. It -- yes.**
 6 Q. Why?
 7 A. **Why?**
 8 Q. Yes.
 9 A. **I guess I don't even know. Depends on**
 10 **the vehicle. I mean, honestly, just not**
 11 **everybody asks and then -- I mean, if it had an**
 12 **accident. It is just something they ask. I**
 13 **don't know if it is a trained thing or not.**
 14 Q. Okay. Let me ask you this: Based upon
 15 your vast and intimate experience in selling
 16 hundreds of used cars to the community, do
 17 consumers within the community who buy a used car
 18 generally have a negative stigma associated with
 19 a car that has been in a previous accident?
 20 A. **Yeah, yeah.**
 21 Q. Have you ever known a situation where a
 22 previous accident would increase a vehicle's
 23 value?
 24 A. **Yes. I mean, not -- you would assume**
 25 **it would. I would assume it would.**
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1 Q. In what way?

2 A. **Well, it has got an accident on it.**

3 Q. My question was, maybe you didn't --

4 maybe you didn't understand it. Based on your

5 experience in selling hundreds of cars to the

6 community, have you ever gained information or

7 ever heard of a vehicle that has been in a

8 previous accident actually being a good thing or

9 increasing its value?

10 A. **No.**

11 Q. Why?

12 A. **Because it has been in an accident.**

13 Q. Because consumers associate a negative

14 stigma to accidents with used cars, true?

15 A. **True.**

16 Q. And that's, again, based upon what you

17 have heard consumers talk to you about in

18 purchasing vehicles, correct?

19 A. **Yes.**

20 Q. And because consumers might be

21 concerned about a previous accident history that

22 a vehicle might have when buying a used vehicle,

23 it would be important to the dealer at Sahara to

24 always be truthful, honest, and accurate to the

25 consumer in disclosing those types of things when

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1 buying a used vehicle, correct?

2 A. **Yes.**

3 Q. It would be important to disclose any

4 types of information or facts that the dealer

5 actually knew about that affected a vehicle's

6 safety, true?

7 A. **Yes.**

8 Q. That affected a vehicle's mechanical

9 condition?

10 A. **Yes.**

11 Q. That affected a vehicle's value?

12 A. **Yes.**

13 Q. All of those things we just said here

14 would all be included in being truthful, honest,

15 and accurate to the consumer with respect to

16 giving full disclosures to them so they could

17 make an informed decision in buying a used car,

18 correct?

19 MS. SMITH: Objection. Form.

20 Ambiguous. Calls for speculation.

21 BY MR. WEST:

22 Q. You can answer.

23 MS. SMITH: You can answer. You can

24 answer -- anytime I make an objection, it is just

25 for the record. So unless I specifically tell

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1 you not to answer, then you can go ahead and

2 answer I have finished my objection.

3 MR. WEST: Let her re-read the

4 question.

5 THE WITNESS: Yeah, please.

6 (Record read as follows:

7 "Q. All of those things we just

8 said here would all be included in

9 being truthful, honest, and

10 accurate to the consumer with

11 respect to giving full disclosures

12 to them so they could make an

13 informed decision in buying a used

14 car, correct?")

15 THE WITNESS: Correct.

16 BY MR. WEST:

17 Q. And that's something based on your

18 experience since you have been working at Sahara

19 Chrysler Jeep Dodge that they teach you and

20 instill in you to do that in every single

21 transaction, true?

22 A. **True.**

23 Q. And based on your experience, that is

24 what you believe that your employer at Sahara

25 Dodge would expect from you and all of their

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1 salespeople, to be truthful, honest, and accurate

2 and give full disclosure to the consumer

3 involving facts or information that might

4 negatively affect the vehicle's value, safety?

5 A. **Yes.**

6 Q. How about a vehicle's marketability and

7 desirability, if there were factors that

8 negatively impacted those types of things, is it

9 your understanding based on your experience at

10 Sahara Dodge that that is the type of thing that

11 they expect their salespeople to always disclose

12 to consumers buying vehicles?

13 MS. SMITH: Objection. Calls for

14 speculation. Ambiguous.

15 THE WITNESS: Actually, we don't --

16 never heard of them putting anything negative out

17 there. They don't put bad cars out there.

18 BY MR. WEST:

19 Q. That wasn't my question. I will have

20 her repeat it to you.

21 (Record read as follows:

22 "Q. How about a vehicle's

23 marketability and desirability, if

24 there were factors that negatively

25 impacted those types of things, is

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1 it your understanding based on your
 2 experience at Sahara Dodge that
 3 that is the type of thing that they
 4 expect their salespeople to always
 5 disclose to consumers buying
 6 vehicles?")
 7 THE WITNESS: I guess that one was me
 8 because I don't understand the question.
 9 BY MR. WEST:
 10 Q. Based on your four years being involved
 11 in sales, used car sales at Sahara Chrysler Jeep
 12 Dodge, have you received -- strike that.
 13 Based on the four years that you have
 14 been employed at Chrysler Jeep Dodge in the sales
 15 department selling used cars to the community,
 16 have you gained an understanding and an
 17 expectation that when you are working as a
 18 salesperson for Sahara Dodge, that they expect
 19 you to be always completely truthful, honest, and
 20 accurate with the consumer?
 21 MS. SMITH: Objection. Leading.
 22 THE WITNESS: Yes.
 23 BY MR. WEST:
 24 Q. And included in being truthful, honest,
 25 and accurate, that would include disclosing any
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1 important information that based on your
 2 experience might affect a consumer's decision to
 3 buy a car if that information negatively affected
 4 a vehicle's value, safety, would that be
 5 something that you would have been expected to
 6 disclose to a consumer buying a used car?
 7 MS. SMITH: Objection. Form.
 8 Compound.
 9 THE WITNESS: Yes.
 10 BY MR. WEST:
 11 Q. Yes?
 12 A. Yes.
 13 Q. Why?
 14 A. Why?
 15 Q. Yes.
 16 A. Disclose everything? Because that is
 17 what we do. Everything they put on the lot, they
 18 are good vehicles. So I mean, I don't know
 19 where -- what you are trying to convene by it. I
 20 don't know. I mean, I am kind of lost because
 21 first you said marketability and now you didn't
 22 even go that route the second question, so I am
 23 not -- the second time you repeated the question
 24 so I am not really following.
 25 Q. You seem a little confused. Let's make
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1 sure we clean it up a little bit.
 2 You had previously testified that
 3 previous accidents of a vehicle -- used vehicle
 4 has been involved in might be important
 5 information for a consumer within the community
 6 to know about before they purchase a car if the
 7 dealership knew about it, true?
 8 A. True.
 9 Q. If it is important in your mind as a
 10 salesman to always be truthful, honest, and
 11 accurate with a consumer regarding disclosing a
 12 previous accident before the consumer buys a car,
 13 would it also be equally important to disclose
 14 the nature and extent of that accident to the
 15 consumer if the dealer had actual information --
 16 MS. SMITH: Objection.
 17 BY MR. WEST:
 18 Q. -- about that accident?
 19 MS. SMITH: Objection. Form.
 20 Compound.
 21 THE WITNESS: Yes, it would be. If
 22 they knew about it, yes.
 23 BY MR. WEST:
 24 Q. Why?
 25 A. Because that's part of the nature of
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1 the accident.
 2 Q. That it could affect a vehicle's safety
 3 in the mind of a consumer?
 4 MS. SMITH: Objection. Calls for
 5 speculation.
 6 THE WITNESS: I am not -- yeah, I don't
 7 know. So it is kind of a -- yes, it would -- it
 8 would hinder, I guess you would call it, you
 9 know.
 10 BY MR. WEST:
 11 Q. Well, based upon your --
 12 A. Just what I know, right.
 13 Q. Right. We are just talking about what
 14 you know.
 15 Based on your hundreds of conversations
 16 selling hundreds of cars to the community, used
 17 cars to the community, have you found it to be
 18 the situation that consumers that buy cars, used
 19 cars, are concerned about previous accidents
 20 because they might otherwise affect a vehicle's
 21 safety?
 22 A. I guess that could be a reason. There
 23 is tons of different, little accidents, big
 24 accidents, whatever.
 25 Q. Right. But my question is has that
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1 recollections of meeting with Mr. Poole involving
 2 that particular transaction on that particular
 3 day?
 4 **A. No, I don't.**
 5 **Q.** Have you reviewed any documents prior
 6 to your deposition here today?
 7 **A. I didn't review them. I know that**
 8 **there were text messages that were involved.**
 9 **Q.** Did those text messages come from an
 10 attorney?
 11 **A. Well, yeah.**
 12 **Q.** Okay. I don't want to know what those
 13 are.
 14 So you didn't review any documents in
 15 preparation for your depo today?
 16 **A. No.**
 17 **Q.** As you sit here today, without
 18 knowing -- strike that.
 19 As you sit here today, if you don't
 20 have any recollections of what happened in this
 21 particular transaction, okay, and you didn't
 22 review any documents, how do you know you were
 23 involved in this particular transaction?
 24 **A. Well, just from what I was told and why**
 25 **I am here, I mean.**
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1 **Q.** That's good. I don't want to get into
 2 any attorney/client privileged information.
 3 Well, in fact, you have been identified
 4 in documents as the salesperson involved in this
 5 transaction, and that's why you are here with
 6 respect to this.
 7 I am going to go ahead and have these
 8 marked in sequence so we can kind of get these
 9 out of the way. I will have this marked -- and
 10 these pretty much would be the same.
 11 **MS. SMITH:** Okay.
 12 **MR. WEST:** Exhibit 1 will be a copy of
 13 the Allstate Fire and Casualty Insurance
 14 estimate, and it contains eight pages.
 15 (Deposition Exhibit 1 marked.)
 16 **MR. WEST:** Exhibit 2 is going to be a
 17 copy of a CarFax containing four pages.
 18 (Deposition Exhibit 2 marked.)
 19 **MR. WEST:** Exhibit 3 will be another
 20 CarFax containing four pages.
 21 (Deposition Exhibit 3 marked.)
 22 **MR. WEST:** I ran short of an extra one.
 23 Exhibit 4 will be a two-page certified pre-owned
 24 checklist.
 25 (Deposition Exhibit 4 marked.)
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1 **MS. SMITH:** George, do you mind taking
 2 a real quick break?
 3 **MR. WEST:** No, not at all. Sure. Off
 4 the record.
 5 (Recessed from 10:23 a.m. to 10:31
 6 a.m.)
 7 **BY MR. WEST:**
 8 **Q.** Sir, I put in front of you four
 9 exhibits. I would like you to take a look at
 10 Exhibit Number 1, which is the Allstate Fire and
 11 Casualty damage report. I would like you to take
 12 a look at that report where it says under vehicle
 13 in the middle of the page, do you see where there
 14 is a VIN number?
 15 **A. Yes.**
 16 **Q.** Okay. I would like you to compare the
 17 VIN number with the VIN number that is on
 18 Exhibits 2, 3, and 4, and let me know if that is
 19 the same identified vehicle based upon the VIN
 20 numbers in those documents.
 21 **A. Yes, it is.**
 22 **Q.** Now, since you don't have any
 23 recollections at all about the traction that took
 24 place that you were involved in as the
 25 salesperson, the identified salesperson with
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1 Mr. Poole, the questions that I am going to ask
 2 you either with respect to these documents or
 3 based upon what might have happened in that
 4 particular transaction will be based upon the
 5 normal and usual custom, policy, and practice
 6 that you would have followed in these types of
 7 typical sales. Okay?
 8 Since you don't have any recollection,
 9 that is what we are going to go by with respect
 10 to how certain documents may have gotten to him
 11 in the CPO process, who most likely gave them to
 12 him, based upon, again, you doing all of these
 13 types of transactions on a daily basis.
 14 So generally speaking when a -- based
 15 on your experience, when a consumer within the
 16 community purchases a certified pre-owned Dodge
 17 Chrysler or Jeep in May of 2014, you had
 18 mentioned that part of that sale includes a
 19 CarFax, correct?
 20 **A. Yes.**
 21 **Q.** Are you also informed and aware that
 22 part of that sale process includes a certified
 23 pre-owned checklist or report regarding the
 24 inspection that was done on the vehicle?
 25 **A. Yes.**
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1 **A. True.**

2 **Q.** So given those things are true, based

3 on your experience in interacting with hundreds

4 of consumers buying CPO cars, has it been your

5 experience that a consumer within the community

6 has a right to expect that in fact the car, the

7 CPO car, if it has an accident may be more

8 concerned about that accident when they are

9 buying a CPO car versus a non-CPO car?

10 MS. SMITH: Objection. Calls for

11 speculation. Form.

12 THE WITNESS: That one, I wouldn't

13 know. An accident on there is an accident. It

14 doesn't matter what the car is. It has an

15 accident on it. I am going to tell you that

16 there is an accident.

17 BY MR. WEST:

18 **Q.** Okay. Let me ask you this:

19 Irrespective of whether the car is a CPO car,

20 let's just talk about a used car here. If the

21 consumer is buying a used car, we have

22 established that a previous accident history

23 would be important to disclose to the consumer,

24 correct?

25 **A. True.**

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1 **Q.** The reason you would do that is because

2 it might affect the vehicle's safety, correct?

3 **A. Yes.**

4 **Q.** It might affect the vehicle's value,

5 correct?

6 **A. Yes.**

7 **Q.** That is one of the reasons why you

8 specifically point out to the consumer on a

9 CarFax, if you have it, that the vehicle has been

10 in an accident, to inform them of that, correct?

11 **A. Yes.**

12 **Q.** Now, based upon this particular CarFax,

13 Exhibit 2, it would appear that the vehicle was

14 in an accident on March 26, 2014, correct?

15 **A. Yes.**

16 **Q.** And because you don't have any

17 recollection as to what you said to Mr. Poole on

18 that day specifically other than pointing out the

19 accident, would pointing out the accident be

20 something that you as a salesperson in the CPO

21 process would take very seriously and be an

22 important thing to make sure the consumer knows

23 about it?

24 **A. Yes.**

25 **Q.** If you look at Exhibit 1, which is the

HUEBNER COURT REPORTING, INC. (702) 374-2319

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1 Allstate damage collision estimate --

2 **A. Uh-huh.**

3 **Q.** -- have you ever seen that document

4 before today?

5 **A. No.**

6 **Q.** Did you have any knowledge, information

7 at the time when you disclosed the accident to

8 Mr. Poole on Exhibit 2 on the CarFax that the

9 vehicle had previously -- that the accident the

10 vehicle had been in had caused \$4,088.70 in

11 damage?

12 **A. No.**

13 **Q.** Had you known that, would you have told

14 him?

15 MS. SMITH: Objection. Calls for

16 speculation.

17 THE WITNESS: Sure. Why not?

18 BY MR. WEST:

19 **Q.** Why would you have told him that?

20 MS. SMITH: Objection. Calls for

21 speculation.

22 THE WITNESS: Well, give you all of the

23 information and make you make up your own mind.

24 If he didn't want to buy it, I could understand

25 why. That would be fine. But, I mean --

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1 BY MR. WEST:

2 **Q.** If a consumer based upon your

3 experience in selling hundreds of certified

4 pre-owned cars that expect extra value in getting

5 a certified pre-owned car, if you as the

6 salesperson had knowledge that the accident that

7 was reflected on the CarFax actually caused

8 \$4,088.70 in damage to that car and you had

9 knowledge of that, you would have disclosed that

10 to Mr. Poole, correct?

11 MS. SMITH: Objection. Form. Leading.

12 Calls for speculation.

13 THE WITNESS: Yes, yes.

14 BY MR. WEST:

15 **Q.** And the reason that you probably would

16 have done that was to be truthful, honest, and

17 accurate to give full disclosure to the consumer

18 within the community in making an informed

19 decision and choice before they purchased the

20 car, correct?

21 **A. Yes.**

22 **Q.** Based on your experience in dealing

23 with hundreds of used car sales, including CPO

24 cars, would that have been an important fact for

25 a consumer in the community who is buying a CPO

HUEBNER COURT REPORTING, INC. (702) 374-2319

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1 car to know that a certified pre-owned car they
 2 are about to purchase sustained \$4,088.70 in
 3 property damage before they purchased it?
 4 MS. SMITH: Objection. Form. Leading.
 5 Calls for speculation.
 6 THE WITNESS: Yes.
 7 BY MR. WEST:
 8 Q. And that's why you would have disclosed
 9 it had you known it?
 10 A. Yes.
 11 Q. But you know as you sit here today
 12 definitely that's not something you told to him
 13 because you weren't aware of it, true?
 14 MS. SMITH: Objection. Misstates prior
 15 testimony.
 16 THE WITNESS: I did not know about it,
 17 no.
 18 BY MR. WEST:
 19 Q. You did not know about it?
 20 A. I did not know about it.
 21 Q. Had you known about it though, would
 22 you have brought it to someone's attention before
 23 you went through with the process?
 24 MS. SMITH: Objection. Calls for
 25 speculation.
 HUEBNER COURT REPORTING, INC. (702) 374-2319

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1 THE WITNESS: What do you mean, like my
 2 managers?
 3 BY MR. WEST:
 4 Q. Yes. Because the collision report,
 5 Exhibit 1, indicates that the accident that is
 6 reflected on the collision report, Exhibit 1, has
 7 the same date of accident as the one that is
 8 reflected on Exhibit 2.
 9 A. Okay.
 10 Q. It appears to be the same accident.
 11 So my question is based on your vast
 12 experience in what you know you would do in a
 13 certain situation involving knowing there is an
 14 accident, if you somehow came in possession of
 15 this information before Mr. Poole signed the
 16 contract that the vehicle had been involved in a
 17 previous collision that caused \$4,088.77 in
 18 damage as reflected on the damage estimate, if
 19 you had this information, would you have brought
 20 it to your managers and superiors before
 21 Mr. Poole signed on the dotted line?
 22 MS. SMITH: Objection. Calls for
 23 speculation. Leading.
 24 THE WITNESS: Well, if this particular
 25 piece of paper was inside my used car folder that
 HUEBNER COURT REPORTING, INC. (702) 374-2319

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1 I signed through and through my paperwork every
 2 day?
 3 BY MR. WEST:
 4 Q. Yes.
 5 A. No, because I know it would have been
 6 taken care of going through the CPO process.
 7 Whatever problem would have been in there, I
 8 would have showed the customer and let him make
 9 up his own mind.
 10 BY MR. WEST:
 11 Q. Do you have any reason to believe that
 12 that document was in the file?
 13 A. No.
 14 Q. So as you sit here today, you don't
 15 have any recollection one way or the other. You
 16 testified that you didn't know about the nature
 17 and extent of the previous, correct?
 18 A. Right.
 19 Q. You had mentioned that if Exhibit 1 was
 20 in the file, the report, you would have -- I'm
 21 sorry, Exhibit 1, the collision report, you would
 22 have shown it to Mr. Poole, correct?
 23 A. Yes.
 24 Q. Would you have him sign it?
 25 MS. SMITH: Objection. Calls for
 HUEBNER COURT REPORTING, INC. (702) 374-2319

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1 speculation.
 2 THE WITNESS: Yeah, yes.
 3 BY MR. WEST:
 4 Q. And the reason you would want him to
 5 sign it is because you want to make sure he
 6 acknowledges that he knew what the nature and
 7 extent of the accident was to make sure that he
 8 had full, honest, and accurate disclosure with
 9 respect to what he was buying, true?
 10 A. Yes.
 11 MS. SMITH: Objection. Form. Leading.
 12 Calls for speculation.
 13 THE WITNESS: But your question was if
 14 I knew about it, would I take it to my managers.
 15 That is what your question was.
 16 BY MR. WEST:
 17 Q. That was the last question.
 18 A. Right. I know you like had four others
 19 after that, but I was trying to -- I was waiting
 20 patiently. That is what you were asking me, so
 21 that is what I explained to you. If it was in
 22 the used car folder, then they would have already
 23 known about it, it has been fixed, it has been
 24 checked, and it has gone forward.
 25 ///

1 BY MR. WEST:

2 Q. Okay. I understand the reasons why you
3 would not have given it -- strike that.

4 I know the reasons why you just
5 explained to me why you wouldn't inform Mr. Poole
6 in the normal course of doing things that the
7 vehicle had sustained \$4,000 in damage, because
8 it would have gone through the certified
9 pre-owned inspection, correct?

10 A. Uh-huh.

11 Q. Yes?

12 A. Say that again. Say that again.

13 Q. Okay. With respect to Exhibit 1, the
14 collision damage estimate, if you look at Page 4,
15 does it reflect this vehicle -- I'm sorry,
16 Page 3, does it reflect this vehicle's total cost
17 of repair is \$4,088.77? Is that what it
18 reflects, if you look at Page 3 of Exhibit 1?

19 A. Yes, yes. That is what you are showing
20 me, yes.

21 Q. Now, if you had information, that
22 particular document or other information, that
23 the vehicle that Mr. Poole was about to purchase
24 had that kind of damage, \$4,088, would you have
25 told him by the way, the accident reflected on

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1 here caused \$4,088.77 in damage?

2 A. Yes.

3 MS. SMITH: Objection. Calls for
4 speculation.

5 BY MR. WEST:

6 Q. Why would you have done that?

7 A. Because the right thing to do and he
8 would need to know.

9 Q. And that would be part of being
10 truthful, honest, and accurate in giving full
11 disclosure to the consumer in buying a certified
12 pre-owned, true?

13 A. Yes.

14 MS. SMITH: Same objection. Leading.
15 I couldn't really get in there because the two of
16 you had a back and forth.

17 MR. WEST: How is our reporter doing?

18 THE WITNESS: I will try to stop.

19 Sorry.

20 BY MR. WEST:

21 Q. Based on your experience in selling
22 hundreds of certified pre-owned used cars and
23 talking with consumers and getting to know what
24 their expectations are, based on those
25 experiences and conversations, would a consumer

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1 within the community who is going to buy a
2 certified pre-owned vehicle from Sahara Dodge
3 want to know that if a car had a previous
4 accident history and Sahara Dodge knew it had
5 \$4,088.77 in damage, that that buyer would want
6 to know that fact?

7 MS. SMITH: Objection. Form. Calls
8 for speculation.

9 THE WITNESS: Yes. I would assume so,
10 yes.

11 BY MR. WEST:

12 Q. And that's based upon your experience?

13 A. Yes.

14 Q. Certainly that is something you would
15 have done in the normal course of you selling a
16 CPO car, correct?

17 A. Yes.

18 Q. Is that something that you believe
19 based upon your years of experience in working at
20 Sahara Dodge, that that is what they would expect
21 you to do as well?

22 A. Yes.

23 Q. Because based upon your experience in
24 working at Sahara Dodge, they expect you as their
25 salesperson and within the sales department to

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1 always be truthful, honest, and accurate, to give
2 full disclosure to a CPO consumer about facts
3 that might negatively impact a vehicle's value or
4 safety, true?

5 MS. SMITH: Objection. Form. Calls
6 for speculation. Leading.

7 THE WITNESS: Yes.

8 MS. SMITH: Pause just for a second
9 after he asks a question.

10 BY MR. WEST:

11 Q. If you look at Exhibit 3, this seems to
12 be a preliminary CarFax. Are you familiar with
13 the difference between Exhibit 2 and Exhibit 3,
14 the two CarFaxes?

15 A. A little bit. Normally, they are both
16 together, but yeah.

17 Q. What is the difference between
18 Exhibit 2 and Exhibit 3 based on your experience?

19 A. Actually, they come together in our
20 form so it is the same thing to me.

21 Q. Would it appear based upon the dates
22 that are reflected on Exhibit 2 and Exhibit 3,
23 that these reports were run on May 5th -- I'm
24 sorry, May 6, 2014? If you look at the last
25 page -- actually, I take it back. This is why I

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EXHIBIT 13





EXHIBIT 14

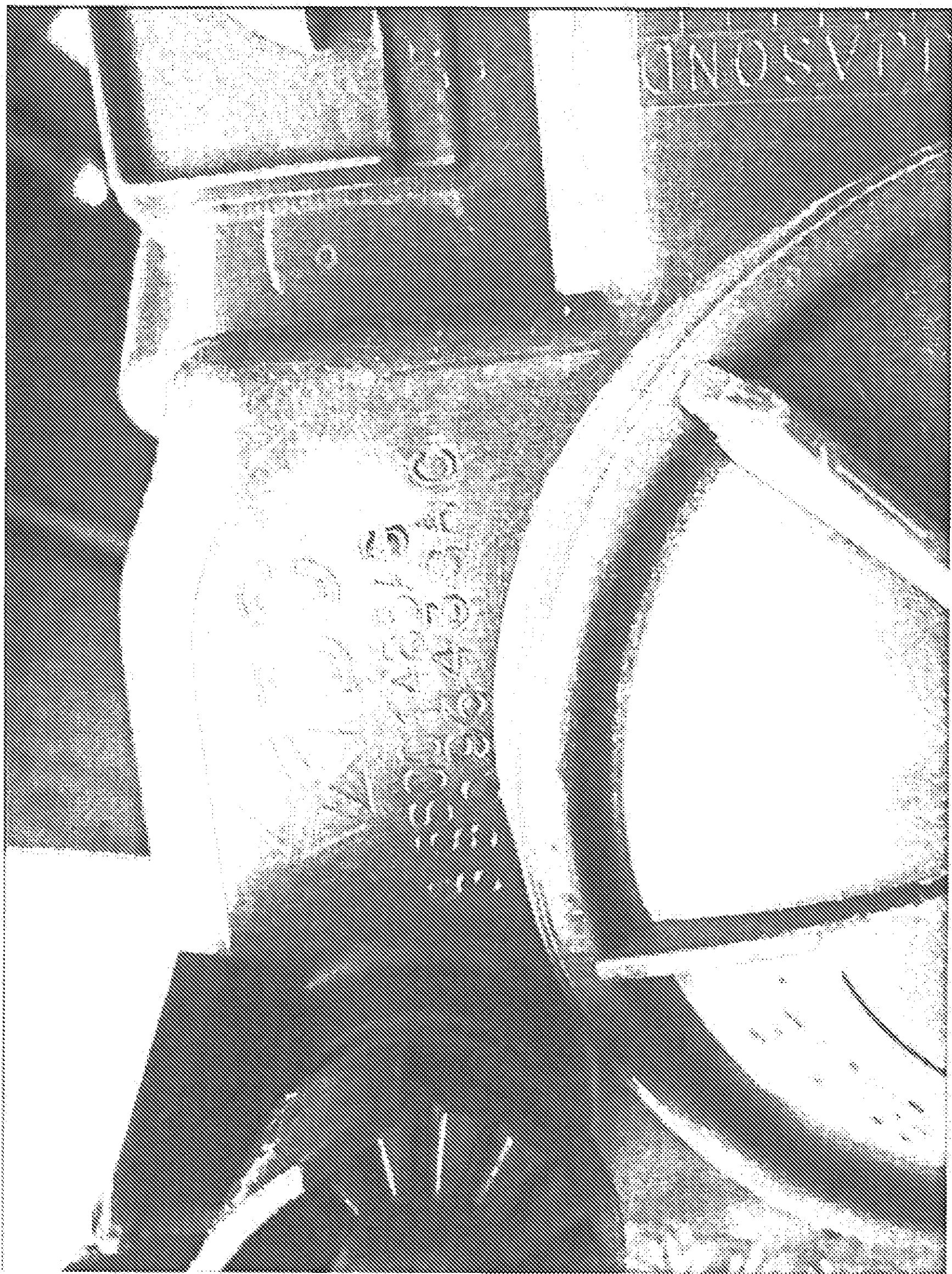


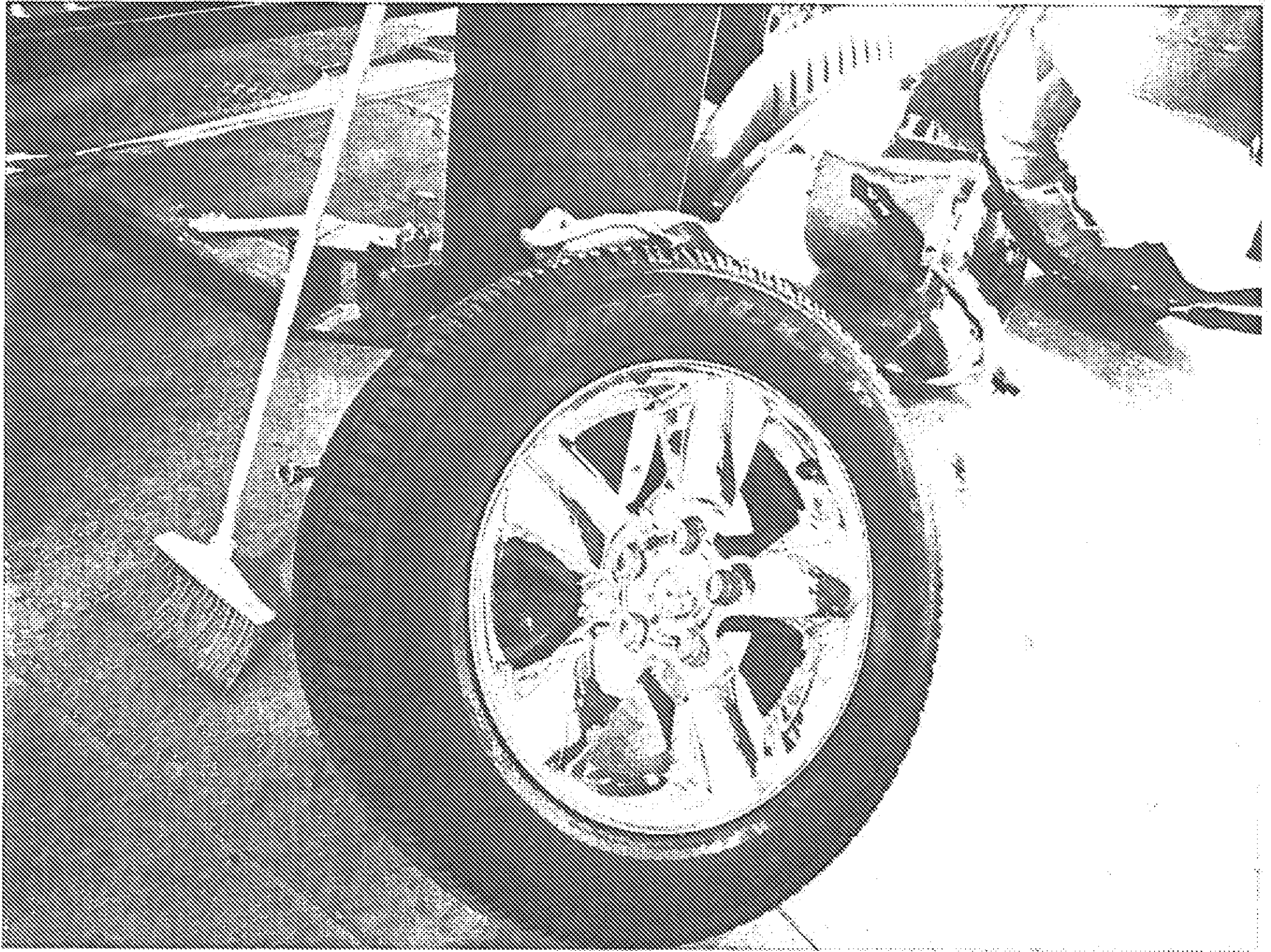


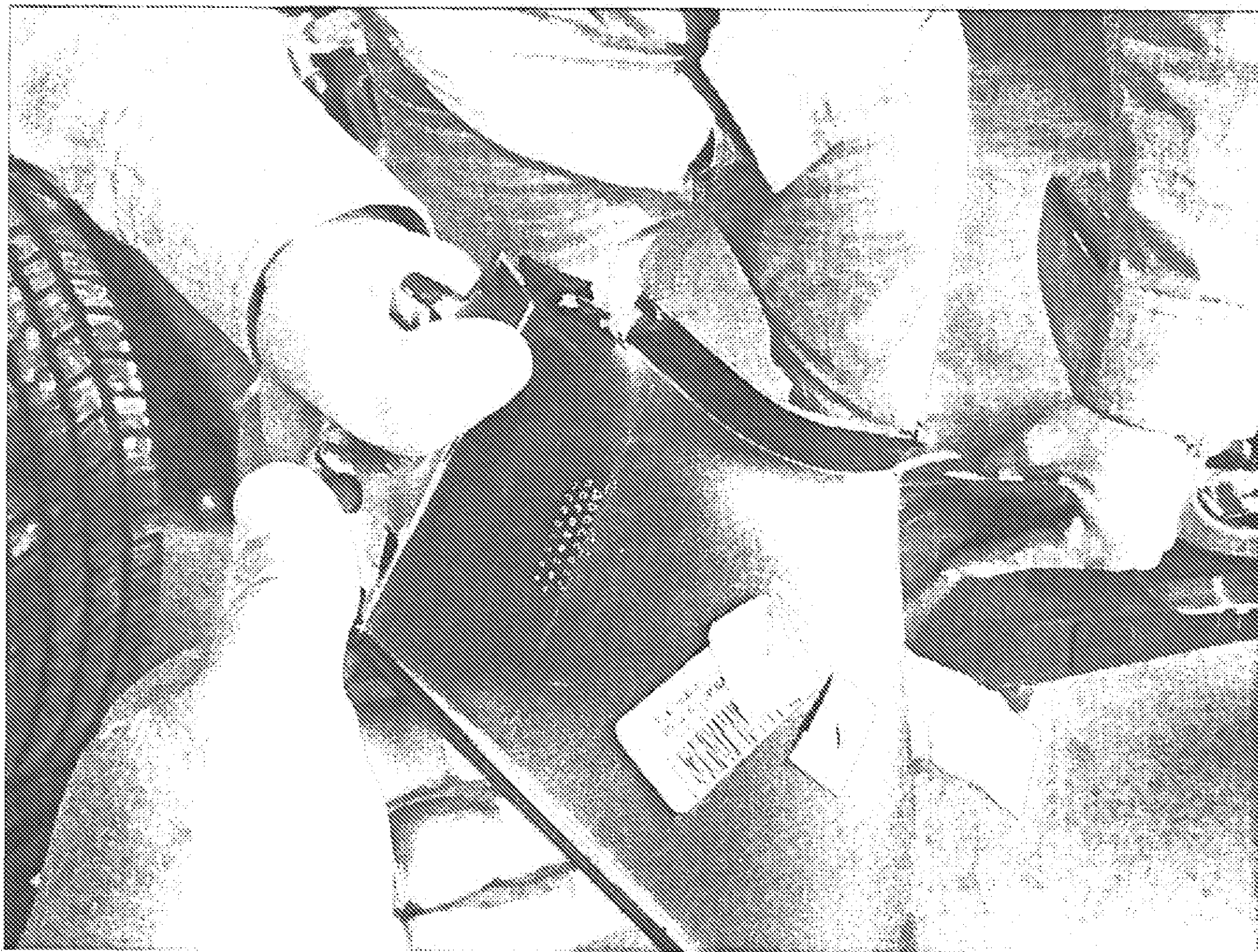






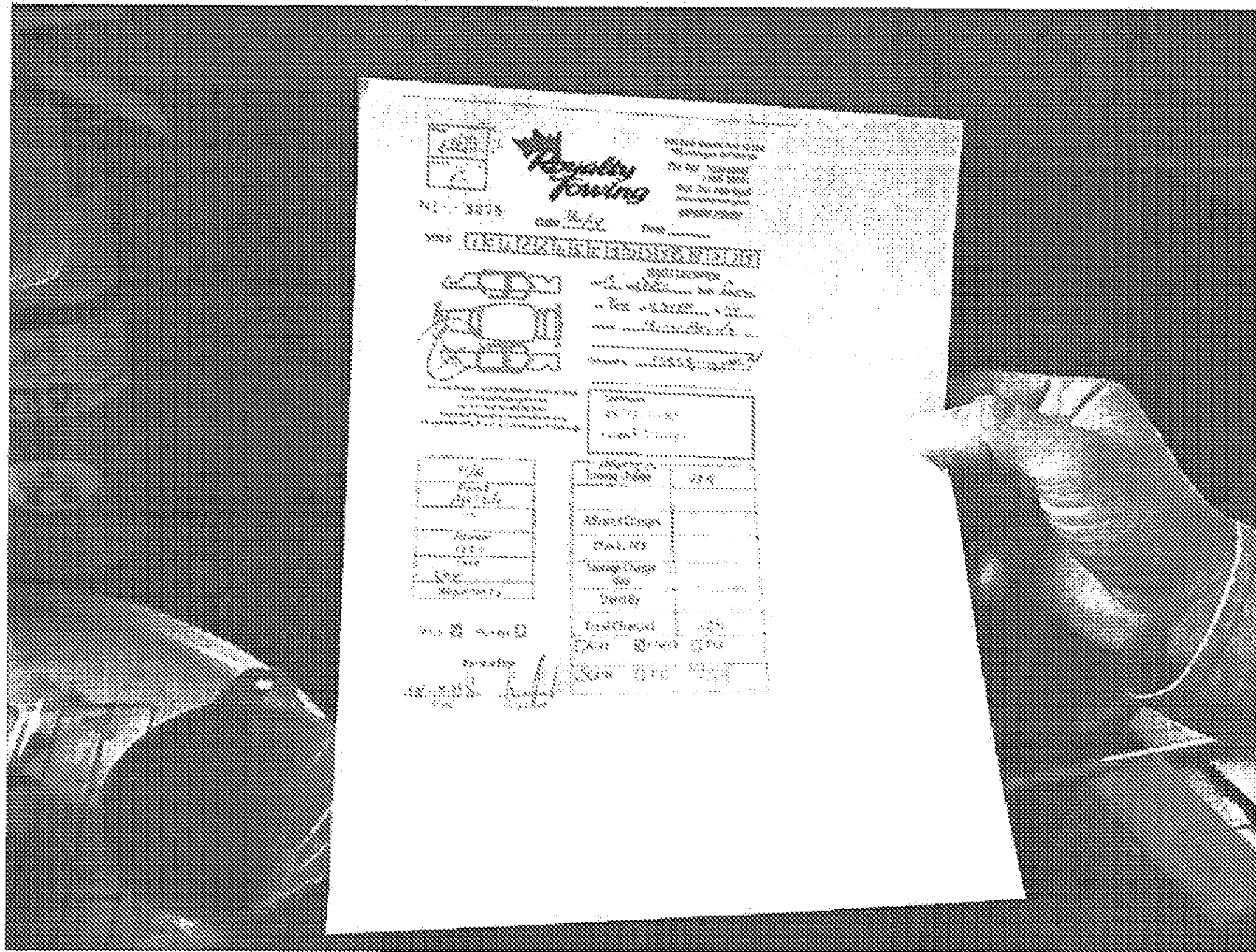


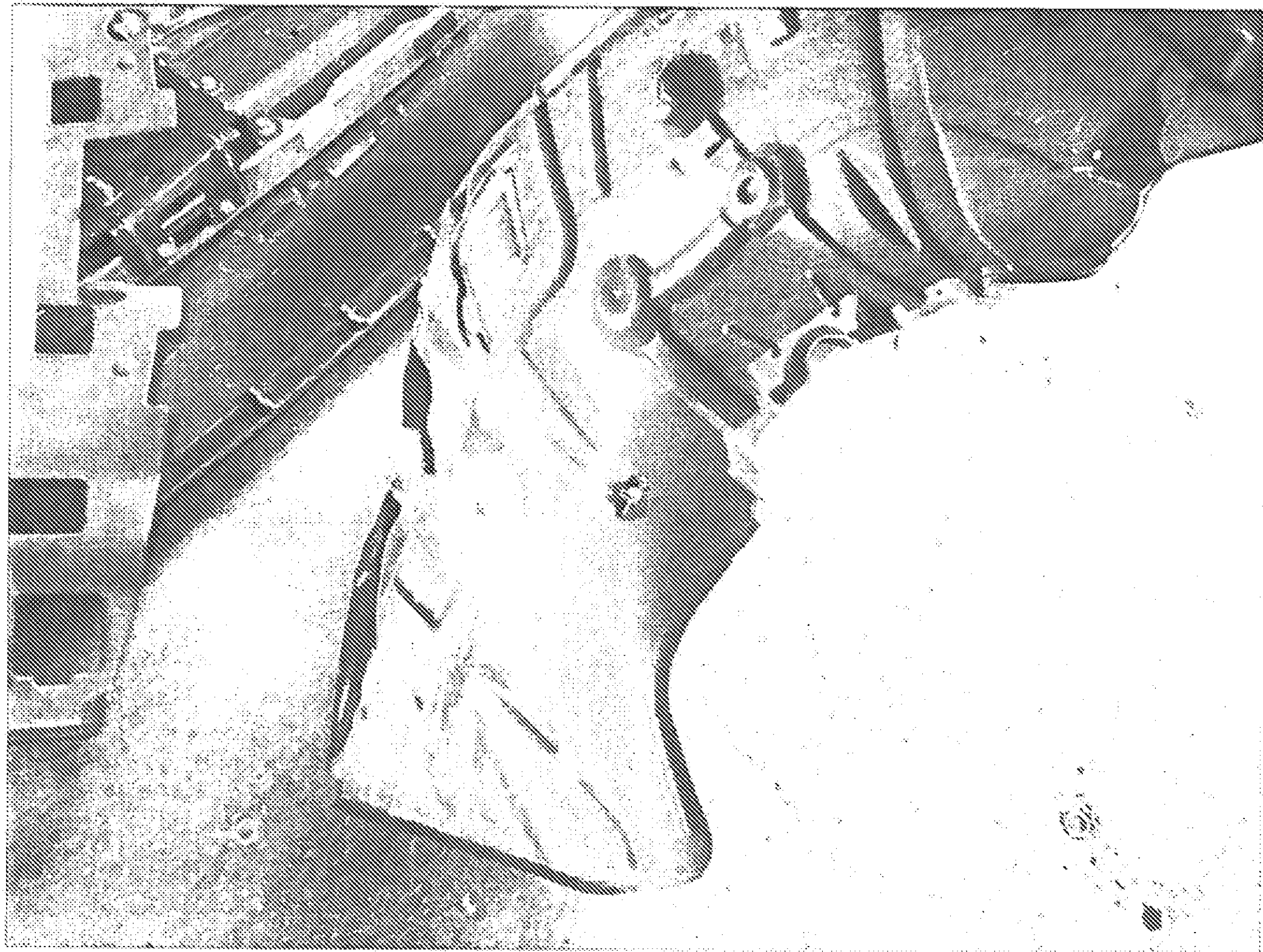


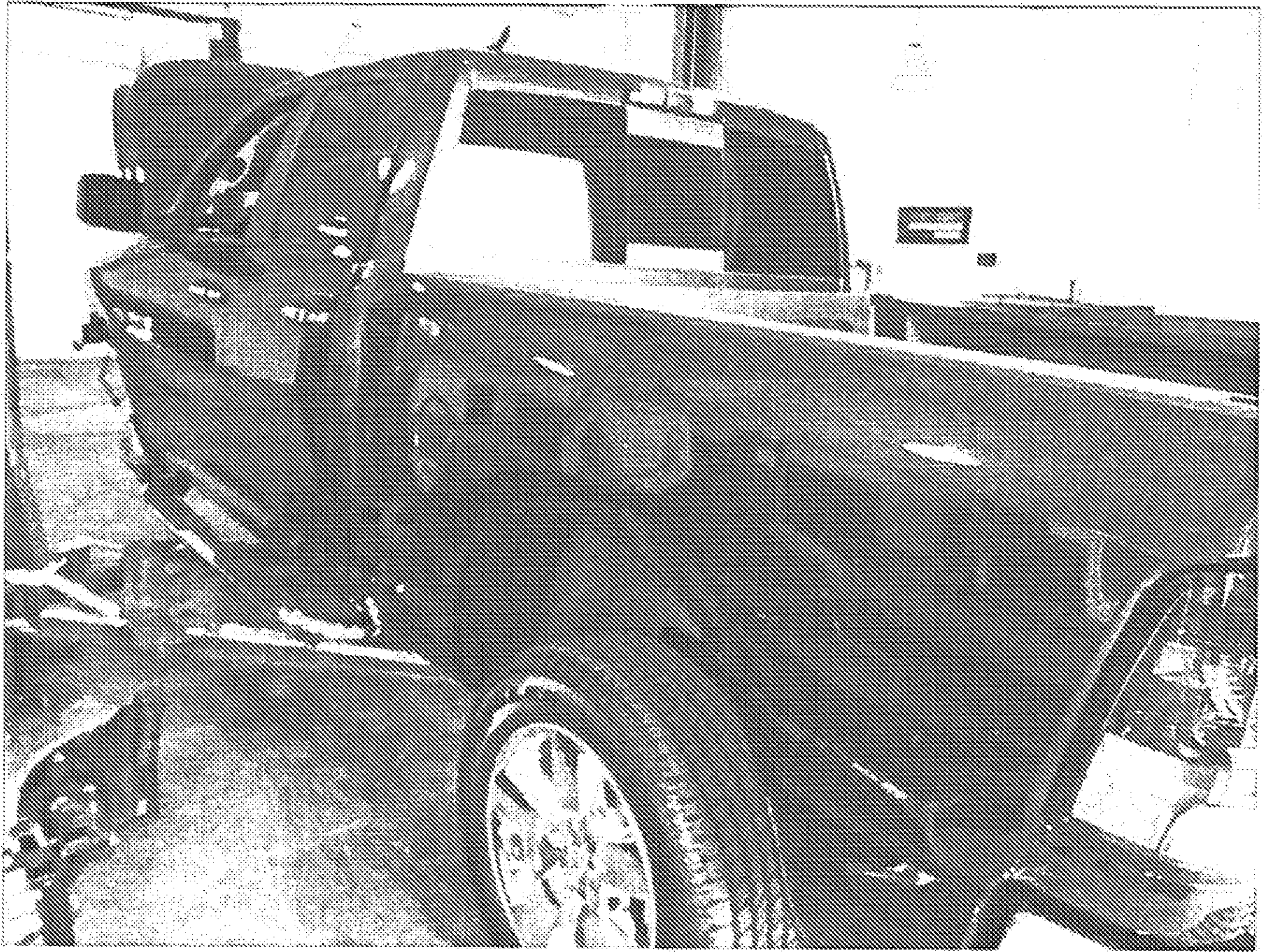












owing from any
subsequent damage.

FE Damage
Wheel Damage.

After 57.8
Towing Charge

125 -

Advance Charges

Check / CC#

Storage Charge
day

Stand By

Total Charges

125 -

☐ Acct.

☒ Check

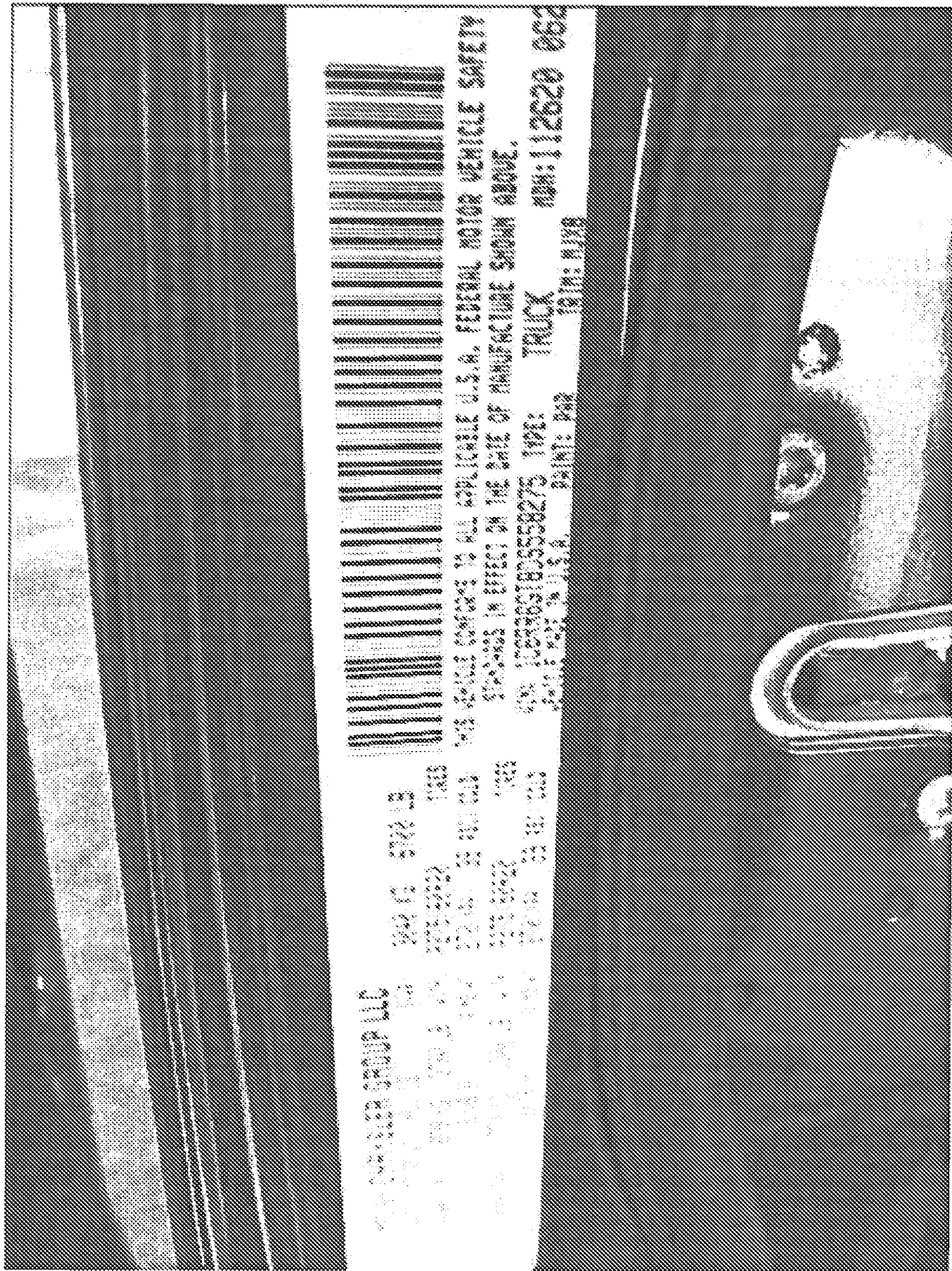
☐ P.O

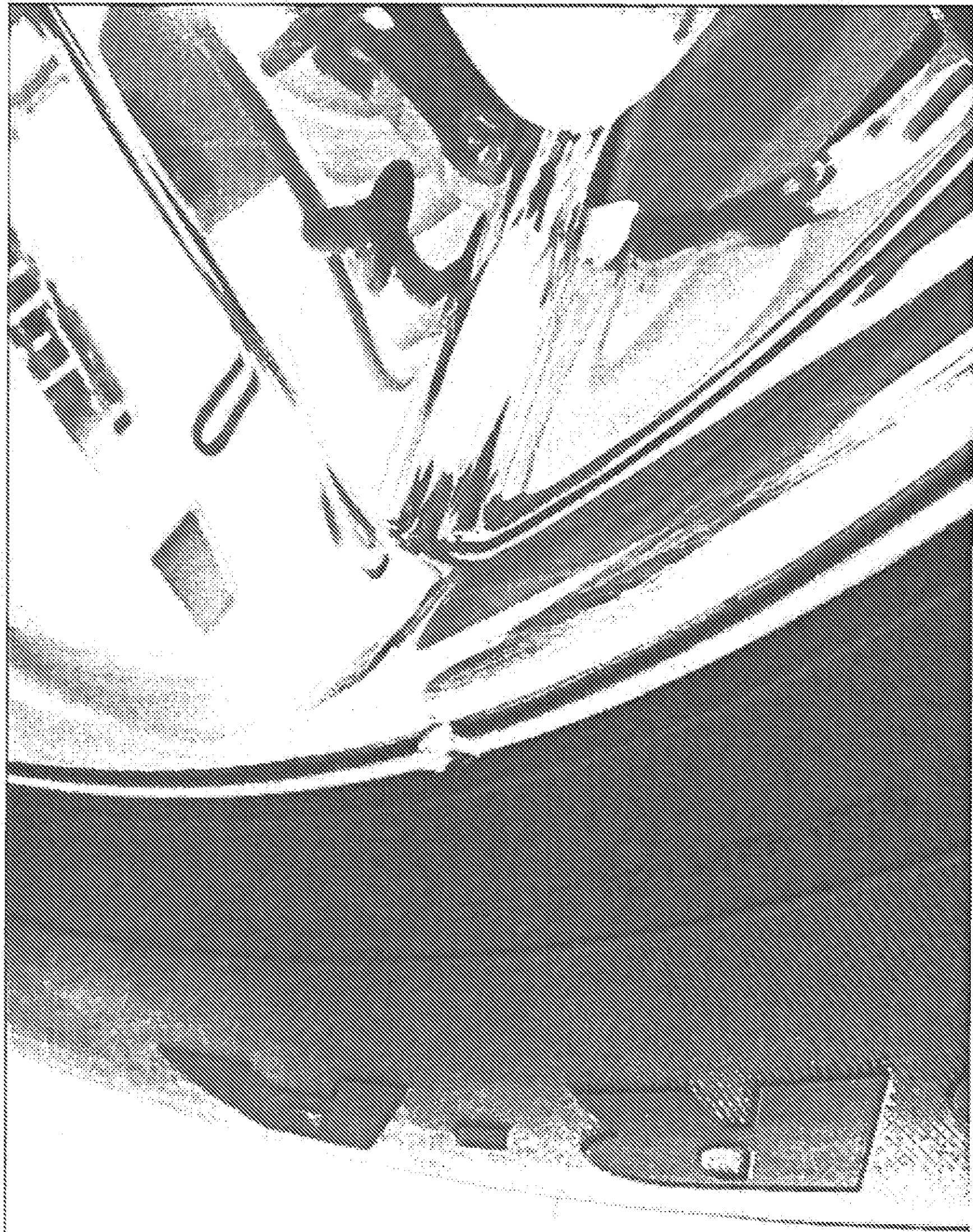
☐ Cash

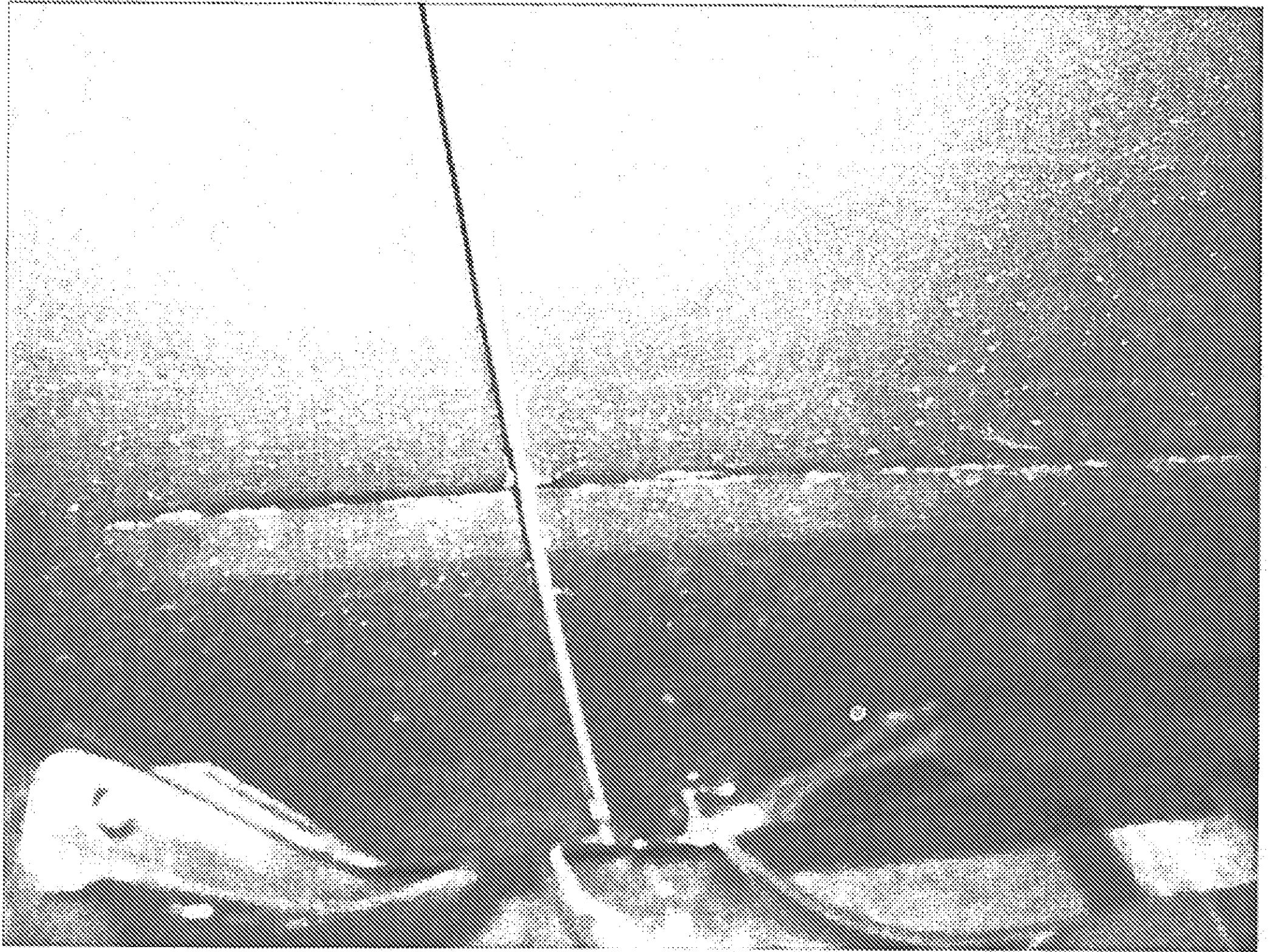
☐ C.C

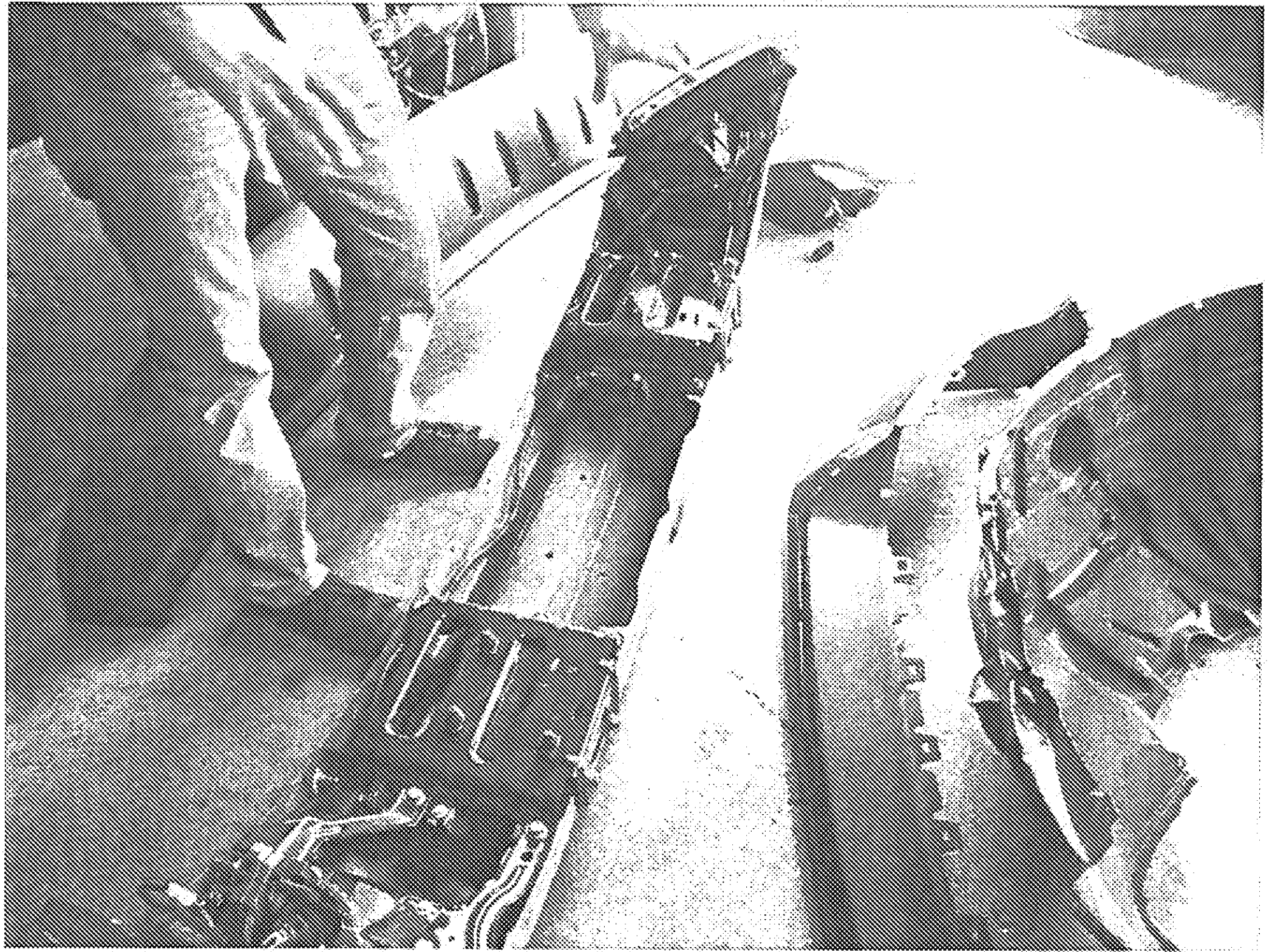
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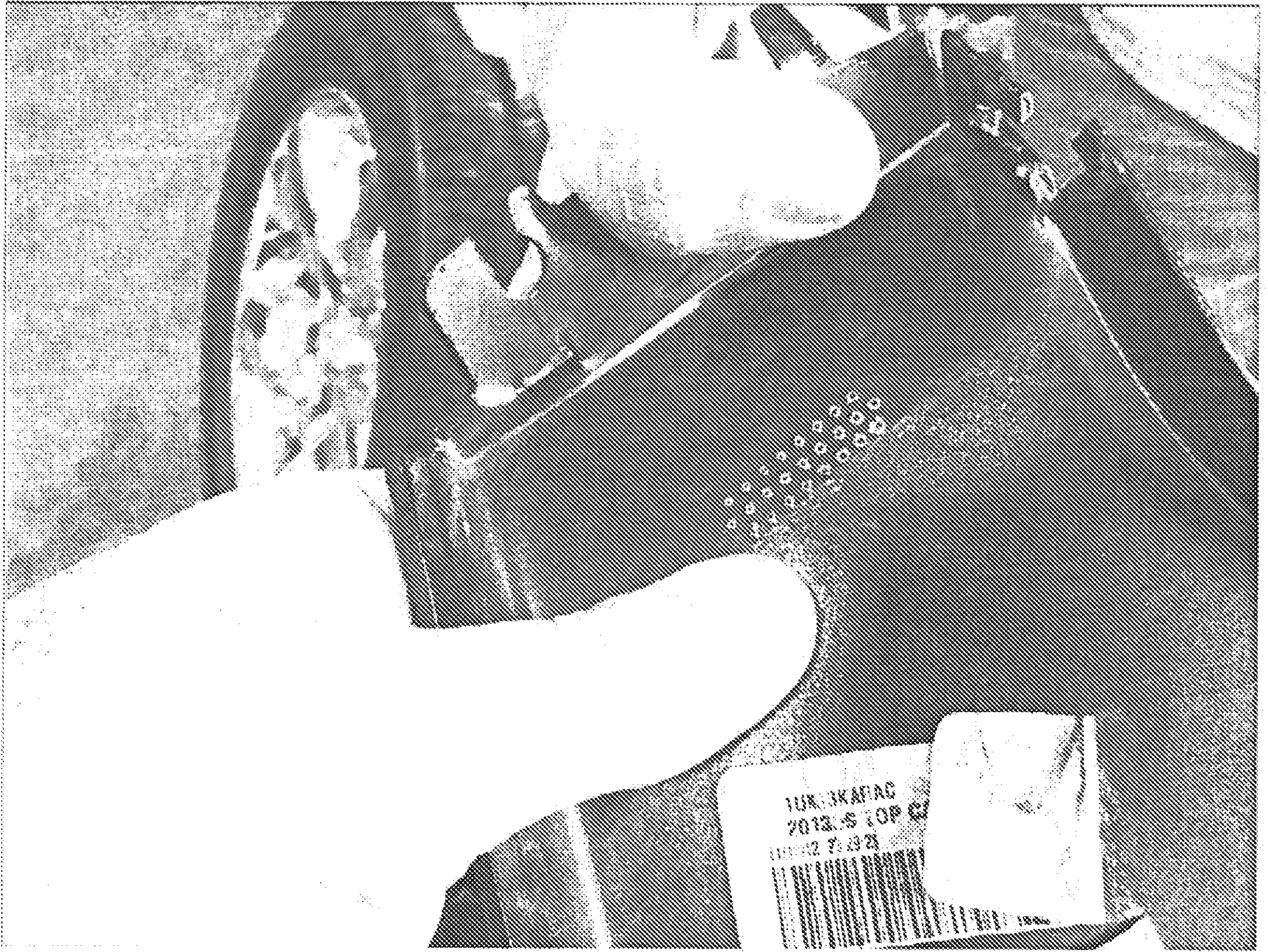
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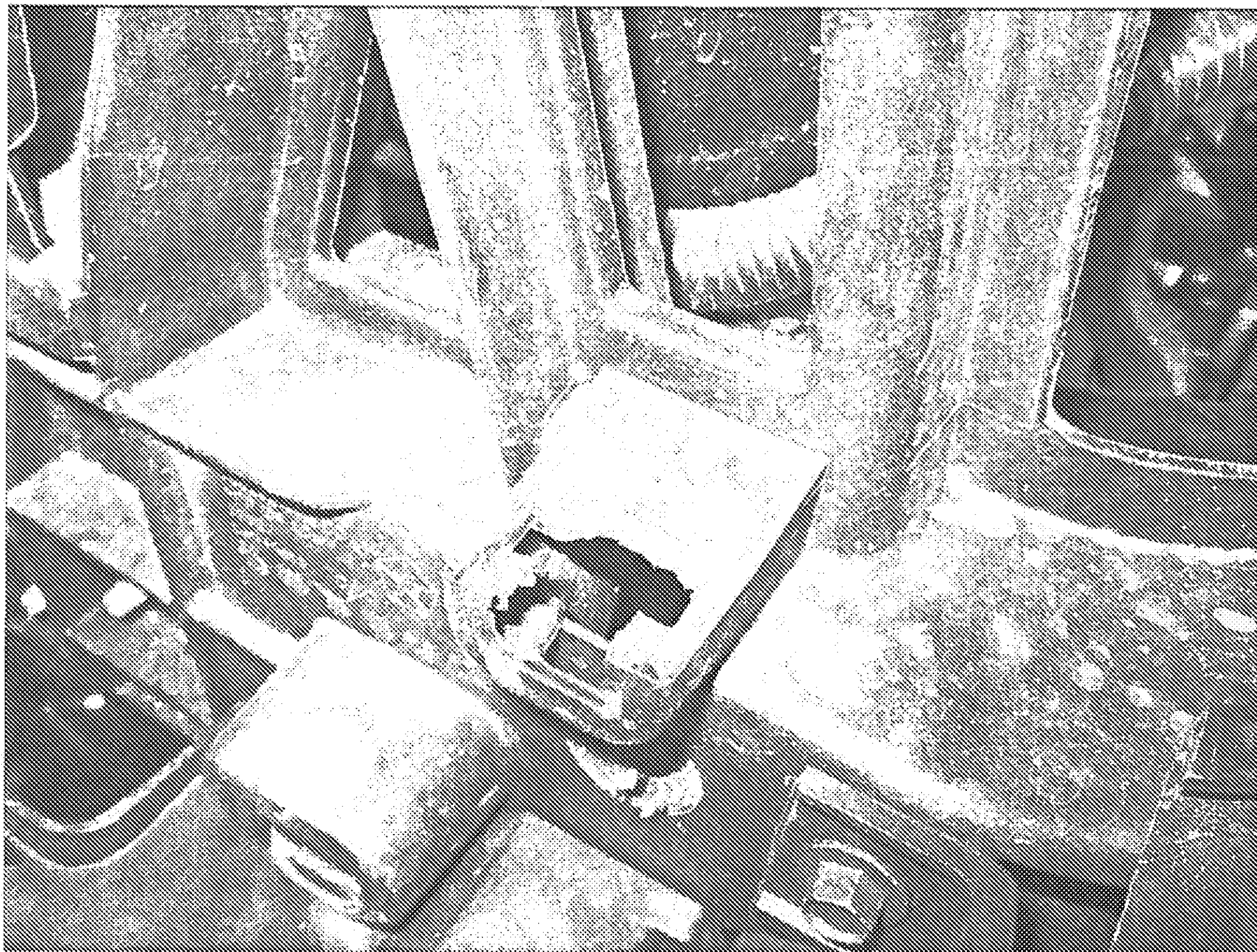












IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK POOLE,

Appellant,

v

NEVADA AUTO DEALERSHIP
INVESTMENTS LLC a Nevada
Limited Liability Company d/b/a
SAHARA CHRYSLER, JEEP,
DODGE, and COREPOINTE
INSURANCE COMPANY,

Respondents,

Appeal from the Eighth Judicial District Court, Clark County.
The Honorable Nancy Alff, District Court Judge

Supreme Court Case No: 74808

Electronically Filed
Jun 18 2018 08:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No:
A-16-737120-C

APPELLANT'S APPENDIX VOLUME 2

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1 C. BECAUSE THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH
2 RESPECT TO WHETHER THE FACTS AND/OR INFORMATION IN
3 THE ACE WOULD HAVE BEEN “MATERIAL” TO A REASONABLE
4 CONSUMER IN PURCHASING A CPO VEHICLE, SAHARA HAD AN
AFFIRMATIVE LEGAL OBLIGATION AND DUTY TO DISCLOSE
THOSE MATERIAL FACTS TO THE PLAINTIFF ON THE DATE OF
SALE

5 SAHARA contends that Plaintiff is attempting to create or impose “overly broad”
6 disclosure obligations and/or legal duties upon SAHARA that do not exist under Nevada
7 law. *Mot. 5: 1-2, 11-13, 9: 13-16, 12: 2-4.* More specifically, SAHARA contends that
8 they ***only had an obligation*** to disclose that the vehicle was in a previous accident,
9 *and nothing more. Mot. 9: 13-16.* Such is ***not*** the state of the law in Nevada. What is
10 clear from the ACE and SAHARA’s employees is that the information contained in the
11 ACE most certainly was ***not*** collateral, inconsequential, minor, trivial or unimportant,
12 but rather those facts were “material” in nature. Consequently, the law in Nevada is
13 clear – SAHARA had an affirmative legal obligation to disclose those material facts to
14 the Plaintiff.
15

16
17 1. NRS 598.0923(3), WHICH IS PART OF THE NDTPA IMPOSES AN
18 AFFIRMATIVE *STATUTORY* OBLIGATION ON SAHARA TO DISCLOSE
19 ALL KNOWN MATERIAL FACTS TO THE PLAINTIFF IN
CONNECTION WITH THE SALE OF THE CPO VEHICLE

20 NRS 598.0923(2) states in pertinent part :

21 A person engages in a “deceptive trade practice” when in the course of his
22 or her business or occupation he or she knowingly: ***Fails to disclose a
material fact in connection with the sale of... goods ...***

23 The NDTPA via NRS 598.0923(2) drastically modified existing common law, *see*
24 *fn. 7 infra. Indeed, the NDTPA and NRS 598.0923(3) changed the entire*
25 *landscape with respect to a fraud claim based on non-disclosure and/or*
26 *omission in consumer sale transactions* – transactions, the overwhelming
27 majority of which do NOT involve any type of “fiduciary,” “confidential” or other
28

1 “special” relationship. This is significant because under common law a Plaintiff was
2 essentially required to demonstrate a fiduciary or other special relationship in order to
3 mandate or otherwise trigger the duty of full disclosure from the other party, if the
4 theory of fraud was predicated on non-disclosure or omission.⁷ NRS 598.0923(3)
5 changed all that, and is entirely consistent with the underlying objectives behind the
6 NDTPA which is deal with, root out and address broader concepts of “deception” in
7 *consumer sales transactions*, so as make it easier for consumers to overcome the more
8 strident hurdles associated with common law fraud.

10 NRS 598.0923(3) is clear. The NDTPA imposes an **affirmative statutory**
11 **duty** on a person who sells goods within their “business or occupation” to disclose all
12 known material facts in a transaction involving the sale of goods. Contrary to SAHARA’s
13 contention Plaintiff is not attempting to impose “overbroad” legal duties on SAHARA to
14 require them to “disclose *each and every fact a car dealer might have* regarding any
15 used vehicle inventory...” *Mot. 5: 1-2*. Rather, quite the opposite is true. Plaintiff is
16 only seeking to enforce an already existing duty to disclose that SAHARA has under
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19 ⁷ For example, a fraud claim based upon non-disclosure and/or omission will arise in situations
20 where there is a fiduciary or other “special relationship” involving special confidence or trust. See *Foley v*
21 *Morse & Mawbray* 109 Nev. 116, 125, 848 P. 2d. 519, 525 (1993), *Mackintosh v Jack Matthews & Co.* 109
Nev. 628, 634, 855 P. 2d 549, 553 (1993).

22 See also *Epperson v. Roloff*, [102 Nev. 206, 213, 719 P.2d 799, 803 \(1986\)](#) [holding that generally
23 an action in deceit **will not lie** for nondisclosure as for mere omission to constitute actionable fraud, a
24 plaintiff must first demonstrate that the defendant **had a duty to disclose the fact at issue**.

25 Furthermore, if Plaintiff had plead a common law claim for fraudulent concealment, (which he
26 purposely did not), he would have to plead and prove : (1) the defendant concealed or suppressed a
27 material fact; (2) **the defendant was under a duty to disclose the fact to the plaintiff**; (3) the
28 defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; that is,
the defendant concealed or suppressed the fact for the purpose of inducing the plaintiff to act differently
than she would have if she had known the fact; (4) the plaintiff was unaware of the fact and would have
acted differently if she had known of the concealed or suppressed fact; (5) and, as a result of the
concealment or suppression of the fact, the plaintiff sustained damages. See *Dow Chem. Co. v. Mahlum*,
114 Nev. 1468, 1485, 970 P.2d 98, 110 (1998) [rev’d on other grnd’s].

See *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 110 (1998) [rev’d on other
grnd’s] [For a mere omission to constitute actionable fraud, a plaintiff **must first demonstrate that**
the defendant had a duty to disclose the fact at issue.

1 Nevada law.⁸

2 **2. EVEN UNDER COMMON LAW SAHARA HAD DUTY TO DISCLOSE**
3 **THE INFORMATION AND FACTS CONTAINED IN THE ACE**
4 **BECAUSE SAHARA HAD VASTLY SUPERIOR AND**
5 **PARTICULARIZED KNOWLEDGE OVER THAT OF THE PLAINTIFF**
6 **ABOUT THE CONDITION OF THE VEHICLE AT TIME OF SALE**

7 As a threshold matter, SAHARA concedes that it has **vastly superior**
8 **knowledge** about the condition of a CPO vehicle as opposed to that of the consumer at
9 time of sale. *SS fact # 29* and 109. Indeed, SAHARA **concedes** in their moving papers
10 that Plaintiff “is not a car guy and would unlikely have knowledge of the individual
11 replaced or repaired parts [on the vehicle].” *Mot. 18: 1-5*.

12 It has long been held in Nevada, even under common law, that a party has a duty
13 to disclose material facts **that are particularly within the knowledge of the**
14 **party sought to be charged**, and not within the fair and reasonable reach of the
15 other party.⁹ SAHARA had vastly superior knowledge about the condition of the vehicle
16 given the ACE was in SAHARA’s and Joshua Grant’s possession, **in conjunction with**
17 the fact that the vehicle underwent SAHARA’s 125 point CPO inspection that was

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19 ⁸ The *NDTPA* limits its applicability to only those transactions involving a Defendant’s “business or
20 occupation” which, by definition, would mostly include merchants as defined under the UCC, such as car
21 dealers. See NRS §§ 598.0915, 598.092 & 598.0923. While the *NDTPA* does not apply to transactions
22 that are not related to one’s business or occupation, it would of course still apply to those sales
23 transactions involving non-merchants, as long as the transaction in question was related to one’s
24 “business or profession.” However, in this case the Defendant is a merchant. Consequently, car dealers, as
25 merchants **in the course of their business**, are under an affirmative duty under the *NDTPA* to
26 **ensure** they disclose all material facts to the consumer which they know or reasonably should know
27 about with respect to a vehicle they are selling to a consumer.

28 ⁹ See *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 110 (1998) [rev’d on other
29 grnd’s] [citing *Villialon v Bower* 70 Nev 456, 467, 273 P 2d. 409, 415 (1954)], see also *Mackintosh v Jack*
30 *Matthews & Co* 109 Nev. 628, 634, 855 P. 2d 549, 553 (1993), [holding that party’s superior knowledge
31 can impose a duty to speak in certain transactions and nondisclosure will become the equivalent of
32 fraudulent concealment when it becomes the duty of a person to speak in order that the party with whom
33 he is dealing may be placed on an equal footing with him]; see also *Epperson v. Roloff*, 102 Nev. 206, 211–
34 12, 719 P.2d 799, 803 (1986) [holding that even an independent investigation will not preclude reliance
35 where the falsity of the defendant’s statements is not apparent from the inspection, where the plaintiff is
36 not competent to judge the facts without expert assistance, or where the defendant has superior
37 knowledge about the matter in issue citing *Stanley v Limberys*, 74 Nev. 109, 323 P .2d 925 (1958)]

1 conducted by their trained and certified technician. SAHARA sells hundreds of CPO
2 cars a year, all of which were supposed to undergo a 125 point CPO inspection. How
3 many CPO vehicles does the average consumer purchase every year? Who has superior
4 knowledge about the condition of a CPO vehicle? Plaintiff has no expertise to know or
5 to discover the nature and extent of the damage caused by the previous collision via an
6 inspection or test drive undertaken by him. *See decl. of Plntf at ¶ 2 and SS fact # 109.*

7
8 Plaintiff had no access to the ACE because it was a private insurance document.
9 Under Nevada law it was incumbent on SAHARA to disclose the ACE to Plaintiff. The
10 facts and information contained in the ACE were essentially within the “exclusive”
11 knowledge of SAHARA. Most certainty, at a bare minimum, the facts and information
12 in the ACE were within the ***particular knowledge*** of SAHARA. *SS fact # 3 & 7.*
13 Based on the aforementioned, Defendant’s motion should be denied
14

15 **V**

16 **THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT**
17 **SAHARA MADE FALSE REPRESENTATIONS IN A TRANSACTION AND**
18 **VIOLATED A FEDERAL STATUTE RELATING TO THE SALE OF GOODS**

19 **A. SAHARA MADE AFFIRMATIVE *ORAL* MISREPRESENTATIONS TO**
20 **THE PLAINTIFF REGARDING THE NATURE AND EXTENT OF THE**
21 **PREVIOUS COLLISION DURING THE SALES PROCESS**

22 SAHARA contends it made no false representations to the Plaintiff involving the
23 vehicle. As alleged at paragraphs 27 and 31(E) of the FAC at Exhibit 1, as set forth in SS
24 fact # 61, and paragraph 2 of Plaintiff’s declaration, when Plaintiff ***specifically***
25 ***inquired*** with SAHARA’s sales person, (Travis Spruell), about the accident after it was
26 initially disclosed to Plaintiff, Mr. Spruell told Plaintiff that it was just a minor accident,
27 that it had gone though the 125 CPO safety inspection, and that if the vehicle had been
28 in significant accident, SAHARA would not be selling the vehicle to him.

A four corners review of the information contained on the ACE (Exhibit 2) does
not comport with the description of the collision as represented by Mr. Spuell. At a

1 bare minimum, it is up to the jury to decide what a “minor” or “significant” accident as
2 well as whether \$4,088.70 in previous damage along with all of the components and
3 parts were replaced or repaired on the vehicle should be characterized as merely a
4 “minor,” collision. Furthermore, are the photos of the vehicle that depict the nature
5 and extent of the damage and work done on the vehicle **as identified and reflected**
6 **on the ACE** considered minor or significant to the reasonable consumer ? *See Exhibit*
7 *14, photos.* Again, these are clearly issues for the jury.

9 **B. SAHARA MADE AFFIRMATIVE WRITTEN MISREPRESENTATIONS TO**
10 **THE PLAINTIFF VIA THE CPO INSPECTION REPORT THAT SAHARA**
11 **PREPARED RELATING TO THE VEHICLE**

12 SAHARA’S CPO inspection report given to, reviewed and signed by the Plaintiff is
13 attached as Exhibit 3. *SS fact # 59.* SAHARA concedes that a consumer within the
14 community has **every right to rely** on the contents and accuracy and truthfulness of
15 the CPO inspection report. *SS fact #67.* Plaintiff SAHARA further concedes that the
16 CPO technician who undertook the CPO inspection on the vehicle **was trained to**
17 **recognize the signs and/or indications of prior collision/accident damage**
18 to a vehicle that was going to be resold to the community. *See Exhibit 5, Def’s Resp. to*
19 *Plntf. RFA # 20, and SS fact # 91* Many of the things and components set forth on the
20 ACE are **the same** as those that would be covered by the CPO inspection report. *See*
21 *Exhibits 2 and 3 and SS fact # 88.* **None** of the repaired and/or replaced items on the
22 ACE were listed on SAHARA’s CPO check list/inspection report as being repaired
23 and/or replaced, including on the second page under the heading **“additional**
24 **information.”** *See Exhibits 2 and 3 and SS fact # 88.*

25 **C. SAHARA VIOLATED 16 C.F.R. § 455.1(A)(1), A FEDERAL**
26 **REGULATION RELATING TO THE SALE OF GOODS**

1 NRS 598.0923(3) states in pertinent part that it is a deceptive trade practice to:
2 “violate a state or federal statute or regulation *relating to the sale ... of goods*” 16 C.F.R.
3 § 455.1(A)(1) states:

4
5 It is a deceptive act or practice for any used vehicle dealer, when that
6 dealer sells or offers for sale a used vehicle in or affecting commerce
as *commerce* is defined in the Federal Trade Commission Act:

7 ***To misrepresent the mechanical condition of a used vehicle.***

8 16. C.F.R. § 455.1(A)(1) is a federal regulation “relating to the sale of goods.”
9 C.F.R. § 455.1(A)(1) does not in and of itself provide for a private claim for relief.
10 However, because it is a federal statute “relating to the sale of goods,” NRS 598.0923(3)
11 “barrows” from other qualifying federal and state regulations relating to the sale of
12 goods. Consequently, any violation of 16. C.F.R. § 455.1(A)(1) now becomes an
13 actionable and independent ***state*** deceptive trade practice pursuant to NRS
14 598.0923(3), which in turn is statutory consumer fraud pursuant to NRS 41.600(2)(e),
15 *supra*. For the reasons set forth in sub sections “A” and “B” immediately *supra*, there
16 are genuine issues of material fact and Defendant’s motion should be denied.

17
18 **VI**

19 **THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT SAHARA**
20 **REPRESENTED GOODS FOR SALE THAT WERE OF A PARTICULAR**
21 **STANDARD, QUALITY OR GRADE AND SAHARA KNEW OR SHOULD HAVE KNOWN THEY**
22 **WERE OF ANOTHER STANDARD, QUALITY OR GRADE AND MADE A FALSE**
23 **REPRESENTATION AS TO THE CERTIFICATION OF GOODS FOR SALE**

24 SAHARA agrees with and follows and subscribes to the advertising statements
25 regarding the sale of Dodge CPO vehicles to the community that ***“our CPO vehicle***
26 ***must pass a strident certification process that guarantees only the finest***
27 ***late model vehicles get certified.”*** SS fact # 21. Based on this concession alone,
28 there are most certainly triable issues of material fact as to how a Dodge vehicle with

1 **\$4,088.70** in previous collision damage, which *also had*, among other items a : **(1)** a
2 replaced front bumper, **(2)** a repaired left front frame end bracket, **(3)** a repainted left
3 front fender **(4)** a replaced right bumper bracket, **(5)** a replaced radiator support, **(6)** a
4 replaced left outer and inner tie rod, **(7)** a repaired front left wheel and **(8)** a replaced
5 aftermarket left stabilizer link, could be have been characterized as one of SAHARA's
6 *"finest late model vehicles"* for purposes of "certifying" it as a Dodge CPO vehicle. *See*
7 *SS fact # 21 and3 Exhibit 14, photos of vehicle during repair.*

9 The information that Joshua Grant actually had on the Plaintiff's vehicle via the
10 ACE, (Exhibit 2), was "per se" entirely opposite, incompatible, irreconcilable, contrary,
11 divergent, contradictory and antithetical to what SAHARA subscribes to and specifically
12 wants to instill in the mind of the consumer with respect to the things a consumer would
13 associate with purchasing a Dodge CPO vehicles. ***These things are : value, quality,***
14 ***safety, competence, assurance, piece of mind and trust.*** *SS fact # 21, 23, 24 &*
15 *25.* If SAHARA seeks to instill and engender and have the consumer associate these
16 things when purchasing a CPO vehicle, how could this vehicle have been one of
17 SAHARA's "finest late model vehicles?" *SS fact # 23-25.* This issue is up for a jury to
18 decide.

20 For starters, SAHARA, through its Director of Used Car Sales, (Joshua Grant),
21 who personally made the decision to CPO the vehicle, (SS fact # 73), could have easily
22 ***avoided*** selecting a vehicle for CPO certification that ***he knew*** had *an known accident*
23 *history.* Most certainly SAHARA and Joshua Grant could have avoided a vehicle that
24 ***he knew*** had \$4,088.70 in previous monetary damage that had the type of multiple
25 components repaired or replaced as identified in the ACE at Exhibit 2. Finally, based
26 on the ACE, they could have entirely avoided selecting a vehicle ***to which they knew***
27 that the front left wheel was not repaired₂₀ according to manufacturer's specifications,
28

1 which in turn created a very grave safety risk to the community. *SS fact # 4 and 90-100*

2 SAHARA concedes that one of the reasons why CPO vehicles go through CPO
3 vehicle inspections is to ensure that SAHARA does **not** sell a vehicle that might be a
4 safety hazard to the community. *SS fact # 27*. Attached as Exhibit 8 is a true and
5 correct copy of a Fiat Chrysler factory position statement with respect to their guidelines
6 involving “reconditioned” (damaged) wheels on its vehicles. *See decl. of Avillini ¶ 14*
7 *and SS fact # 94*. This is the same position statement that would or should have been
8 known to SAHARA, or at least available and/or easily accessible to all franchised
9 Chrysler/Dodge dealerships, including SAHARA. In fact, anyone could get it off the
10 internet. *See decl. of Avillini ¶ 14 and SS fact # 94*.

12 According to Fiat Chrysler America (FCA”) official factory position statement
13 regarding “reconditioned” wheels – “reconditioned” wheels are defined as wheels that
14 have been **“damaged,”** -- meaning bent, broken cracked or sustained some other
15 physical damage and that use of “reconditioned” wheels CAN RESULT IN A SUDDEN
16 CATASTROPHIC WHEEL FAILURE WHICH COULD CAUSE LOSS OF CONTROL
17 AND RESULT IN INJURY OR DEATH. *See Exhibit 8 and SS fact # 95*. More
18 specifically, FCA’s official factory position statement states: “replating or chrome plated
19 wheels, or chrome plating of original equipment is **NOT an acceptable procedure**
20 **as this may alter the mechanical properties and affect fatigue**”. *See Exhibit*
21 *8 and SS fact # 95*.

24 A photo of the left front chromed wheel to the vehicle that was produced and
25 identified by SAHARA in discovery, is attached as Exhibit 13, which was part of a group
26 of photos showing the damaged components, and the repairs to the vehicle as a result of
27 the previous collision. **It shows a sizable chip taken out of the rim of the wheel**
28 **as a result of the previous collision.** ²¹*SS fact # 97*. A chip taken out the the edge

1 of the wheel obviously meets the definition of damage under the FAC factory position
2 statement on “reconditioned” wheels. *See Exhibit 8, and decl. of Avillini ¶ 16.*

3 Furthermore, the ACE **clearly indicates** the left front wheel as being
4 “reconditioned” and that the wheel was **sent out to be “rechromed,” or** the front left
5 wheel was replaced with a “recycled” wheel. *See Exhibit 2, ACE, Exhibit 8 FCA pos.*
6 *stmt., and decl. of Rocco Avillini at paragraph 14 and SS fact # 93.* The definition of
7 “RCY” is in page 5 of the ACE and **means “used parts.”**¹⁰ Whether the left front
8 wheel to the vehicle was repaired by being “rechromed” or replaced with a “used” or
9 “recycled” wheel, it would **not** meet Chrysler/ Dodge Factory repair specifications. *SS*
10 *fact # 100, 101 102 & 103, Exhibit 8, and decl. of Rocco Avillini at paragraph 17.* Yet
11 even though SAHARA **actually knew** the front left wheel on vehicle was repaired by
12 using a “reconditioned” or “used” wheel as a result of the repair from the previous
13 collision, **SAHARA still certified the vehicle as a Dodge CPO.**

14
15
16 All of the aforementioned belies SAHARA’s contention that “the nature and
17 extent of the accident is **not** material because “all of the damage was repaired and the
18 vehicle passed a 125 point inspection by SAHARA.” *Mot. 9: 9-12.* The vehicle may
19 have been “repaired” but it was not “properly repaired” according to manufacturer
20 specifications. *SS fact # 99-103.* However, even assuming the vehicle was “properly
21 repaired” (which it was not), if SAHARA had specific information about the nature and
22 extent of the damage caused to the vehicle by the previous collision, even SAHARA
23 concedes it would **still be material information** that any reasonable consumer
24 would still want to know about before making decision to purchase a Dodge CPO
25 vehicle. *SS fact # 22, 42, 43, 46 and 53.* This issue is for a jury to decide.

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¹⁰ *See Exhibit 2, ACE at pages 2 & 3 lines under heading “WHEELS” lines 29-34.*

1 Finally, the aforementioned also belies SAHARA's repetitive argument that
2 because the vehicle "passed" SAHARA's 125 point CPO inspection it "automatically"
3 means that the vehicle was "properly certified" as a Dodge CPO. Such in not the case. SS
4 In fact, SAHARA would not even be entitled to a "presumption" of a proper CPO
5 certification simply based upon the vehicle "passing" SAHARA's 125 point CPO
6 inspection given Plaintiff's SS. *SS fact # 99-103*.

7
8 There are a profusion of triable issues of a material fact which include whether: 1)
9 the vehicle was repaired according to manufacturer's specs, 2) whether the vehicle was
10 properly certified as as Dodge CPO vehicle and 3), how could the vehicle have been
11 characterized as one SAHARA's "finest late model vehicles" given the information
12 SAHARA knew about from the ACE. Defendant's motion should be denied.

13 VII

14 **THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH RESPECT** 15 **TO PLAINTIFF'S EQUITABLE CLAIM FOR EQUITABLE ESTOPPEL**

16 As a threshold matter, pursuant to NRS 41.600(3)(b), any consumer fraud
17 claimant is statutorily and expressly authorized to also seek any and all appropriate
18 equitable claims or remedies for violation of any of the enumerated items set forth in
19 NRS 41.600(2)(e). Equitable Estoppel is essentially the "equitable" counter part to a
20 claim at law for for fraud.¹¹ In the instant case, since Plaintiff has established triable
21 issues of material fact that SAHARA had both a statutory and common law duty to
22 disclose any known material facts that would adversely affect the vehicle's value, safety,
23

24
25 ¹¹ See *Friedland v. Gales* 131 N.C. App. 802, 509 S.E.2d 793 (N.C. App.,1998) [***explaining the***
26 ***related but different nature of a claim at law for fraudulent concealment versus a claim***
27 ***for equitable estoppel***]. See also, *Smith v. Safe Auto Ins. Co.*, 901 N.E.2d 298 (Ohio. App. 2008),
28 ***[holding the purpose of equitable estoppel is to prevent actual or constructive fraud and***
to promote the ends of justice], *Hysell v. Kimmel*, 834 N.E.2d 1111 (Ind. App. 2005), ***[holding the***
basis for the doctrine of equitable estoppel is fraud, either actual or constructive, on the
part of the person estopped, Birt v. Wells Fargo Home Mortg., Inc. 75 P.3d 640 (Wyo. 2003)
[holding equitable estoppel is designed to combat not just actual fraud, but also constructive fraud].

1 desirability and marketability, those same triable issues of material fact are equally
2 established with respect to Plaintiff's equitable claim for Equitable Estoppel

3 "[E]quitable estoppel functions to prevent the assertion of legal rights that **in**
4 **equity** and good conscience should not be available due to a party's conduct." See
5 *Hermanson v Hermanson* 110 Nev. 1400, 887 P.2d 1241 (1994). Unlike other
6 jurisdictions, in Nevada the doctrine of equitable estoppel has **dual applicability** and
7 can be used both as a "shield" and a "sword;" meaning is not limited to just a defense,
8 but it can also be asserted as an affirmative claim for relief. See *Mahban v. MGM*
9 *Grand Hotels, Inc.* 100 Nev. 593, 597, 691 P.2d 421 (1984) [holding that in Nevada
10 Equitable Estoppel can be asserted **as an affirmative claim for relief** and is not
11 limited to just a defense].
12

13 The four elements of Equitable Estoppel are: (1) the party to be estopped *must be*
14 *apprised of the true facts*, (2) that party must intend that his conduct shall be acted
15 upon *or* must so act that the party asserting estoppel *has the right to believe it was so*
16 *intended*, (3) the party asserting estoppel must be *ignorant of the true state of the facts*,
17 and (4) the party asserting estoppel must have *detrimentally relied* on the other party's
18 conduct. See *LVCVA v Miller* 191 P.3d 1138 ____ Nev. ____ (2008). These have all been
19 established through SS fact # 60-66.
20

21 Most relevant to the instant case is that it has also been held in Nevada that
22 equitable estoppel can be **based on silence**. See *Mahban*, id at 597 FN 2 [stating
23 "that equitable estoppel is a doctrine by which a person may be precluded by his act or
24 conduct, **or silence when it is his duty to speak**, from asserting a right which he
25 otherwise would have had], *Goldstein v Hanna* 97 Nev. 559, 635 P. 2d. 290 (1981),
26 *Noble Gold Mines Co. v. Olsen* 57 Nev. 448, 66 P.2d 1005 (1937) [holding equitable
27
28

1 estoppel may be raised by silence when there is a duty to speak]. **SAHARA had a**
2 **duty to speak given what they knew.**

3 Because equitable estoppel is essentially the “equitable” counterpart to a claim at
4 law for various forms of fraud, both claims are essentially opposite sides of the same
5 coin, except instead of seeking damages based upon a material misrepresentation or
6 omission, Plaintiff seeks equitable relief to preclude the Defendant from asserting
7 and/or exercising certain legal positions or rights it otherwise would have been able to
8 assert **but for** SAHARA engaging in statutory deceptive trade practices. Here Plaintiff
9 seeks to equitably estop SAHARA from claiming or contending that the underlying
10 contract he entered into with SAHARA is valid, **thereby entitled Plaintiff to the**
11 **equitable remedy of rescission.**
12

13 VIII

14 **THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH RESPECT** 15 **TO PLAINTIFF’S EQUITABLE CLAIM FOR RESCISSION**

16 As previously mentioned, NRS 41.600(3)(b) expressly authorizes a 41.600
17 claimant to seek any and all appropriate equitable relief. While the objective of
18 rescission is to put the parties into “as close to” the positions they were in prior to
19 entering into the contract, that is **not** an absolute requirement of rescission, because
20 sometimes that is not entirely possible, but rescission is an equitable remedy. As with
21 most equitable remedies, the court has **broad discretion** to fashion the equitable
22 remedy. For example, should the jury find Defendant engaged in consumer fraud, the
23 court can fashion the equitable remedy appropriately, such as requiring the Defendant
24 to take the vehicle back and pay back Plaintiff the value of the vehicle at time of sale,
25 (without the diminished value as a result of the undisclosed accident), plus his down
26 payment credit of \$4,000.00, while giving some reasonable credit for miles driven ect...
27
28

1 There **are a myriad** of ways to fashion appropriate equitable relief in this case with
2 respect to rescission should Plaintiff prevail on his consumer fraud claim.

3 Of course, should Plaintiff prevail, there might be an election to be made after the
4 verdict, but prior to entry of judgment to avoid any double recovery. However, that
5 election is not required to be made until **after** time of verdict. See *J.A. Jones Const.*
6 *Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 289, 89 P.3d 1009, 1017 (2004)
7 [holding that election is made after the verdict and the court makes the determination
8 **after trial** if a duplicate recovery has been obtained on different theories of recovery].

9
10 A party to a contract is entitled seek rescission of a contract based on fraud in
11 the inducement. See *Awada v. Shuffle Master, Inc.* 123 Nev. 613, 173 P.3d 707 (2007).
12 *Pacific Maxon, Inc. v. Wilson* 96 Nev. 867, 619 P.2d 816 (1980). To establish fraud in
13 the inducement of a contract, a party must prove that the other party made a false
14 representation and/or omission that was **material to the transaction**. See *Awada*
15 at 713. Because Plaintiff has demonstrated abundant triable issues of material fact
16 exist with respect to his claim for statutory consumer fraud with respect to SAHARA
17 failing to disclose material facts to the Plaintiff involving the vehicle, then triable issues
18 must, by definition, also exist as to Plaintiff's equitable claim for rescission.

19
20 Next Defendants cite *Bergstrom v Estate of Devoe* 109 Nev. 575, 854 P. 2d. 860
21 (1993), as somehow dispositive of Plaintiff's claim for Rescission as a matter of law. It
22 is not. *Bergstrom* does **not** apply to the instant action because *Bergstrom only dealt*
23 with a strictly across the board garden variety **breach of contract action**, coupled
24 with a second cause of action for Rescission of that same underlying contract, *id at 578*
25 *and 862*. *Bergstrom* held :

1 Because a rescinded contract is void *ab initio*, following a lawful rescission
2 ***the “injured” party is precluded from recovering damages for***
3 ***breach*** just as though the contract had never been entered into by the
4 parties

5 Most notably, unlike *Bergstrom*, Plaintiff has ***not*** plead any claim for relief for
6 breach of contract, nor is Plaintiff seeking any “damages” or other pecuniary loss based
7 upon any “breach of contract,; or even upon any contract based theory. *See Exhibit 1*
8 *FAC*. Secondly, unlike *Bergstrom*, ***the instant action is strictly based in TORT,***
9 ***not in contract. This distinction is critical.*** The FAC is clear -- Plaintiff’s
10 primary claim in this case, from which ***all*** equitable claims and/or remedies are based,
11 is strictly based upon statutory consumer fraud and for violation of the NDTPA pursuant
12 to NRS 41.600(2)(e). ***A contract may have been “involved” in Plaintiff’s sale***
13 ***transaction that Plaintiff seeks to rescind, but Plaintiff is not suing on the***
14 ***contract, nor is Plaintiff seeking any “damages” for any “breach” of that***
15 ***contract, making Bergstrom inapplicable, both as to its facts as well as to***
16 ***its law.***

17 Thirdly, *Bergstrom* is entirely inapplicable because in their moving papers,
18 Defendants conspicuously omitted the “fraud” exception to the general rule enunciated
19 in *Bergstrom*. While *Bergstrom* made it clear that the general rule is that a Plaintiff
20 cannot seek “damages” under the contract and ***also*** retain the benefits conferred under
21 that contract, (as that would allow a double recovery), this general rule does ***not*** apply
22 when the Defendant ***is guilty of fraud. Bergstrom also specifically held:*** “We
23 recognize that this general rule may not apply where the defendant is guilty of fraud.
24 See, e.g., *Jennings v. Lee*, 105 Ariz. 167, 461 P.2d 161 (1969); *Fousel v. Ted Walker*
25 *Mobile Homes, Inc.*, 124 Ariz. 126, 602 P.2d 507 (App.1979). *Supra* at 578 and 862, at
26 footnote 1. In fact, the Court in *Bergstrom* specifically went out of its way and found
27
28

1 there was no evidence that the Defendant in *Bergstrom* engaged in any fraud, so the
2 Plaintiff in *Bergstrom* was subject to the general rule. *Supra* at 578 and 862, at
3 footnote 1. Because the instant action is entirely predicated on fraud as against
4 SAHARA *Bergstrom* entirely inapplicable. Defendant's motion should be denied.

IX

THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH RESPECT TO PLAINTIFF'S EQUITABLE CLAIM FOR RESTITUTION

8 Contrary to SAHARA's position, the mere fact that Plaintiff has also alleged
9 claims at law does **not** preclude him from seeking appropriate equitable relief.
10 SAHARA has conspicuously omitted the express statutory authorization set forth in NRS
11 41.600(3)(b) expressly authorizing a 41.600 claimant to seek any and all attendant
12 equitable claims or remedies, assuming the claimant has a viable claim for violation of at
13 least one of the enumerated items of consumer fraud set forth in NRS 41.600(2), which
14 Plaintiff has demonstrated in this opposition that he does.

16 Furthermore, like with Plaintiff's equitable claim for Rescission, similarly,
17 Plaintiff's claim for Restitution is **not** based in contract nor is Plaintiff contending that
18 SAHARA "breached" the contract, rather Plaintiff's restitution claim **is strictly based**
19 **upon statutory consumer fraud, i.e. in tort.** In *Nevada Indus. Dev., Inc. v.*
20 *Benedetti*, 103 Nev. 360, 363, 741 P.2d 802, 804 (1987) the court held :

22 Unjust enrichment is the unjust retention of a benefit to the loss of
23 another, or the retention of money or property of another against the
24 fundamental principles of justice or equity and good conscience. *Earling*
25 *v. Emigh*, 218 U.S. 27, 30 S.Ct. 672, 54 L.Ed. 915 (1910). **Money paid**
26 **through misapprehension of facts belongs, in equity and good**
27 **conscience, to the person who paid it.** 66 Am.Jur.2d *Restitution &*
28 *Implied Contracts* § 119 (1973).

26 Nevada has long held for over 55 years that recovery under a claim for
27 Restitution/Unjust Enrichment is **not** just limited to just contract or quasi contract

1 based theories of recovery. Indeed, a claim for Restitution/Unjust Enrichment can also
2 be predicated upon the other party engaging in fraudulent conduct **arising out of a**
3 **contract**, wherein an unjust benefit has been retained **as a result of fraud**, (such as
4 fraudulent inducement), which in good conscious should be not retained and returned
5 to the aggrieved party. See *McGill v Lewis*, 74 Nev. 381, 385, 333 P. 2d. 717, 719-720
6 (1958). The *McGill* Court stated and held :

8 We start with the proposition that plaintiffs' second cause of action [for
9 fraud] is **NOT** an action on the contract itself or for compensation for its
10 performance, **but one to prevent the defendants' unjust enrichment of themselves** ACCOMPLISHED BY MEANS OF THE FRAUD
11 practiced by them upon the plaintiffs.

12 Various means and remedies have been employed to afford relief **outside**
13 **of the domains of technical contracts and torts. Unjust enrichment, restitution**, quasi contract, implied contract, resulting
14 and constructive trusts, accounting, etc. are some of the means thus employed. See 46 Am. Jur. 99-101, Restitution and Unjust Enrichment, for numerous instances and examples...

15 [Defendant] contends that the allegations of fraud as made by plaintiffs
16 do not present a case of unjust enrichment ... [T]he significance attached
17 to plaintiffs' prayer for judgment for the balance due under the contract
18 [is not the issue]. **Such is not the measure of the relief that may be afforded. We are concerned here, not with the amount due as compensation under the contract, but with the amount by which defendants have been unjustly enriched....**[emphasis added]
19

20 As stated and held in *McGill, id*, the equitable claim for Restitution/Unjust
21 enrichment is measured by the benefit conveyed to the Defendant through their
22 wrongful conduct, **not** the damages caused to the Plaintiff. Those unjustly retained
23 benefits are not only the agreed upon \$4,000.00 trade in value for Plaintiff's down
24 payment, but also include disgorgement of any profit SAHARA made on the deal based
25 upon them engaging in deceptive trade practices which induced Plaintiff to enter into
26 the contract. See SS fact # 106 and Exhibit 18, Plaintiff's Installment Contract. As the
27
28

1 court in *EarthInfo, Inc. v. Hydrosphere Res. Consultants, Inc.*, 900 P.2d 113, 118 (Colo.
2 Sprm. Ct. 1995) explained it :

3
4 **Rescission of a contract normally is accompanied by**
5 **restitution on both sides.** 1 Dan B. Dobbs, *Law of Remedies* § 4.3(6)
6 at 614 (2d ed. 1993) [hereinafter “Dobbs”]. The contract is “being
7 unmade, so restoration of benefits received under the contract seems to
8 follow.” *Id.* **Restitution measures the remedy by the defendant's**
9 **gain and seeks to force disgorgement of that gain in order “to**
10 **prevent the defendant's unjust enrichment.”** 8 *Id.* § 4.1(1) at 552,
11 557. **Restitution, which seeks to prevent unjust enrichment of the**
12 **defendant, differs in principle from damages, which measure the**
13 **remedy by the plaintiff's loss and seek to provide compensation for**
14 **that loss.** *Id.* at 555, 557. As a consequence, “in some cases the
15 defendant gains more than the plaintiff loses, so that the two remedies
16 may differ in practice as well as in principle.

17 Like in *McGill*, the primary relief Plaintiff seeks in this case is not based in
18 contract, but rather is based in tort via Plaintiff's first claim for relief for statutory
19 consumer fraud, making plaintiff's claim entirely viable going forward given Plaintiff has
20 established triable issues of material fact regarding his consumer fraud claim.

21 X

22 **PLAINTIFF HAS SUFFERED DAMAGES/MONETARY LOSS AND** 23 **SAHARA HAS BEEN UNJUSTLY ENRICHED**

24 At the time Plaintiff purchased the vehicle from SAHARA on May 26, 2017, the
25 vehicle was worth thousands less the minute he signed the contract with SAHARA and
26 before he even drove it off the lot due to the diminished value it sustained from the
27 March 26, 2014 accident as set forth and described in the ACE. *See Decl. of Plntf's*
28 *Expert ¶ 22 & 31 and SS # 105, and Exhibit 19, DV Rpt.* Furthermore, Plaintiff would
not have entered into a the contract with SAHARA had SAHARA disclosed the
information contained in the ACE. *See Decl. of Plntf ¶ 5 and SS fact # 107.*
Consequently, Plaintiff committed himself to monthly payments on a vehicle for several
years that was inherently worth ~~thousands~~ **less** the very day he signed the contract

1 due to SAHARA's deceptive trade practices. *See Decl. of Plntf's Expert ¶ 22 & 31 and SS*
2 *# 105, and Exhibit 19, DV Rpt.* Plaintiff has paid to date a total of **\$22,641.94** in
3 payments on the vehicle. *See Decl. of Plntf ¶ 7 and SS fact #108.*

4 Plaintiff's damages, pecuniary loss and/or restitutionary are, at a bare minimum
5 the amount of diminished value to the vehicle, or all the way up to all of the payments
6 on the vehicle he has made to date. Alternatively, if Rescission is granted, Plaintiff may
7 be entitled to his \$ 4,000.00 in trade in equity, Defendant's get the truck back, and
8 reimburse Plaintiff for all of payments he has made to date on the vehicle. ***The point***
9 ***is that SAHARA's assertion that Plaintiff has not sustained any pecuniary***
10 ***or restitutionary loss or damages is simply not tenable.*** SAHARA's motion
11 should be denied.
12

13 XI

14 **THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH**
15 **RESPECT TO IMPUTATION OF PUNITIVE DAMAGES TO SAHARA**
16 **BY WAY OF JOSHUA GRANT ACTING IN THE CAPACITY OF A**
17 **MANAGING AGENT OF SAHARA WHO IS PERSONALLY GUILTY OF FRAUD**
18 **AND/OR IMPLIED MALICE RELATING TO THE VEHICLE**

19 **A. JOSHUA GRANT WAS ACTING AS SAHARA'S MANAGING AGENT**
20 **WITH RESPECT TO DECIDING, APPROVING AND DESIGNATING**
21 **CPO VEHICLES FOR RESALE TO THE COMMUNITY, INCLUDING**
22 **THE PLAINTIFF'S VEHICLE**

23 NRS 42.007 limits the imputation of punitive damages to a corporation unless an
24 officer, director ***or managing agent*** of the corporation is ***personally guilty*** of
25 fraud oppression or malice.¹² In this particular case there is ample evidence that
26 establishes genuine issues of material fact that Joshua Grant, SAHARA's Director of
Used Cars, was SAHARA's managing agent, and in that capacity he was personally guilty

27 ¹² The alternative theory of an officer, director or managing agent authorizing or ratifying the
28 employee's conduct is ***not*** relevant here because the evidence demonstrates that Joshua Grant personally
engaged in "fraud" and/or "implied malice." 31

1 of “fraud” or “implied malice” for purposes if imposition of punitive damages to
2 SAHARA as defined under NRS 41.007.

3 The seminal case with respect to who is considered a “managing agent” of the
4 corporation for purposes of imputing punitive damages to the corporation is *Nittinger v.*
5 *Holman*, 119 Nev. 192, 197, 69 P.3d 688, 691 (2003). In *Nittinger*, the Court held that a
6 managing agent for purposes of imputation of punitive damages to the corporate entity
7 is a person who has: **“sufficient stature and authority to have some control**
8 **and discretion and independent judgment over a certain area of [the]**
9 **business with some power to set policy for the company.”**

11 Despite the Supreme Court in *Nittinger* overturning and vacating the punitive
12 damage award against the corporate Defendant, *Nittinger* is entirely supportive of
13 Plaintiff’s position in this case with respect to establishing a genuine issue of material
14 fact as to whether Joshua Grant was SAHARA’s managing agent vis-à-vis CPO vehicle
15 sales to the community. *Nittinger* was a battery/excessive force case against a hotel
16 [Gold Coast] that arose from an altercation between the Plaintiff and hotel security
17 guards. In *Nittinger*, **the hotel’s management established a three tiered**
18 **progressive use of force policy.** On the day in question when Plaintiff was beaten
19 by the hotel’s security guards, a security supervisor (Mallory) was tasked and charged
20 with implementing the hotel’s three tiered use of force policy, and ensuring it was
21 followed while he was on shift. In vacating the punitive damage award the Court held
22 and found :

25 In this case, the Gold Coast presented evidence of its progressive-force
26 policy **established by its management regarding the treatment**
27 **of patrons.** Malloy was charged with responsibility for security in the
28 casino at the time of the incident, **implementing** the Gold Coast's
progressive-force policy, and ensuring that the guards obeyed it. Malloy
was apparently present during much of the guards' tortious and malicious
misconduct ... Malloy had the power₃₂ and responsibility to stop the beating

1 and other tortious conduct, but did not do so ... Since the Gold Coast had
2 charged [Mallory] with this responsibility that evening and he did not
3 fulfill it, the hotel can be held liable for the compensatory damages
4 However, for purposes of imposing punitive damages on the Gold Coast,
5 Malloy must be a managerial agent, which the evidence does not establish.

6 **There is no evidence that Malloy had the authority to deviate from**
7 **the established policy or that he had any discretion or could exercise**
8 **his independent judgment.** The evidence indicates that [Mallory]
9 **merely had the authority to implement the Gold Coast's policy**
10 **and to see that the security guards enforced it.** Therefore, he
11 would not be classified as a managerial agent under section 909(d) of
12 the *Restatement (Second) of Torts* so as to subject the Gold Coast to
13 liability for punitive damages for his actions or inactions on the night in
14 question... The fact that Malloy was a supervisor was not enough to grant
15 him that status.

16 There are two solid takeaways from *Nittinger* with respect to imputation of
17 punitive damages to a corporate entity under NRS 42.007. First job titles are not highly
18 relevant. Second, mere supervisory authority over others is not sufficient to deem an
19 employee “managerial status.” However, Plaintiff’s punitive damage claim in this case
20 does **not** hinge on or even involve either of these issues.

21 The first important distinction between *Nittinger* and the instant case is that
22 Mallory (the security shift supervisor), was **not** actually or personally involved in the
23 incident concerning the Plaintiff. Even if he was, it would not have changed the Court’s
24 analysis in *Nittinger* because Mallory had no control over establishing, promulgating, or
25 formulating the three tiered security policy that was established by hotel management
26 with respect to guests. Mallory knew what the policy was and was there to enforce it.
27 **But the operative fact in Nittinger was the Mallory, (the security shift**
28 **supervisor), had no discretion or control to deviate from the established**
security policy and he had nothing to do with establishing, formulating or
promulgating that security policy.

1 In sharp contrast, Joshua Grant was not only **personally involved** with
2 purchasing the vehicle at issue, but he initially appraised it, he entering it into
3 SAHARA's inventory, he brought it over to SAHARA's service department, and he was
4 the one who personally made the decision to resell the vehicle to the community as a
5 CPO. *SS fact # 2, 3, 14, 16 & 73.* Moreover, Joshua Grant **personally received and**
6 **actually knew** about material information contained in the ACE that any reasonable
7 consumer would want to know about before they purchased the vehicle. *SS fact # 3.*

9 **Furthermore, and most critically, unlike in Nittinger, Joshua Grant,**
10 **as SAHARA's Director of Used Car Sales was THE ONE who established**
11 **and instituted ALL of SAHARA's internal policies and procedures with**
12 **respect to CPO vehicle sales to the community, but he did not put a single**
13 **one in writing.** *SS fact # 11 & 15.*

14 What is made clear from Plaintiff's SS is that, in addition to establishing **all** of
15 the internal policies and practices for SAHARA's Used Car Department, Mr. Grant was
16 also "the one" who was in charge of this aspect of SAHARA's business. He oversaw **all**
17 of SAHARA's used car inventory, (including CPOs), used car purchasing, used car
18 wholesaling, used car pricing and oversaw the used car mechanical operations, which
19 specifically included coordinating with SAHARA's service department with respect to
20 the CPO certifications on any given vehicle that was going to be resold to the community
21 as a CPO vehicle. *SS fact # 12, 13 & 14.*

22 Furthermore, unlike *Nittinger*, because Mr. Grant was "the one" who was
23 charged with the responsibility for **establishing and enforcing** the internal policies
24 and practice of SAHARA's Used Car Sales Department. **He had the authority and**
25 **discretion to change those policies or deviate from as he saw fit and at any**
26 **time.** Just about every person Plaintiff took a deposition of from SAHARA who was
27
28

1 involved with the vehicle seems to agree that it would have been important to disclose
2 the type of information contained on the ACE to CPO buyer, *SS fact #32, 42, 43, 44, 45,*
3 *46, 50, 51, 53, 54, 55 and 56, but there was no written internal policy or*
4 *practice* governing disclosure of the nature and extent of the damage caused to a CPO
5 vehicle as a result of a previous collision, if that information was known to SAHARA.

6
7 Notwithstanding no written policies, Joshua Grant in his capacity as the 30(b)(6)
8 representative concedes that it would be “important” for SAHARA’s used car
9 department to “make *full disclosure* to used car buyer involving things that might affect
10 the vehicle’s value, safety, desirability or marketability.” *SS fact # 32.* This “full
11 disclosure” to the buyer would presumably include the type of information reflected on
12 the ACE, (Exhibit 2), that Mr. Grant knew about and had in his possession as the
13 Director of SAHARA’s Used Car Sales Department.

14
15 However, as set forth infra in section “B,” according to Joshua Grant, the *same*
16 *person* who established ***all*** of the internal policies of SAHARA’s Used Car Department,
17 which would by definition would include those involving or relating to making “full
18 disclosure” to the consumer, testified that such “full disclosure” would ***NOT*** include
19 disclosure to the buyer of a CPO vehicle the type of information reflected on the ACE.
20 *SS fact # 82-84.*

21 Because none of these internal policies involving CPO vehicles that Joshua Grant
22 established were in writing, they were entirely subject to change on a whim ***at the***
23 ***entire discretion and independent judgment of Mr. Grant***, leaving little to no
24 guidance to the used car sales department about disclosing the type of material
25 information reflected in the ACE to a CPO buyer. What is quite apparent from Plaintiff’s
26 SS, at least with respect to CPO sales to the community, is that SAHARA’s Used Car
27 Department was operating ***entirely unconstrained*** vis-à-vis any of the internal
28

1 policies or practices that Mr. Grant not only established, but who was also the person
2 responsible for **implementing and enforcing** those same policies and practices –
3 policies and practices that were never put in writing.

4 What is clear from the Plaintiff's SS is that Mr. Grant had "**sufficient stature**
5 **and authority to have some control and discretion and independent**
6 **judgment over a certain area of SAHARA's business with some power to**
7 **set policy for the company,**" SS fact # 11-14. SAHARA's motion should be denied.

9 **B. JOSHUA GRANT WAS ACTED WITH THE REQUISITE STATE OF**
10 **MIND AND WAS PERSONALLY GUILTY OF FRAUD OR IMPLIED**
11 **MALACE**

12 NRS 41.001(2) and (3) state :

13 "Fraud" means an intentional misrepresentation, deception or
14 **concealment of a material fact known to the person** with the
15 intent to deprive another person of his or her rights or property or to
16 otherwise injure another person.

17 "Malice, express or implied" means conduct which is intended to injure a
18 person or despicable conduct which is engaged in with a conscious
19 disregard of the rights **or safety** of others.

20 **1. FRAUD**

21 Joshua Grant testified that it is "important" for SAHARA to make full disclosure
22 to the used car buyer involving things that might affect the vehicle's value, safety,
23 desirability and marketability. SS fact # 32. However, later in his testimony Mr. Grant
24 was very clear that SAHARA's "full disclosure" policy with respect to a consumer who is
25 purchasing a CPO vehicle would would **NOT** include the type of information reflected in
26 the ACE. SS fact # 82-84

27 If Mr. Grant was "the one" who was responsible for establishing and enforcing all
28 of the internal policies of SAHARA's Used Car Department, which would have included
the disclosure of information that might affect the vehicle's value, safety, desirability
and marketability, but that "full disclosure" policy does **NOT** include disclosure of the

1 type of material information reflected on the ACE (or any other body shop estimate). In
2 fact, Mr. Grant testified that did he did **NOT** deem the nature and extent of a previous
3 accident to a vehicle as being important in making a determination as to whether or not
4 he would resell the vehicle to the community as a CPO. *SS fact # 76*. The testimony of
5 Joshua Grant, as referred to in SS fact # 76 and 82-84 **is palpable and potent**, if not
6 chilling, given how unsafe that CPO vehicle really was. *SS fact # 92-96*.

7
8 If SAHARA's alleged "full disclosure" policy did **NOT** include disclosure of the
9 type of "material information" reflected on the ACE to the buyer of a CPO vehicle, which
10 is precisely what occurred in Plaintiff's transaction – a policy which by Mr. Grant's
11 testimony he would have been the one at SAHARA to have established that policy, SS
12 fact # 11, this creates a genuine issue of material fact that SAHARA's managing agent
13 was personally guilty of "fraud" as defined in NRS 42.001.(2), *id*, i.e. "concealment of
14 material facts known to SAHARA in the sale of CPO vehicles to the community.

15
16 Mr. Grant's testimony takes on even more significance vis-à-vis imputation of
17 punitive damages when the Court considers that: 1) Joshua Grant was **the one** who
18 made the decision on behalf of SAHARA to CPO the Plaintiff's vehicle and 2), that
19 Joshua Grant actually knew about and had possession of the ACE on May 5, 2014 when
20 the vehicle was entered into SAHARA's inventory, when the vehicle went through the
21 CPO inspection on May 8, 2014, **and on** May 26, 2014 when the vehicle was resold as a
22 CPO to the Plaintiff. *SS fact # 104*.

23 **2. IMPLIED MALICE**

24
25 Furthermore, there are triable issues of material fact that Mr. Grant acted with
26 implied malice. Mr. Grant actually knew, based on the ACE, that the left front wheel
27 was "rechromed" or replaced with a recycled or used wheel, among all the other repairs
28 to the vehicle. *See Exhibit 2, ACE and SS fact # 90*. Furthermore neither Mr. Grant nor

1 SAHARA instituted or had any policy or practice of disclosing such important
2 information to the service department before their CPO inspection,. *SS fact # 74 & 75.*
3 Mr. Grant took no steps whatsoever to ensure that the material information contained
4 on the ACE, which he personally acquired possession of three (3) days earlier, was
5 passed onto the service department. *SS fact # 2, 3, 74 and 75.* In fact, the information
6 reflected on the ACE would **not even be important to Mr. Grant** or even something
7 he would even consider passing the onto the service department before the CPO
8 inspection took place. *SS fact # 74 & 75.*

10 Most telling is the fact that the information contained on the ACE would have
11 been “important” information for SAHARA’s CPO technician, (Mr. Gongora) to know
12 about with respect to his CPO inspection. Mr. Gongora would have wanted to have had
13 the ACE, and would have reviewed it **before** his CPO inspection. *SS fact # 85 and 89.*
14 Furthermore, neither Mr. Grant or Mr. Gongora know or remember if such information
15 was ever given to the service department. *SS fact # 86 & 87.*

17 Finally, it was not even custom or practice to bring the Carfax that was run on a
18 CPO vehicle to the service department **before** they undertook their CPO inspection –
19 the same Carfax that Joshua Grant personally obtained on the vehicle that reflected the
20 vehicle was involved in a previous collision. *SS fact # 77, 78, 79 and 80.* Joshua Grant
21 was also the person responsible for **personally taking** the used vehicles that were
22 going to be certified Dodge CPO over to the service department for their CPO inspection.
23 *SS fact # 14.* Mr. Grant does not know or recall if he brought the Carfax involving the
24 vehicle to SAHARA’s service department before they did their inspection. *SS fact # 81.*

26 The aforementioned most certainty creates genuine issues of material fact the
27 SAHARA’s managing agent (Mr. Grant), is personally guilty of implied malice because
28 this conduct can be construed to have been ³⁸despicable conduct which was engaged in

1 with a conscious disregard of the rights **or safety** of others. A very real and tangible
2 danger to the community was created by the vehicle being driving on the streets and
3 highway of the community. *See SS fact # 93-99*. Had that wheel had a sudden
4 catastrophic failure going 75 miles and hour on the freeway, people within the
5 community could have been seriously injured or killed. *See Exhibit 8, FCA position*
6 *statement*. The fact that an actual physical injury did not happen does **not** diminish the
7 implied malice on behalf of Mr. Grant in having a conscious disregard “for the safety of
8 others.”
9

10 This is because that an actual "intent to cause harm" **has no relevance** in an
11 implied malice finding with respect to a conscious disregard standard under NRS
12 42.001. *In Countrywide Home Loans v Thitchener* 124 Nev. 725, 192 P. 3d 243 (2008),
13 the Court clearly stated at FN 55 :

14 ... The intent to cause harm, however, is the mental element of express
15 malice and **plays no role in analyzing a defendant's conscious**
16 **disregard or purposes of implied malice or oppression.**
17 **Moreover, to the extent that [Defendant] asserts that NRS**
18 **42.001(1)'s definition of conscious disregard requires direct**
19 **proof of a defendant's actual knowledge, we disagree, since**
20 **NRS 42.001 does NOT impose such a specific evidentiary**
21 **requirement.**

22 In other words, Joshua Grant’s implied malice **can be reasonably inferred** if
23 there are sufficient attendant facts to warrant the inference, which there are in this case
24 based on the relevant identified facts in Plaintiff’s SS. Moreover, pursuant to
25 *Countrywide, id*, Plaintiff is **not** required to show that Mr. Grant had an actual “intent
26 to harm” or even proof of his “actual knowledge” in creating a conscious disregard to the
27 safety of others with respect to the wheel, notwithstanding the fact that Mr. Grant had
28 the documentation **right in front of him** which clearly reflected the improper repair
to the front left wheel.

1 Based on the aforementioned, there are more that sufficient facts that create
2 genuine triable issues of material fact as to whether Mr. Grant acted as a managing
3 agent with the requisite state of mind to have a fact find decide whether he acted with
4 “fraud” or “implied malice” for purposes of imputation of punitive damages to SAHARA.

5 XII

6 **PLAINTIFF HAS PLEAD THE REQUISITE ELEMENTS OF A CLAIM** 7 **AGAINST COREPOINT, SAHARA’S VEHICLE LICENSING SURETY BOND**

8 **A. COREPOINT’S INVOLVEMENT IN THIS CASE AS A DIRECT PARTY** 9 **DEFENDANT**

10 Among other requirements, before any used vehicle dealer is be able to conduct
11 any lawful business in this state, the dealer is required to obtain a licensing surety bond
12 pursuant to NRS 482.345(1), *infra*. Not only does NRS 482.345(7)(a)(1) make clear an
13 aggrieved consumer’s statutory right to sue the bond company as a direct party
14 defendant, (based on the deceptive acts of its principal (the dealer), but the language
15 set forth in NRS 482.345(7)(a)(2), ***expressly contemplates*** litigation vis-à-vis
16 seeking compensation from the bond, as the bond company has the express right to
17 defend on the merits of any lawsuit filed against its its principal (the dealer) or the
18 bond company itself.

19
20 COREPOINT’s liability in this case, as with any other case invoking NRS
21 482.345, is *strictly vicarious and/or derivative in nature*, and is based only upon its
22 ***status*** as the bond company. All that is required is alleging the requisite requirements
23 that are set forth in the statute itself is all to bring in COREPOINT as a direct party
24 Defendant. To bring in a bond company as a proper party Defendant Plaintiff
25 essentially must plead or refer to certain operative provisions of NRS 482.345(1), (5),
26 (6) and (7), *infra*. Keeping this frame of reference in mind, to state a claim against
27 COREPOINT pursuant to NRS 482.345, the Plaintiff must allege, at a minimum, that :
28

- The dealership must be a vehicle dealer as defined in Chapter 482. *See FAC ¶ 6.*
- Plaintiff must be a consumer (natural person) who purchased a vehicle from a licensed vehicle dealer. *See FAC ¶ 7.*
- The damage or loss sustained was caused by a representative or sales person of the dealership who was working within the scope of their employment. *See FAC ¶¶ 21, 22, 26 and 49, SS fact # 59-62 and # 104.*
- Plaintiff sustained loss or damage. *See FAC ¶ 49, SS fact # 105-108.*
- The loss or damage sustained was the result of deceptive trade practices, fraud, fraudulent representation. *See FAC ¶¶ 31 and 32, SS fact # 59-62 and # 104.*

As set forth above, Plaintiff has plead and/or otherwise established triable issues of material fact with respect to all of the above required statutory prerequisites to state a claim directly against COREPOINT pursuant to NRS 482.345.

B. BRINGING IN THE BOND COMPANY AS A DIRECT PARTY DEFENDANT IN AN ACTION PURSUANT TO NRS 482.345(7) IS ONLY ONE OF THREE EXPRESSLY STATUTORILY AUTHORIZED WAYS IN WHICH SEEK COMPENSATION FROM THE BOND

NRS 482.345 states in pertinent part :

1. Before any dealer's license ... is furnished to a dealer ... as provided in this chapter, the Department shall require that the applicant ... procure and file with the Department a good and sufficient bond ... and conditioned that the applicant or any employee who acts on behalf of the applicant within the scope of his or her employment shall conduct business as a dealer, without breaching a consumer contract ***or engaging in a deceptive trade practice, fraud or fraudulent representation***, and without violation of the provisions of this chapter.

5. The undertaking on the bond is ***for the use and benefit of the consumer*** and includes any breach of a consumer contract, ***deceptive trade practice, fraud, fraudulent representation*** or violation of any of the provisions of this chapter by the representative... or the salesperson of any licensed dealer ... who acts for the dealer ... on his or her behalf and within the scope of the employment of the representative or salesperson.

1 7. *If a consumer has a **CLAIM FOR RELIEF AGAINST A DEALER** ...*
2 representative or salesperson, the consumer *may*:

3 (a) **BRING AND MAINTAIN AN ACTION IN ANY COURT OF COMPETENT**
4 **JURISDICTION. If the court enters:**

5 (1) *A judgment on the merits against the dealer... the*
6 *judgment is binding on the surety.*

7 (2) A judgment other than on the merits against the dealer ...
8 representative or salesperson, including, without limitation, **A**
9 **DEFAULT JUDGMENT**, the judgment is binding on the surety ***only if***
10 ***the surety was given notice and an opportunity to***
11 ***defend at least 20 days before the date on which the***
12 ***judgment was entered against the dealer*** ... representative
13 or salesperson.

14 (b) *Apply to the Director, for good cause shown, for*
15 *compensation from the bond.* The Director may determine the
16 amount of compensation and the consumer to whom it is to be paid. The
17 surety shall then make the payment.

18 (c) ***Settle the matter with the dealer*** ... representative or
19 salesperson. If such a settlement is made, the settlement must be reduced
20 to writing, signed by both parties and acknowledged before any person
21 authorized to take acknowledgments in this State, and submitted to the
22 Director ***with a request for compensation from the bond.*** If the
23 Director determines that the settlement was reached in good faith and
24 there is no evidence of collusion or fraud between the parties in reaching
25 the settlement, ***the surety shall make the payment to the***
26 ***consumer in the amount agreed upon in the settlement.***

27 There are three (3) ***unambiguous*** statutory options under NRS 482.345(7) that
28 a claimant can exercise to seek compensation from the bond company who issued a
29 licensure bond to a vehicle dealership. *See NRS 482.457(7), id.* The first option,
30 discussed more in depth *infra*, is to file an action against the dealer and name the bond
31 company as a direct party Defendant in that same action against the dealer and seek
32 reimbursement from the bond that way.

33 The second option is that the claimant can file a complaint with the DMV and
34 request a hearing to seek reimbursement from the bond and request a hearing. The
35 third option is that the claimant can settle directly with the bond company with our
36 42

1 without a complaint being filed with the DMV, and if there is no collusion, ask the DMV
2 to order the bond company to pay that agreed upon settlement amount. Which one of
3 the three (3) statutorily approved alternatives and/or avenues the claimant chooses to
4 seek compensation from the bond is ***at the claimant's choosing and discretion.***

5 See NRS 482.345(7)

6
7 **C. THE LEGISLATIVE DIGEST RELATING TO THE 2013 LEGISLATIVE**
8 **AMENDMENTS TO NRS 482.345 CLEARLY RECONFIRMED A**
9 **CLAIMANT'S RIGHT UNDER ALREADY EXISTING LAW TO BRING**
10 **IN THE BOND COMPANY AS A DIRECT PARTY DEFENDANT TO**
11 **SEEK COMPENSATION FORM THE BOND**

12 First and foremost, COREPOINT's strained interpretation that NRS
13 482.345(7)(a) does not allow a claimant to bring in the bond company as a direct party
14 defendant is in categorical contradiction to what is set forth in the Legislative Digest.
15 That Digest is attached as *Exhibit 2*. Those findings stated in pertinent part :

16 AN ACT relating to motor vehicles; ***providing that certain persons***
17 ***[consumers] may recover on the bond*** or deposit that each broker,
18 manufacturer, distributor, dealer and rebuilder of motor vehicles is
19 required to procure or make with the Department of Motor Vehicles; and
20 providing other matters properly relating thereto.

21 Legislative Counsel's Digest:

22 ***Under existing law***, each ... dealer ... of motor vehicles is required to
23 procure and file a surety bond with the Department of Motor Vehicles...
24 ***ANY PERSON, INCLUDING CONSUMERS ... INJURED BY***
25 ***THE ACTIONS OF SUCH A ... DEALER ...*** is allowed to apply to the
26 Director of the Department ***OR TO BRING AND MAINTAIN AN ACTION IN***
27 ***ANY COURT OF COMPETENT JURISDICTION FOR COMPENSATION FROM THE***
28 ***BOND*** or deposit. (NRS 482.3333, 482.345, 482.346)

As the digest clearly sets out, the 2013 amendments ***further reconfirmed***
existing law regarding a consumer's right to bring in a bond company under NRS
482.345 ***as a direct party defendant***, as one of the ways to seek compensation
under the bond under NRS 482.345, *supra*. Bringing in the bond company as a direct
party defendant in addition to the dealer is not the only way to seek compensation from

1 the bond under NRS 482.345, but it is most certainly is one of the enumerated
2 statutorily authorized ways in which to do so under NRS 482.345, *infra*.

3 As set forth in Exhibit 20, the 2013 amendments never changed a claimant's
4 ***already existing right*** to bring in the bond company as a direct party defendant,
5 rather, what the amendments did was further enumerate the categories of "damages or
6 loss" the bond company will be liable for under the bond, and to also ensure only
7 consumers, (natural persons), who are purchased the vehicle on a retail from the dealer
8 are the only ones who are entitled to claim under the bond.
9

10 Based on the aforementioned, Defendant's motion should be denied with respect
11 to Plaintiff's claim for relief for Recovery Under Vehicle Dealership Bond or with respect
12 to Defendant COREPOINT seeking dismissal from the case.

13 **D. NRS 482.345(7)(a)(1) AUTHORIZES A DIRECT SUIT AGAINST THE**
14 **BOND COMPANY AS LONG AS THE PLAINTIFF HAS A VIABLE CLAIM**
15 **AGAINST THE DEALER TO WHOM THE BOND COMPANY ISSUED**
THE BOND

16 NRS 482.345(7)(a)(1) states :

17 ***If a consumer has a claim for relief against a dealer ...***
18 ***representative or salesperson, the consumer may:***

19 ***(a) Bring and maintain an action in any court of competent***
20 ***jurisdiction. If the Court enters :***

21 ***(1) A judgment on the merits against the dealer... the judgment***
22 ***is binding on the surety.***

23 What NRS 482.345(7)((a)(1) makes clear is that a consumer does ***not*** need, nor
24 is the consumer required in any way to "invoke" the provisions of NRS 482.345(7)(a)(1),
25 *id*, to enable the consumer to file an action in court as against the dealer. This is
26 because the consumer already has the ***unrestricted right*** to sue the dealer under
27 common law, NRS 41.600, violation of the NDTPA and a myriad of other claims
28 ***arising from*** a sale transaction involving a vehicle sold by a dealership. Put another

1 way, NRS 482.345(7)(a)(1) is not empower or authorize the consumer to sue the
2 dealership, nor does the consumer need to look to any statutory authorization
3 whatsoever under NRS 482.345(7)(a) to be able sue the dealership.

4 ***Query – if the consumer already has the unrestricted right to bring***
5 ***an action against the dealer without having to resort to NRS***
6 ***482.345(7)(a)(1) -- TO WHOM is NRS 482.345(7)(a)(1) referring to with***
7 ***respect to the consumer’s right to “bring and maintain” an action”***
8 ***against?*** The only other direct “party” defendant that NRS 482.345(7)(a)(1) could be
9 referring to with respect to “maintain an action against” (assuming the Plaintiff had a
10 viable claim against the dealer is the bond company), is the bond company
11 (COREPOINT). It most certainly is NOT referring to consumer’s ability to “bring and
12 maintain” an action against the dealership, because as previously established, the
13 Plaintiff can already sue the dealership without resorting to NRS 482.345.
14

15
16 ***Contrary to COREPOINT’s contention, Plaintiff does NOT have to***
17 ***acquire a judgment first against the dealer, rather, all Plaintiff is required***
18 ***to show to bring in the bond is that he or she has a viable claim for relief***
19 ***against the dealer for any of the enumerated claims set forth in NRS***
20 ***482.345(1) and (5), which Plaintiff has done via his FAC.***

21 Based on the aforementioned, Defendants motion should be denied with respect
22 to Plaintiff’s claim for relief for Recovery Under Vehicle Dealership Bond or with respect
23 to Defendant COREPOINT dismissal from the case.
24

25 E. THE LANGUAGE IN NRS 482.345(7)(a)(2) MAKES IT CLEAR AND
26 SELF EVIDENCE THAT THE THE STATUTE EXPRESSLY
27 CONTEMPLATES THE AUTHORIZED “FILING OF AN ACTION”
28 AGAINST THE BOND COMPANY

1 ***If a consumer has a CLAIM FOR RELIEF AGAINST A DEALER ...***
2 representative or salesperson, the consumer ***may***:

3 (a) ***BRING AND MAINTAIN AN ACTION IN ANY COURT OF***
4 ***COMPETENT JURISDICTION.*** ***If the court enters:***

5 (2) A judgment other than on the merits against the dealer ...
6 representative or salesperson, including, without limitation, ***A***
7 ***DEFAULT JUDGMENT,*** the judgment is binding on the surety ***only if***
8 ***the surety was given notice and an OPPORTUNITY TO DEFEND at***
9 ***least 20 days before the date on which the judgment was***
10 ***entered against the dealer*** ... representative or salesperson.

11 NRS 482.345(7)(a)(2) makes clear and the statute ***expressly contemplates*** an
12 action being filed in court because a judgment on the merits, or even under a “default
13 judgment” cannot be obtained without a formal “action” being filed in Court under the
14 NRCP. Moreover, the statute expressly acknowledges litigation in the context of the
15 bond company vis-à-vis NRS 482.345(7)(a)(2), and expressly contemplates litigation
16 because the bond company is given the opportunity to defend on the action ,***whether***
17 ***they are a direct party defendant or not.***

18 ***F. A CLAIMANT IS NOT REQUIRED TO FIRST “OBTAIN A JUDGMENT***
19 ***AGAINST THE DEALER BEFORE BEING ABLE TO SUE THE BOND***
20 ***COMPANY UNDER NRS 482.345(7)(a)(1)***

21 Defendant COREPOINT contends that a claimant who seeks compensation from
22 the bond under NRS 482.345(7) is not allowed bring in the licensing bond company as a
23 direct party defendant ***unless the Court enters a judgment on the merits against the***
24 ***dealer.*** ***Mot. 27: 11-14/*** Defendants’ interpretation of NRS 482.345 misconstrues the
25 statute and would lead to absurd results, lead to multiplicity of actions, and is also
26 entirely in contradiction to the Legislative Digest dealing with the 2013 amendments to
27 the statute which expressly reconfirmed existing law as to claimant’s right to bring in
28 the bond company as a direct party defendant under NRS 482.345(7). ***See Exhibit 20.***

1 Contrary to Defendant's interpretation of NRS 482.345(7), Plaintiff does **not**
2 have to "first" obtain a judgment against the dealership to bring the bond company in as
3 a direct party defendant. Rather, obtaining a judgment against the dealer merely
4 "triggers" or otherwise "matures" the bond company's **duty to pay** the Plaintiff for his
5 or her incurred damages, fees and costs. It has **nothing to do** with a consumer's
6 actual ability to bring the bond company in as a direct party co-defendant in a suit filed
7 against the dealer.
8

9 Put another way, obtaining judgment "first" is **not** a "perquisite" to be able to
10 directly sue the bond company, only that the Plaintiff have a "claim against the dealer"
11 **Again, to whom is NRS 482.345(7)(a), supra, referring to with respect to a**
12 **consumer's right to file a direct action against?** It is not the dealership.

13 XIII

14 **PLAINTIFF HAS PLEAD THE REQUISITE ELEMENTS FOR DECLARA-**
15 **TORY RELIEF AND BECAUSE THERE ARE TRIABLE ISSUES OF MATERIAL**
16 **FACT INVOLVING PLAINTIFF'S EQUITABLE CLAIMS FOR RESCISSION,**
17 **RESTITUTION AND EQUITABLE ESTOPPEL, THOSE TRIABLE ISSUES CARRY**
18 **OVER TO PLAINTIFF'S CLAIM FOR DECLARATORY RELIEF**

19 Pursuant to the FAC, Plaintiff seeks a judicial declaration as to the validity of
20 SAHARA's installment contract it entered into with the Plaintiff respect to whether it
21 was void ab initio, voidable and/or unenforceable, given the deceptive trade practices
22 that SAHARA is alleged to have engaged in?

23 To plead a claim for declaratory relief : "(1) there must exist a justiciable
24 controversy; that is to say, a controversy in which a claim of right is asserted against
25 one who has an interest in contesting it; (2) the controversy must be between persons
26 whose interests are adverse; (3) the party seeking declaratory relief must have a legal
27 interest in the controversy, that is to say, a legally protectable interest; and (4) the issue
28

involved in the controversy must be ripe for judicial determination.” See *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). Plaintiff’s FAC as sufficiently plead these elements. NRS 30.040(1) states in pertinent part :

Any person interested under a ... **written contract ... or whose rights, status or other legal relations ARE AFFECTED BY A ... CONTRACT...** may have determined **ANY QUESTION OF ... VALIDITY ARISING UNDER THE ... CONTRACT...** and obtain a declaration of rights, status or other legal relations thereunder.

Plaintiff’s allegations in the declaratory relief claim go directly to the contract’s validity, voidability and/or enforceability. This is because Plaintiff seeks a ruling from the Court that the contract was void ab initio, meaning it never legally existed. **Only a Court can make that ruling, not a jury.** Plaintiff’s declaratory relief claim grounded upon the contract’s “validity” from its very inception. Plaintiff’s declaratory relief claim, given the facts of this case and the relief sought, is entirely appropriate as well as “coextensive” with Plaintiff’s equitable claims and/or remedies for Rescission, Restitution and Equitable Estoppel.

NRS 30.040, supra, states : declaratory relief is appropriate regarding “... **ANY question of ... validity arising under the ... [written] Contract ... and obtaining a declaration of rights, status or other legal relations thereunder**”– “**any question of validity.**” This is very broad in its application. Adjudicating the “validity” of a written contract between the party’s can be based on numerous grounds, one of which would based on Defendant engaging in consumer fraud in relation to the subject matter of the contract.

More specifically, per the FAC, Plaintiff is **not** asking for a declaration that Defendant Defendants’ engaged in statutory deceptive trade practices, (that is for the fact finder); rather Plaintiff is asking the Court for a declaration regarding the contract’s “validity” and/or enforceability,⁴⁸ or the Defendant’s legal ability or contend

1 that the contract was “valid,” **if** the fact finder finds that Defendants engaged in
2 statutory consumer fraud with respect to the sale of the vehicle. Under NRS 30.040(1),
3 if the underlying “validity” of the contract between the parties has been put at issue,
4 then declaratory relief is entirely proper. Defendant’s motion should be denied.

5 **XIV**

6 **CONCLUSION**

7 Based on the aforementioned in conjunction with Plaintiff’s SS, Defendants’
8 motion should be denied.

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14 Dated this 19th day of October, 2017

15
16 /s/ George O. West III
17 George O. West III
18 ***Consumer Attorneys Against Auto Fraud***
19 Attorney for Plaintiff
20 **DERRICK POOLE**
21
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DECLARATION OF GEORGE O. WEST III

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, George O. West III, hereby declare :

That I am the attorney for the Plaintiff in this case, and I am admitted to practice law in all of the courts of the State of Nevada, and I have personal knowledge of the matters in this declaration, and if called as a witness I would and could competently testify:

1. Exhibit 1 is a true and correct conformed copy of the First Amended Complaint in this matter.

2. Attached as Exhibits 5, 6 and 7 are true and correct copies of the pertinent portions of SAHARA's response to Plaintiff's First Request for Admissions.

3. Attached at Exhibits 9, 10, 11 and 12 are the pertinent portions of the condensed transcripts of Joshua Grant, Noah Grant, Raymond Gongora and Travis Spruell.

4. Attached as Exhibits 13 and 14 and true and correct color copies of some of the photos that were produced and identified by SAHARA as photos involving the repairs to Mr. Spruell's vehicle via in their initial disclosures which I forwarded to Mr. Avillini for his review with respect to his opinions in this case. These include two photos of the wheel at issue. Attached as Exhibit 17 is a true and accurate copy of SAHARA's initial disclosures identifying the Allstate Collision Report involving the subject vehicle and its VIN number, as well as the repair photos relating to the subject vehicle.

1 5. Attached as Exhibit 15 is a true and correct copy of the 30(b)(6)
2 representative from SAHARA regarding CPO certifications, which spanned a very board
3 areas of topics involving Dodge CPO vehicles. SAHARA produce Joshua Grant for this
4 deposition in that capacity, but he also had percipient observations and knowledge
5 about the vehicle as well.

6 6. Attached as Exhibit 16 is a true and accurate copy of the appraisal sheet
7 identified by Mr. Grant and attached to his deposition regarding the subject vehicle.
8

9 7. Attached as Exhibit 19 is a true and correct copy of Mr. Avillini's
10 diminished value report with exhibits.

11 8. Attached as exhibit 20 is a true and correct copy of the Legislative Digest
12 involving the 2011 amendments to NRS 482.345.

13 9. Attached as Exhibit 19 is a true and accurate copy of Plaintiff's First
14 Requests for production with exhibits.

15 10. Attached as Exhibit 22 is a true and accurate copy of Mr. Avillini's
16 condition report without exhibits.
17

18 I certify that the aforementioned is true and correct under penalty of perjury
19 under the laws of the state of Nevada.

20 Executed this 19th day of October, 2017.

21 /s/ George O. West III
22 George O. West III
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DECLARATION OF DERRICK POOLE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Derrick Poole, hereby declare :

That I am the Plaintiff in this case and I have personal knowledge of the matters in this declaration, and if called as a witness I would and could competently testify:

1. That on May 26, 2014 I went to SAHARA Dodge to purchase a vehicle. When I arrived I was greeted by SAHARA' sales person. I believe his name was Travis. We took a test drive in a used Certified Pre Owned ("CPO") 2013 Dodge Ram Big Horn 1500 Quad Cab ("vehicle"). While I had not purchased a CPO vehicle before, I was generally aware and I believed that they had more value then an vehicle that was not certified. Travis had also indicated to me that CPO vehicles come with a 125 point safety inspection by their service department, that it comes with a Dodge warranty, Carfax, Sirius radio subscription, towing coverage, things that would not come with a non-CPO vehicle.

2. While we were taking the test drive Travis was talking more about the inspection their CPO vehicles go through. Everything seemed fine with the vehicle on the test drive. I looked like a clean vehicle to me. I have no specialized knowledge about vehicles or about seeing the signs of previous accident or collision damage. Travis then mentioned that the vehicle was in a previous "minor" accident. I became a little concerned about that then inquired about the accident. Travis then reiterated that it was only a "minor" accident, that the vehicle had passed the 125 point safety inspection, and that if the vehicle was in a significant accident, they would not be

1 selling it to me and that there was nothing to worry about because it was a CPO vehicle.
2 I was assured by Travis and I took him at his word. I was given assurance by Travis
3 that the vehicle represented more value and quality than a non-certified CPO vehicle,
4 and that it was safe because it passed the 125 point safety inspection by their service
5 department, and I was given piece of mind in purchasing the vehicle.
6

7 3. After the test drive, we went back into the show room. We discussed
8 price, my trade in, payments, those types of things. During the sales process Travis
9 presented a Carfax to me. I briefly reviewed it, it indicated there was an accident.
10 Having been told by Travis that the accident was only minor and that that it passed
11 their safety inspection, I signed the Carfax. It is attached as Exhibit 4. Travis also
12 presented me with a CPO check list. I reviewed that as well. I did not note anything
13 out of the ordinary. It appeared to me that the vehicle passed their safety inspection
14 and it was certified by the dealer. I also signed the CPO check list. It is attached as
15 Exhibit 3.
16

17 4. After my case was filed, my attorney showed me an Allstate Collision
18 Estimate ("ACE") that he had obtained from the dealership through the lawsuit. I was
19 shocked to find this out and was further shocked to find out, based upon review of the
20 Separate Statement my attorney prepared to oppose SAHARA's motion, that SAHARA's
21 Director of Used Car Sales actually knew about and had the ACE in his possession. I
22 was never told about, shown or given the ACE. I was never told or given any
23 information contained in the ACE.
24

25 5. Based upon my review of the ACE, had I been given the ACE on the date
26 of sale, I would not have purchased this vehicle. In fact, I would not have not done any
27 business with Sahara because what is reflected on the ACE was in my mind essentially
28 the opposite of what I was told about the accident by Travis. The ACE was something


1 that would have been important to me to know about as a buyer of a used vehicle in
2 making my decision to purchase this vehicle, especially given it was a CPO vehicle.

3 6. In reviewing the ACE, to me as a layman, I would not have characterized
4 the previous accident as a “minor” accident in any sense of the word. \$4,088.70 in
5 damage is not “minor” to me and it does not seem minor to me in looking at all the
6 things that were repaired or replaced on the vehicle. To me, with all the things repaired
7 or replaced on the vehicle, I would not feel I would be receiving the additional value in
8 purchasing a CPO, and how would I know everything was fixed properly and that it was
9 safe? To me, a repaired left front frame end bracket would be a potential safety issue to
10 me. Even though I don’t have any expertise in vehicles or vehicle repair, as a layman
11 who is buying a used vehicle, anything involving or referring to repair of anything to do
12 with the “frame” would be a red flag for me. If I was given the ACE at time of sale, as a
13 layman purchasing a CPO vehicle, the first thing that would have come to my mind was
14 how could this car have been certified as a Dodge CPO given the emphasis Travis was
15 putting on as to how thorough and comprehensive their inspection process was, and
16 how could it have passed their 125 point inspection? I would not have purchased the
17 vehicle and would have walked away from the deal had I known about the ACE. A true
18 and correct copy of my installment contract is attached as Exhibit 20. SAHARA gave me
19 \$ 4,000.00 credit for my trade in towards my down payment on the CPO truck.
20
21

22 7. To date, I have paid \$ 22,641.94 in payments on the vehicle. \$ 16,766.11 is
23 remaining on the balance.
24
25
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28

1
2
3 I certify that the aforementioned is true and correct under penalty of perjury
4 under the laws of the state of Nevada.

5 Executed this 19th day of October, 2017.

6
7
8 
9 Derrick Poole
10

DECLARATION OF ROCCO AVELLINI

I, Rocco Avellini, declare:

1. That I have been retained by Plaintiff in this case to give certain opinions regarding a 2013 Dodge Ram 1500 ("subject vehicle") that was sold to the Plaintiff, Mr. Poole. This declaration is made in opposition to Defendant Nevada Auto Dealership Investments LLC's ("SAHARA") motion to exclude me from rendering expert opinions in this case. I have read Defendant SAHARA's motion to attempt to prevent me from testifying in this case, as well as SAHARA's Motion for Summary Judgment as it relates to me. **This declaration is being submitted in opposition to Defendant's Motion for Summary Judgment.**

2. I have personal knowledge of the matters set forth herein, except those matters of which I have gained such knowledge based upon my review of certain documents, records, information and data relating to the subject vehicle in this case or relating to the general subject matter that would be relevant to this case and my opinions. My opinions were based on my specialized knowledge, training, experience, and continuing education, and keeping abreast of the latest advances and changes relating to the collision damage and repair of vehicles, including but not limited to the new aluminum vehicles and hybrid vehicles, in addition to assessing diminished value of vehicles. The documents specifically involving the subject vehicle and other comparable vehicles, in addition to other documents and sources of information identified or referred to in both my Vehicle Condition Assessment and Diminished Value Assessment, and based on my experience within my area of expertise, **are documents and information that other experts in my field of expertise would reasonably rely upon in forming opinions in this case** concerning the subject matters that I have been retained to render opinions about; and if called as a witness, I would and could competently testify:

VEHICLE CONDITION REPORT OPINIONS

3. Regarding my Vehicle Condition Assessment, the report consisted of seven pages and it is attached as Exhibit 22 without exhibits. I clearly set forth in my report what materials and information I reviewed and relied upon in formulating my opinions at pages 3 and 4 of my Vehicle Condition Assessment at Exhibit 22. I also produced at my deposition

additional materials, including the the portions of deposition transcripts of Mr. Gongora, SAHARA's CPO mechanic, and Joshua Grant, SAHARA's used car director, that I reviewed. With respect to my condition report, I was asked to formulate the following opinions:

- Were the previous repairs to the vehicle done correctly and were they to manufacturer's specifications?
- Should the subject vehicle have been sold as a Chrysler/Dodge CPO vehicle?
- Did SAHARA know or should they have known the extent of the collision damage caused by the previous collision, as well as the extent of the repairs as a result of the previous collision when SAHARA sold the CPO vehicle to Mr. Poole?
- Did the vehicle sustain diminished value as a result of the March 26, 2014 collision?

4. From my review of the facts and information given to me, this case is about four primary issues involving areas of my expertise, of which my opinions are based. First, what was the extent of the damage caused to the subject vehicle as a result of the previous collision/accident the subject vehicle was involved in on March 26, 2014. Second, were the repairs to the subject vehicle resulting from the March 26, 2014 previous collision done properly, meaning were they within manufacturer specifications? Third, based on the thorough and comprehensive nature of SAHARA's 125 Point CPO inspection undertaken by SAHARA's certified and trained mechanic on May 8, 2014, did SAHARA know or should they have known the extent of the previous collision damage? Fourth, based upon that CPO inspection, should SAHARA have known that not all of the previous repairs to the vehicle were done properly, (meaning not to manufacturer's specifications), and knowing, or should have knowing that, should the subject vehicle have been certified as a Dodge CPO? All of the documents and information I reviewed is listed on page 3 and 4 of my assessment at Exhibit 22, (without exhibits), and would be relevant and relied upon by any other expert in my area of expertise in rendering the opinions. I will address the basis for my diminished value opinions later in this declaration.

5. My area of expertise for the last 30 years has been in automotive collision and mechanical repairs, insurance claims manager, vehicle appraisals, post collision and mechanical repair inspections, evaluating vehicle values and collision monitoring. A very large

part of my expertise is performing and assessing the extent of damage to vehicles caused by all types of collisions and accidents, performing or supervising the proper repairs on those vehicles to return the vehicle to manufacturer specifications, quality control over the repair to vehicles to ensure they meet manufacturer specifications after being repaired, and assessing whether repairs performed on the vehicles were done properly and within manufacturer specifications. **This case primarily centers around automotive collision and repair. This case also primarily involves the extent of a previous collision that the subject vehicle was involved in just prior to selling that same vehicle to Mr. Poole approximately sixty days later as a Dodge CPO vehicle.** The case involves assessment of whether those previous repairs to the subject vehicle were completed properly and according to manufacturer specifications. This case is also about if those previous repairs were not done properly and according to manufacturers specifications, should the vehicle have been certified as a Dodge CPO vehicle? This case is about whether the subject vehicle sustained diminished value as a result of the previous collision.

6. In reading SAHARA's motion to exclude me from testifying they argue that I do not have the required "formal or informal schooling, training, licensing or experience" to testify in this case. My CV is attached as Exhibit 23 to this declaration and I believe it speaks for itself that I am qualified to render the opinions I have been asked to make in this case. Most of the cases I have been involved with concern auto/dealer fraud usually involving improper automotive repairs, hidden/undisclosed damage or repairs, total loss evaluations, appraisals and diminished value. Sometimes my services don't have anything to do with dealer fraud. For example many people want a second opinion regarding a total loss evaluation to insure that the amount that an insurance company is offering is correct. While SAHARA's counsel never bothered to ask me a single question at my deposition about my qualifications, I feel compelled to set forth this information in a little more detail, which tracks my CV.

7. I began my automotive career in 1969 as a body man in Brooklyn, NY and worked myself to the front office to become an estimator and then the shop manager. I also managed the tow truck operation for the same repair facility. I also was an owner of a tow

truck company and then became a manager of an automotive salvage yard. I was the manager of an automobile salvage yard supervising a total of 10 – 15 yardmen, delivery drivers and office support staff. In the early 1980, I began working in the insurance industry, starting as an independent automobile estimator. I was promoted to the supervisor of this small independent appraisal company (that employed from 9 – 15 appraisers), which completed estimate and total loss evaluations for numerous insurance companies. My next insurance related position was as a heavy equipment adjuster for Empire Mutual Insurance, my duties included estimating damage to trucks, motorhomes, water craft trucks and trailers. **I then went to work for the Hertz Corporation as a National Property Damage Reinspector & Manager.** My duties included supervising eight (8) Regional offices with approximately 100 property damage adjusters. I conducted a national re-inspection program for the 390 independent appraisal companies. I conducted open and close file audits at our regional offices **and supervised our direct repair program facilities for our fleet vehicle repairs.** I then became partners in an auto sales business that operated at Rocco's Collision Center ("RCC"), that included buying, selling and inspections of vehicles. I then opened Rocco's Sports Car Emporium in 1988 where I personally restored and repaired exotic vehicles and muscle cars. Rocco's Sports Car Emporium evolved into RCC. RCC was a state of the art facility that offered collision and full mechanical repair and maintenance involving almost every domestic and foreign vehicle on the market. I owned, operated and personally supervised all repairs and then did the majority of the quality control inspections after the collision repair process was complete. **I owned and operated RCC for fifteen years.**

8. While operating RCC I became involved with Wreck Check a company that offered diminished value assessments and many other Value Added Services [VAS]. In 1997, I created Wreck Check Car Scan Centers ("WCCSC") that offers VAS services to the public, including but not limited to, expert witness testimony, improper repairs, hidden and non-disclosed damage or repairs, post repair inspections, diminished value assessments, total loss assessments, collision monitoring and other automotive related assistance. I have approximately 40 licensees nationwide that offer the WCCSC VAS services in their area. Over the course of my career in the auto collision industry, I have personally appraised, evaluated,

repaired, inspected for quality control of repairs, or supervised the repair in the high tens of thousands of vehicles and probably over 100,000. After opening WCCSC, I have personally appraised, evaluated and inspected over thousands of vehicles. **What I did to assess the subject vehicle in this case in rendering my opinions is no different from what I have been trained to do for over the last 30 years as a collision damage repair professional.**

9. As an auto collision and repair professional with over three decades in the industry, I have extensive familiarity and specialized knowledge, experience, skill, training and technical education in assessing and evaluating collision damage, the extent of that collision damage, proper and improper repairs and diminished value to vehicles. I do not have an engineering background, nor do I have any academic background in vehicle design or engineering. I am not a designer of vehicles. I was not involved in the development of the Dodge CPO standards nor was I involved in the development of the manufacturer's repair specifications for the subject vehicle. However, what I do have is extensive and intimate familiarity and specialized knowledge, experience, skill, training and technical education involving the inspection, valuation, appraisal, estimation, assessment and proper repair of vehicles, including the subject vehicle.

10. Based on my over three decades in the auto collision and repair industry as auto collision and repair professional and based upon that experience, technical training and expertise, technical education in the field of collision repair, in either preparing or reviewing collision estimates in at least the high tens of thousands, I would **not** have to be present or actually see the repair process to a vehicle to know, opine or evaluate the extent of the damage to that vehicle. All that is required is the body shop estimate, which in this case is the Allstate Collision Estimate of Record ("ACE"), which I reviewed and is attached as Exhibit 2. In assessing whether the repairs to the subject vehicle were properly completed according to the manufacturers' specifications. However, my subsequent inspection of the vehicle would also assist me in rendering my opinions in assessing if the repairs were completed correctly, which I also conducted on the vehicle. **This is precisely what I have been trained to do and know**, which is to properly inspect and evaluate the repairs to vehicles.

11. SAHARA makes much to-do about the fact that my inspection occurred two years after the previous collision in March of 2014; and that somehow my opinions are not reliable due to the passage of time. The passage of time in this case does ***not*** affect my opinions at all in this case because I am not aware of, nor have I seen any information or evidence that there were any subsequent repairs or changes to the vehicle between the time of the previous collision on March of 2014 and the time I inspected it in June of 2016. In fact, in reviewing SAHARA's motion for summary judgment, which also mentioned my opinions, at undisputed fact number 18 in SAHARA's motion, **SAHARA agrees and states that there were no repairs performed to the vehicle during the time Mr. Poole purchased the subject vehicle and the time I inspected the vehicle.** The subsequent accident the subject vehicle was involved in on May of 2017 does not affect my opinions in any way because my opinions are based upon, limited to and focused on the repairs undertaken to the vehicle as a result of the March 2014 accident. **Based upon what I was requested to do, my focus would be on what were the state of the repairs on the subject vehicle when it underwent and "passed" the 125 Point CPO inspection that was completed by SAHARA's certified and trained technician on May 8, 2014.**

12. It is appropriate to point out the obvious here. When a vehicle is damaged and it needs to be properly repaired according to manufacturer specifications, if it can be restored to those specifications, the vehicle is not brought to the manufacturer or to a design engineer, or to a metallurgist. The vehicle is brought to a independent collision damage professional. An auto collision and repair professional does not have to have an engineering degree, or any other scientific or academic degree to be able to undertake a proper inspection, valuation or assessment about whether previous repairs to the vehicle were properly done within manufacturer's specifications. If having an academic degree in engineering, metallurgy or other related academic degree were a requirement, based on my over three decades experience in this industry, then nearly no body shop collision professional would be competent to do their job -- which is to repair the vehicle, if possible, to the manufacturer's repair specifications. In over 30 years, I have yet to meet a trained auto collision and repair professional that possesses that type of academic degree in design or

engineering of vehicles and components of a vehicle.

13. If having some sort of academic degree or background in engineering or car design were required to repair collision damaged vehicles, that would mean that consumers, insurance companies and most importantly, **the governmental agencies that regulate the collision industry**, allow unqualified and incompetent people to attempt to return collision damaged vehicles to the road in a safe condition. It is common knowledge in the collision industry that education and training offered by a combination of manufacturers, providers of information that specialized in the aftermarket repair industry such as I-CAR and ASE, All Data and others, are the benchmark for collecting data and information for the proper repair of collision-damaged vehicles. These entities and organizations have all the most up-to-date data that is **utilized on a daily basis** with respect to any information involving the proper repair of collision damages vehicles, which I also stay up-to-date on.

14. Manufacturers will also quite commonly issue technical updates or position statements on proper repairs to vehicles, all of which any authorized franchised dealership such as SAHARA would have or should be familiar with.. These manufacturer's position statements sometimes are also easily accessible to the public like with Chrysler/Dodge at <https://www.moparrepairconnection.com/collision/position-statements/>. To secure access to these position statements you can establish an account simply as a "vehicle owner" or a "do-it-yourselfer." This is where I obtained a Fiat Chrysler official factory position statement on "reconditioned" wheels attached as Exhibit 8 in doing my research in this case. This position statement was attached to my assessment, and of which I testified to in my deposition with respect to my opinions that the subject vehicle was not properly repaired according to manufacturer's specifications; and because of that, the vehicle was not only improperly certified as a CPO vehicle, but it created a major safety risk to the community. **The ACE at Exhibit 2 at pages 2 and 3, lines 29 to 34, clearly indicates that the left front wheel to the vehicle was replaced with a "reconditioned" wheel which was sublet to a wheel repair company to complete the process, or, the left front wheel was replaced with a "recycled" wheel, which means according to the definitions in the ACE, is a "used" part, and based on my experience, that can also mean the wheel could come from salvaged vehicle**

from a junkyard. According to the FCA official position statement:

FCA US LLC does **not** recommend that customers use “reconditioned” wheels (wheels that have been damaged and repaired) **because they can result in a sudden catastrophic wheel failure which could cause loss of control and result in injury or death.**

Damaged wheels are those which have been bent, **broken, cracked or sustained some other physical damage** which may have compromised the wheel structure.

Repaired indicates that the wheel has been modified through bending, welding, heating, straightening, or material removal to rectify damage.

Re-plating of chrome plated wheels, or chrome plating of original equipment painted or polished wheels is **not an acceptable procedure as this may alter mechanical properties and affect fatigue life.**

15. This information on “reconditioned” wheels is entirely accessible to the public. Based upon my experience, since most auto body collision facilities would most certainly know or should know and have access to this information, it is my opinion that this information was not only within the knowledge of SAHARA as a authorized and franchised Chrysler/Dodge dealership, but at a bare minimum, this FCA position statement should have been known to SAHARA, given this is a manufacturing standard involving damaged wheels to Dodge vehicles. Wheels are damaged on a regular basis and brought to franchised dealers, who can order OEM wheels to properly replace damaged OEM wheels.

16. As part of my opinions in this case, I also reviewed photographs of the vehicle in being repaired during the collision repair process. The photographs included various parts that were being repaired or replaced, all of which were entirely consistent with the repairs reflected on the ACE, and are of the same make, model year and color of the subject vehicle. Additionally one of photos identifies the same VIN number of the subject vehicle. Some of those I reviewed are attached as Exhibit 14. I am informed and believe that these photos were identified and produced by SAHARA in discovery and that the photographs are in fact those of the vehicle being repaired from the March 26, 2014 collision. The photo of the front left wheel from the vehicle, as identified in the ACE, is attached as Exhibit 13. It clearly depicts a chip taken out of the wheel’s rim as a result of the previous collision. In my

opinion, this wheel would meet the FCA definition of a “damaged” wheel as stated in the FCA position statement. Furthermore, based on my experience, which I also testified to in my deposition, I have dealt with hundreds of these types of wheels (and this type of damage to these types of wheels), and these wheels need to be replaced as new and not reconditioned or repaired because of the exact reasons stated in the FCA position statement. A chip like the one depicted in Exhibit 13 could easily propagate a crack into the wheel, and as the FCA position statement says, **it could cause sudden loss of control to the vehicle causing serious injury or death.** and that is why FCA does not recommend reconditioned wheels be used on their vehicles. Based on the ACE, the vehicle’s front left wheel was either “reconditioned” or was replaced with a “recycled” or “salvaged” wheel. Neither of these repairs to the front wheel would meet factory repair specifications, and therefore this vehicle should have never been certified as a CPO vehicle.

17. I reviewed Mr. Gongora’s deposition. He was SAHARA’s CPO technician who undertook the CPO inspection on the subject vehicle. He testified in his deposition at pages 50 and 51, which I reviewed, that as long as the subject vehicle met specifications, there was no need to notate it on the CPO inspection report he prepared. The CPO inspection report is attached as Exhibit 6, which I also reviewed as part of the information I received in formulating my opinions. Based on the ACE, based upon Exhibit 13 (the photograph of the damage to the wheel), and based upon Mr. Gongora’s deposition, this vehicle did not meet manufacturer’s repair specifications and should not have been certified as a CPO vehicle. It is my opinion that if Chrysler/Dodge collision repair specifications requires that reconditioned wheels should not be used than that requirement must be equally applicable to the CPO process.

18. With respect to my opinions about whether SAHARA knew or should have known the extent of the previous collision, based on my experience, my review of the deposition of Mr. Gongora, and reviewing the CPO inspection manual, **(which does not require any measurements to be taken by the CPO technician other than for fluids, brakes and other wear items)**, it is entirely achievable to determine the approximate severity of the impact solely by a visual inspection. These are the same procedures that a qualified collision damage technician

would use to analyze collision damage and to properly repair the subject vehicle. Mr. Gongora, SAHARA's certified and trained CPO technician, inspected the subject vehicle and determined that the vehicle was CPO eligible.

19. Mr. Gongora testified in his deposition that he did not make any comment on the Chrysler CPO checklist regarding the prior collision damage because he was able to look at the prior damage and determine if all the repairs were completed to OEM specifications. **Again, keep in mind that his determination was rendered without taking measurements on the vehicle.** I identified the prior collision damage and repairs by utilizing the same visual procedures that any qualified collision repair technician or post repair inspector would use to analyze collision damage and to repair the subject vehicle according to those manufacturer specifications. **According to the Dodge CPO Manual, item 103 on the CPO list under the heading "Body Panel," the CPO technician, (Mr. Gongora), is also trained and required to inspect the "body surface and panel alignment and fit."** The collision technician, like me, would look for ***misaligned exterior panels***, damage and movement of structural components and secure points such as bolts, hood, door and luggage hinges. My descriptions of the photos I attached to my report show these, and I describe them in detail at pages 3 and 4 of my report. I took a total of 110 photos for my inspection, which further supports my opinions, which I am informed were all provided to SAHARA's counsel, but I took a smattering of the ones that I believed best supported my opinions.

20. Taken as a whole, which I testified to at my deposition, (as opposed to any one thing in isolation such as the misalignment of one bolt which SAHARA attempts to do in the motion), given my experience, because of misalignment of the bumper, tires, wheels, panels, gaps, the repaired left front frame end bracket, and other items set forth in my report at pages 3 to 7, and based upon my observations, the subject vehicle was not repaired according to manufacturer specifications, including but not limited to the front wheel, based on the FCA position statement. Although I did take some measurements showing the uneven space between the right and left front wheels in relation to the bumper, which were part of the other photographs that I took and of which were produced to SAHARA, my opinions in this case that the vehicle was not repaired according to manufacturer's specifications were in large part

based upon my visual observations upon my inspection, in conjunction with the ACE, which experts in my field of expertise would use in formulating their opinions. Again, there is no evidence of which I am aware of that any repairs or other accidents or collision the subject vehicle was involved in between March of 2014, when the previous collision occurred and when I inspected the vehicle in June of 2016. To a person with training, all of what I have just described are signs and indications that the vehicle was involved in a previous collision in addition to the fact that the vehicle was not repaired according to manufacturer's specifications; because if the subject vehicle was fixed according to those specifications, the vehicle would not have all the gaps in between the panels and the other things I just describe and opine about in my report.

DIMINISHED VALUE REPORT OPINIONS

21. I incorporate all of my qualifications and experience mentioned at paragraph 7 in addition to my CV attached as Exhibit 1. With respect to my opinions regarding diminished value of the subject vehicle, my opinions are based upon my numerous years of experience in doing automotive appraisals for insurance companies, my many years of experience with Hertz Rent-A-Car as their National Property Damage Reinspector & Manager, my numerous years of experience in the auto body collision repair business, and my experiences with countless professionals in the field, including auto dealers and auto auctions. I have personally appraised tens of thousands of vehicles, evaluated damage and repaired damage to tens of thousands of vehicles in my personal and supervisory capacity, and I have over 25 years of experience in performing automotive inherent diminished value appraisals. For many years insurance companies claimed they were not liable for diminished value to a damaged vehicle. Over the years that has changed and most jurisdictions in the United States, including Nevada, allow for diminished value damage claims. I have been involved in numerous diminished value claims against Nevada insurance companies on behalf of consumers, and Nevada insurers have paid those claims. My information is also based upon my professional experience in California as well as in talking to WCCSC licensees around the country. I have testified on the amount and existence of diminished value to vehicles in both litigated cases in court and in arbitration; and courts and arbitrators have ordered that diminished value be paid.

22. It is important to note that even if a vehicle can be properly repaired according to manufacturer's specifications, a loss of value remains. There is a significant difference between inherent diminished value and depreciation. Simply put, diminished value is the **immediate** loss of inherent value a vehicle suffers due to an collision or accident. This loss of value occurs at the time a vehicle has been involved in a collision. **Diminished value is measured by the difference in the market value of the vehicle immediately before the collision damage occurred and immediately after the collision damage has been repaired.** Diminished value can have varying degrees. A car with light cosmetic damage or is involved in a very minor collision will not reflect the same loss as the subject vehicle as reflected in the ACE. Diminished value is different from traditional depreciation. Depreciation is an expected and anticipated and measurable reduction or loss of value sustained over a pre-determined time frame, however, like diminished value, Depreciation also takes into account many "objective" factors in calculating the "depreciated" value of a vehicle. These two types of appraisals are similar with respect to the **objective factors** that are taken into account.

23. In determining the existence of, and the amount of, diminished value, I used various relevant sources of information, which is the same information any competent expert in my area of expertise would use in determining diminished value. I use the repair estimate such as the ACE and any reports of prior damage, such as the Carfax run by SAHARA, if available. From these records I take the mileage, year, make and model of the vehicle, as well as the general condition and the options on the vehicle as equipped and the cost of the repairs. The repair estimate shows the type, amount and extent of the damage to the vehicle. I can then easily determine the vehicle's pre-loss value by using comparables or the National Automobile Dealers Association ("NADA") values. It is my opinion, based upon my years of experience, that on line research of vehicle values from dealers and private sellers are more accurate because they represents what consumers and dealers are asking for their vehicles. In addition, when insurance companies evaluate and settle total losses, they use the same on line research information. With this information, I then use comparable car sales to evaluate and determine the diminished value. I find comparables through auction and/or sales data from dealers, public auctions and private sellers across the nation. The above described methodology for

calculating diminished value is commonly accepted in my field of expertise.

24. Vehicles that are in the original condition will typically bring a higher price than vehicles of the same make, model year, and mileage that have been damaged in the manner reflected in the ACE. Inherent diminished value exists across geographic regions and across all types of vehicles. Vehicles that have not been damaged are more sought after by the general public. As a general rule, automotive professionals and dealers will pay more for vehicles that have not been damaged than they will pay for damaged vehicles. **Of course, the extent of the collision, if known, will greatly influence what will be paid by dealer and the consumer.** As I previously stated, there is a big difference with respect to diminished value between a very small collision with very little or cosmetic damage, versus the extent of the damage caused to the subject vehicle by the previous collision reflected in the ACE. This information was known to SAHARA, because Mr. Grant testified that he received the ACE from the private seller approximately three weeks prior reselling the vehicle as a CPO vehicle to Mr. Poole.

25. The difference in value is well recognized in the automobile sales profession. Joshua Grant, SAHARA'S Director of Used Car Sales corroborated this fact in his deposition at page 42 and 43. Most leasing companies charge a lessee an accident penalty. Auction disclosure rules, such as those at Manheim and Adesa require that certain types of damage to vehicles sold at the auction be disclosed. Auction rules, such as those at Mannheim and Adesa allow buyer's of vehicles with undisclosed prior repair damage to return the vehicle and get their money back, or alternatively, have their price adjusted. **These market factors are all indicative and reflective of the uniform existence of diminished value.**

26. SAHARA makes much to do about the comparables in my report were from across the country as opposed to being "local" comparables. The reason why it is best to take a cross section of the country (lower 48) into account with respect to comparables is because it gives me a better overview of the the value of the vehicle. In the case the national search located comparable vehicle within a \$4,000.00 range which is not uncommon and would be similar to the amounts if completing a local search. SAHARA then argues that the "numbers for comparable vehicles inserted appear to be taken from 2017 printouts." SAHARA's argument is misguided. In my deposition I explained the incorrect date is a result of a typo and the

calculation for arriving at the vehicle value at the time of purchase in 2014 and is explained in my diminished value assessment very clearly in exhibit 19 at page five. I utilize this 5% calculation which represents the amount of money the vehicle would increase or decrease in value during the course of a calendar. This percentage in the 25 years as a diminished value expert has been universally accepted in the insurance industry in hundreds of diminished value and total loss claims I have been involved in as an expert. As reflected on my CV in the arbitrations on behalf of consumers for diminished value and total loss, insurers have agreed to the same percentage. In addition in cases where comparables are used from older vehicle value publications I have found in my years of experience in this area of expertise and being involved in numerous cases as identified in my CV at Exhibit 23, after applying the five percent per year calculations the vehicle values are close in value to the 5% calculation. SAHARA next claims there is no basis for the 12.6% or how I utilized that figure. The 12.6% is a damage severity percentage, which is calculated by taking a percentage of the repair cost, (which was \$4,088.70), to the actual cash value of the vehicle, (which was \$32,384.61) This precisely what I testified to in my deposition. The total cost of repairs based on the ACE was \$4,088.73 at Exhibit 2. The Actual Cash Value ("ACV") of the vehicle is reflected on top of page five of my report which is \$32,384.61 based upon the comparables. **\$4,088.70 is 12.6% of \$32,384.61 which is the ACV of the subject vehicle.** The significance of that percentage is that the higher the percentage the less likely it would be for a person to purchase the vehicle.

27. Additionally, In evaluating diminished value it is important to identify the severity of the damage to the subject vehicle which is similar to the steps taken by insurance companies when considering if a vehicle should be deemed a total loss. Because the closer the cost of repairs are to the actual cash value [ACV] the more economically unfeasible it is to continue with the repairs process. It is similar when evaluating diminished value, the greater the percentage of damage is to the ACV of the vehicle the greater the diminished value.

28. It should be noted that in arriving at the loss of inherent diminished value it is not necessary to inspect the subject vehicle, and many experts in this field of expertise can, and often do, rely on the sources of information set forth in this declaration without inspecting the vehicle; however, in this case, I did complete an inspection of the vehicle. This may seem

counter intuitive, but the primary source of information to the existence and amount of a diminished value assessment is the collision damage report from the collision shop. In fact, it is not even necessary to repair the vehicle before I can determine the amount of diminished value that has resulted from the vehicle having been damaged. It is also not necessary to sell the vehicle before I can determine the amount of diminished value. The diminished value exists as of the time the vehicle is damaged. Mr. Pool's vehicle incurred inherent diminished value as set forth and explained in my report at Exhibit 19.

29. SAHARA infers that I engaged in some sort of hocus pocus in arriving at my diminished value amounts and that my opinion was not based upon any specifics of the subject vehicle and that my opinion is nothing but speculation and conjecture. Nothing could be further from the truth. Diminished value is not some new or unrecognized or "cutting edge" field of expertise. Per my report, my diminished value assessments are based upon the **same objective factors** and criteria that any other diminished value expert and automobile dealership takes into account. These objective factors include year, make, model, condition, options, mileage and the cost of repairs. In addition, an assessment of the extent of the vehicle's damage including the amount of damage, the type of damage, the area of the damage and the extent of the damage are considered thus the reason for calculating the percentage of damage.

30. With respect to the computer software program WCCSC uses that SAHARA takes issue with, I am not aware that I am required to have a computer programming degree to use a software program in my area of expertise with respect to my opinions on diminished value, or that I have to have been the one who actually designed or wrote the code for the program. There are a myriad of websites available on the internet where a consumer can enter certain information into a web-based application, and the program will come up with a diminished value. In my opinion, these types of evaluations are not reliable with just this limited information. However, many diminished value experts in my area of expertise who undertake a diminished value assessment do in fact use a computer algorithm, **in conjunction with** their review of other **independent information** that was reviewed in the course of their evaluation.

31. The WCCSC software program considers the **same objective criteria** as any other diminished value professional would, such as the year, make, model, mileage, options, type of damage and the cost of the repair and comparable vehicles to arrive at the diminished value of the subject vehicle. The basis for the algorithms and the objective criteria in the WCCSC software were generated as the result of years of extensive research involving a myriad of business and professions across the automobile industry who deal with vehicle appraisals and valuations on a daily basis, including discussions with hundreds of automobile dealerships, new and used cars general managers and sales personnel, other diminished value experts, insurance company appraisers, independent appraisers, and also attending hundreds of automobile auctions. The **objective factors** set forth in this declaration were designed and programmed into the WCCSC software program which I paid a professional software company to develop. When stating in my deposition that I made several revisions to the software it appears that was misunderstood in the context of the statement. I personally advised a professional software programmer of what changes I need and a professional software programmer completes the task within the program. The operator/licensee enters the information into the appropriate fields and the software will determine the amount of loss value to the vehicle, in conjunction with independent information and assessment regarding the diminished value vehicle itself. Additionally, an important component in evaluating diminished value is to have the ability to review any collision estimates, invoices, repair orders, contracts and pertinent documents relating to the repair of the vehicle, which does not occur with many strictly internet-based diminished value software. I find that utilizing strictly internet-based diminished value websites is not reliable or accurate. The reason that the WCCSC Diminished Value Assessment [DVA] evolved into its current form is because of the resistance over the years from the insurance industry in an attempt to deny diminished value recovery. Our DVA addresses denial based on there is no inherent diminished value, diminished value is not owed, diminished value does not occur until the subject vehicle is sold and the consumer actually suffers a loss, diminished value is not owed unless your vehicle suffered a certain amount of damage etc... and many more attempts to deny diminished value recovery.

I certify that the aforementioned is true and accurate under penalty of perjury under the laws of the state of Nevada

Executed this 19th day of October 2017 at Las Vegas, Nevada.



Rocco Avellini

1 **PROOF OF SERVICE**

2 STATE OF NEVADA)
3 COUNTY OF CLARK)

4 On October 19, 2017, I served the forgoing document(s) described as 1) **PLAINTIFF'S**
5 **OPPOSITION TO DEFENDANT SAHARA'S MOTION FOR SUMMARY**
6 **JUDGMENT** on interested party(ies) in this action by either fax and/or email, or by
placing a true and correct copy and/or original thereof addressed as follows:

7 **JEFF BENDAVID, ESQ**
8 Moran, Brandon, Bendavid, Moran
9 630 South Fourth Street
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10 **NATHAN KANUTE, ESQ**
11 Snell & Wilmer
12 3883 Howard Hughes Pkwy
Suite 1100
13 Las Vegas, NV 89169
nkanute@swlaw.com

14 [] **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of
15 collection and processing correspondence for mailing. Under that practice it would be
deposited with the U.S. Postal service on that same day with first class postage thereon
fully prepaid at Las Vegas, NV in the ordinary course of business.

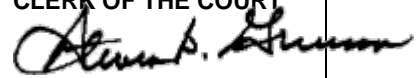
16 [] **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office,
17 and/or to the attorney listed as the addressee below.

18 [] **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify
19 that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule
7.26(a), as set forth herein.

20 [x] **(BY EMAIL SERVICE) (Wiznet/email)** Pursuant NRCP, Rule 5(b)(2)(D), and
21 the EDCR on electronic service, I hereby certify that service of the aforementioned
document(s) via email to pursuant to the relevant and pertinent provisions of EDCR and
NRCP, as set forth herein.

22
23 Executed on this 19th day of October, 2017

24 /s/ George O. West III
25 GEORGE O. WEST III
26
27
28



FGDB

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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

**PLAINTIFF'S RESPONSE TO DEFEN-
DANTS' SEPARATE STATEMENT
MENT OF UNDISPUTED MATERIAL
FACTS IN OPPOSITION TO
DEFENDANTS' MOTION FOR
MOTION FOR SUMMARY**

DATE : November 9, 2017

TIME : 9:00 a.m.

Filed *concurrently* with :

1. Plaintiff's Exhibits in Opposition to Defendant's Motion for Summary Judgment]
2. Plaintiff's Opposition to Defendant's Motion for Summary Judgment
3. Plaintiff's Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment]

DEFENDANT’S UNDISPUTED FACT

PLAINTIFF’S RESPONSE

1 1. On or about May 5, 2014, Defendant
2 (SAHARA) acquired a used 2013
3 Dodge Ram Truck VIN
4 1C6RR6GT8DS558275 (“vehicle”)
5 from a private third party.

Undisputed

6 2. At the time of acquisition, the
7 private third party provided Joshua
8 Grant (“J. Grant”) copies of documents
9 evidencing repairs on the vehicle, in
10 the form of an Allstate estimate.

Undisputed

11 3. J. Grant had significant experience
12 in dealing with used vehicle, and
13 reviewed the Allstate estimate which
14 were given to him by the third party,
15 specifically to determine whether the
16 vehicle had any indication of frame
17 damage, and he did not observe
18 information evidencing any such
19 damage, which was confirmed by the
20 subsequent inspection.

Undisputed that J. Grant has significant
experience with used cars and reviewed
the Allstate Estimate for framed damage
and the estimate was given to him by a
third party.

DISPUTED to the extent that the
statement attempts to suggest, infer or
intimate that the vehicle met
manufacturer’s repair specifications or
that the vehicle was properly certified as a
CPO [Dec. of Avillini ¶¶ 14-20]

21 4. On May 8, 2014, the vehicle
22 underwent a detailed inspection by a
23 certified mechanic, Ray Gongora, to
24 determine whether it [the vehicle]
25 could be a Certified Pre-Owned
26 (“CPO”) vehicle.

Undisputed that Gongora was a certified
mechanic who undertook the CPO
inspection.

DISPUTED to the extent that the
statement attempts to suggest, infer or
intimate that the vehicle met
manufacturer’s repair specifications or
that the vehicle was properly certified as a
CPO [Dec. of Avillini ¶¶ 14-20]

27 5. The certified mechanic conducted
28 the CPO inspection would have had a
Carfax prior or contemporaneous to
performing the inspection, as such
here, the mechanic would have been
aware of the previous accident on the
subject vehicle

Undisputed that mechanic was aware of
previous accident.

DISPUTED -- *Exhibit 9 to Plntf’s Opp.*, depo
of Joshua Grant, **102**: 18-23 (see Plntf’s SS
fact # 80) [It was **not** custom nor practice for
SAHARA used car sales department to give the
Cafax to service department before CPO
inspection]

1 6. It was not required for the
2 inspecting technician to report any
3 repaired items if those repairs were
4 performed correctly, only if there was
5 not a proper repair.

Undisputed that CPO technician did not
report any of the repaired items on the
CPO inspection report.

DISPUTED to the extent the statement
suggests, infers or intimates that all of the
repairs were done correctly or properly.

6
7 7. The vehicle passed the CPO 125
8 point inspection performed by Ray
9 Gongora and accordingly was
10 designated as a CPO vehicle in
11 Defendant's inventor.

Undisputed that SAHARA certified the
vehicle as a CPO vehicle and that the
vehicle passed SAHARA's CPO inspection

DISPUTED to the extent that the
statement suggests, infers or intimates
that the vehicle was properly certified a
CPO [See decl. of Avillini ¶¶ 14-20]

12 8. On May 26, 2014, Plaintiff entered
13 into a contract with Defendant to
14 purchase the vehicle with financing
15 and Plaintiff was also given trade in
16 value for his former vehicle in the
17 amount of Four Thousand (\$
4,000.00).

Undisputed

18 9. At the time of the Vehicle purchase
19 sales person Travis Spruell went
20 through a Certified Pre-Owned Vehicle
21 Delivery Check Sheet which was signed
22 by Plaintiff.

Undisputed

23 10. Additionally, Defendant present a
24 Carfax to Plaintiff dated May 10, 2014
25 ("the Carfax") pursuant to CPO
26 Delivery Check Sheet

Undisputed

27 11. The Carfax on both the front page,
28 the second page and on page 3 reflect
that the vehicle had been in an
accident and states "Damage
reported."

Undisputed

1 12. At the time of the sale of the
2 Vehicle, Defendant disclose the
3 previous accident and present the
4 Carfax reflecting the accident on the
5 Vehicle to the Plaintiff, and Plaintiff
signed the Carfax acknowledging it has
been in a previous accident

Undisputed

6 13. Despite being informed of the
7 accident on the vehicle, Plaintiff did
8 not ask any specifics about the
9 accident, he did not ask if there were
10 any other documents regarding the
11 accident, and he himself walked
around the vehicle.

DISPUTED that Plaintiff did not inquire
into the accident when it was disclosed to
him – Decl. of Plntf ¶¶ 2.

Undisputed that the did not ask for any
documents regarding the accident and
that he walked around the vehicle

12 14. At the time of the sale, the vehicle
13 had six thousand seven hundred
14 sixteen miles (6,716). It currently has
15 approximately twenty three thousand
miles.

Undisputed, but *irrelevant* and not
material to Plaintiff's claim for
statutory deceptive trade practices as
to the omissions or misrepresentations
that occurred on May 26, 2014.

16 15. At time of sale, Defendant also
17 provided and proffered Plaintiff
18 additional warranties for the vehicle
19 based on the fact that it was a CPO
vehicle.

Undisputed, that additional warranties
were given to Plaintiff, but *irrelevant*
and not material Plaintiff's claim for
statutory deceptive trade practices as
to the omissions or misrepresentations
that occurred on May 26, 2014.

DISPUTED to the extent that the
statement suggests, infers or intimates
that the vehicle was properly certified a
CPO [See decl. of Avillini ¶¶ 14-20]

23 16. Plaintiff left with the vehicle on the
24 date he purchased it, and drove the
25 Vehicle over the course of the
26 following three years with no problems
27 whatsoever.
28

Undisputed, but *irrelevant* and not
material Plaintiff's claim for statutory
deceptive trade practices as to the
omissions or misrepresentations that
occurred on May 26, 2014.

1 17. Plaintiff has not personally
2 experienced any safety issues the
3 vehicle.
4
5
6
7

DISPUTED Plaintiff was exposed to major safety issues concerning the vehicle's left front wheel, and this is further disputed to the extent that the statement suggests, infers or intimates that the vehicle met manufacture's specs, or that it did not create a danger of serious injury or death at the time the vehicle was sold to the Plaintiff or that the vehicle was properly certified CPO Dodge vehicle. [See decl. of Avillini ¶¶ 14-20]

8 18. Plaintiff did not have to have any
9 repairs performed on the vehicle
10 during the time he drove the vehicle.
11
12

Undisputed.

13 19. Plaintiff subsequently got into a
14 collision accident in May 2017 during
15 which the vehicle sustained
16 approximately \$ 5,000.00 of damage.
17
18

Undisputed that a subsequent collision occurred, but *irrelevant* and not material Plaintiff's claim for statutory deceptive trade practices as to the omissions or misrepresentations that occurred on May 26, 2014.

19 20. Plaintiff never attempted to
20 perform any investigation, at time of
21 purchase into the previous accident
22 the vehicle had been in, despite being
23 informed of it, prior to purchasing the
24 Vehicle.
25
26
27
28

DISPUTED – Decl. of Plntf ¶ 2. Plaintiff did specifically inquire with the sales person about the accident after being informed of it.

1 21. Plaintiff only performed any kind
2 of investigation into the vehicle's
3 history, independently, in
4 approximately April or May of 2016,
5 when he attempted to obtain a third
refinance of the vehicle driving it for
approximately two years.

6 22. Plaintiff's Vehicle was not
7 inspected after the CPO inspection
8 until May of 2016, after he had driven
9 it for two years by his retained
counsel's expert Rocco Avillini.

10 23. Plaintiff continued to drive the
11 vehicle after Rocco Avellini inspected
12 it, and after the filing of his initial
13 complaint, prior to its inspection by
Defendant's expert Thomas Lepper.

14 24. Plaintiff continued to drive his
15 vehicle for approximately 5,500 mile
16 after his expert inspected, and
17 allegedly found problems with the
vehicle.

18 25. Plaintiff subsequently got into
19 what he considers to be a major
20 accident in May of 2017, where the
21 vehicle sustained damage. However,
22 according to Plaintiff the vehicle has
been completely repaired from his
collision.

23
24 Dated this 19th day of November, 2017

Undisputed, but *irrelevant* and not
material Plaintiff's claim for statutory
deceptive trade practices as to the
omissions or misrepresentations that
occurred on May 26, 2014.

Undisputed, but *irrelevant* and not
material Plaintiff's claim for statutory
deceptive trade practices as to the
omissions or misrepresentations that
occurred on May 26, 2014.

Undisputed but *irrelevant* and not
material Plaintiff's claim for statutory
deceptive trade practices as to the
omissions or misrepresentations that
occurred on May 26, 2014.

Undisputed but *irrelevant* and not
material Plaintiff's claim for statutory
deceptive trade practices as to the
omissions or misrepresentations that
occurred on May 26, 2014.

Undisputed that the vehicle has the
damage from the subsequent accident
repaired, but *irrelevant* and not
material Plaintiff's claim for statutory
deceptive trade practices as to the
omissions or misrepresentations that
occurred on May 26, 2014.

25 By /s/ George O. West III
26 Law Offices of George O. West III
27 Consumer Attorneys Against Auto Fraud
28 Attorney for Plaintiff
DERRICK POOLE

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PROOF OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

On October 19, 2017, I served the forgoing document(s) described as 1) **PLAINTIFF'S RESPONSE TO DEFENDANTS' M SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** on interested party(ies) in this action by either fax and/or email, or by placing a true and correct copy and/or original thereof addressed as follows:

JEFF BENDAVID, ESQ
Moran, Brandon, Bendavid, Moran
630 South Fourth Street
Las Vegas, NV 89101
j.bendavid@moranlawfirm.com

NATHAN KANUTE, ESQ
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3883 Howard Hughes Pkwy
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Las Vegas, NV 89169
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☐ **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal service on that same day with first class postage thereon fully prepaid at Las Vegas, NV in the ordinary course of business.

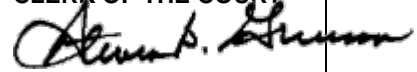
☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office, and/or to the attorney listed as the addressee below.

☐ **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule 7.26(a), as set forth herein.

☒ **(BY EMAIL SERVICE) (Wiznet/email)** Pursuant NRCP, Rule 5(b)(2)(D), and the EDCR on electronic service, I hereby certify that service of the aforementioned document(s) via email to pursuant to the relevant and pertinent provisions of EDCR and NRCP, as set forth herein.

Executed on this 19th day of October, 2017

/s/ George O. West III
GEORGE O. WEST III



STAT

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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

**PLAINTIFF'S SEPARATE STATE-
MENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

DATE : November 9, 2017

TIME : 9:00 a.m.

Filed *concurrently* with :

1. Plaintiff's Exhibits in Opposition to Defendant's Motion for Summary Judgment]
2. Plaintiff's Opposition to Defendant's Motion for Summary Judgment
3. Plaintiff's *Response* to Defendant's Separate Statement of Undisputed Material Facts]

UNDISPUTED FACT

1. On May 5, 2014, a private third party by the name of Dale Hinton sold a used 2013 Dodge Ram 1500 (“vehicle”) to SAHARA bearing VIN 1C6RR6GT8DS558275

2. The person from SAHARA who was personally engaged with and who and dealt with Mr. Hinton, and who purchasing the vehicle from Mr. Hinton on behalf of SAHARA was Joshua Grant, and was the one from SAHARA who personally apprised the vehicle

3. On May 5, 2014, Mr. Hinton told Joshua Grant the vehicle had been in a previous accident also gave an Allstate Collision Estimate of Record (“ACE”) to Joshua Grant regarding the vehicle.

4. Joshua Grant **thoroughly reviewed** the ACE.

5. SAHARA **admits** that the ACE involves a 2013 Dodge Ram 1500 with a VIN 1C6RR6GT8DS558275 of indicates that it was prepared on March 31, 2014

6. SAHARA **admits** that the ACE indicates the vehicle was in a collision/accident on March 26, 2014

7. The ACE received by Joshua Grant **broke down what was actually repaired on the vehicle** and describes, reflects and itemizes the nature and extent of the damage to the vehicle as a result of the previous collision/accident.

SUPPORTING EVIDENCE

Exhibit 1 to Defendant’s Motion for Summary Judgment, *Exhibit 5*, Def’s Resp. to RFA # 1; *Exhibit 16*, appraisal form.

Exhibit 9; depo. of Grant 77: 11-25, 78: 7-19, 79: 3-9, 80: 17-25, 81: 1-8; 111: 11-16; *Exhibit 5*, Def’s RFA resp. to Plntf’s RFA Req. # 10

Exhibit 9; depo of Grant, 81: 21-25, 82: 1-7, 84: 5-14, 96: 24-25, 97: 1-8.¹

Exhibit 9: depo of Grant, 98: 13-23, 99: 2-5.

Exhibit 2, ACE, *Exhibit 7*, Def’s Resp. to Plntf’s RFA # 9; *Exhibit 21*, Plntf’s RFAs

Exhibit 2, ACE; *Exhibit 7*, Def’s Resp. to Plntf’s RFA # 9; *Exhibit 21*, Plntf’s RFAs

Exhibit 9; depo of Grant, 84: 5-14, *Exhibit 2*, ACE

¹ Grant also authenticated the ACE produced and shown to him at his deposition as the same ACE he was given on May 5, 2017. *Exhibit 9*, depo of Grant 98: 2-21

1 8. SAHARA ***admits*** The ACE reflects
2 the vehicle sustained \$4,088.70 in
3 property damage to the vehicle as a
4 result of the previous
collision/accident

*Exhibit 2, ACE; Exhibit 7, Def's Resp.
to Plntf's RFA # 31; Exhibit 21, Plntf's
RFAs*

5 9. SAHARA ***admits*** the ACE reflects,
6 among other items, that the vehicle had:

*Exhibit 2, ACE Exhibit 7, Def's Resp. to
Plntf's RFA # 17, 23-30; Exhibit 21,
Plntf's RFAs*

- 7 • a replaced right bumper bracket.
- 8 • a repaired left front frame end bracket
- 9 • a replaced front bumper.
- 10 • a replaced radiator support.
- a replaced left outer and inner tie rod.
- a replaced aftermarket left stabilizer link
- a repaired front left wheel.
- a repainted left front fender

11 10. At the time Joshua Grant
12 purchased the vehicle from Mr. Hinton
13 on behalf of SAHARA, he was the
14 Director of SAHARA's Used Car
Department and held that position at
15 that point for two and half years.²

*Exhibit 9, depo of Grant, 17: 14-23, 18:
11-14, 66: 2-4*

16 11. As SAHARA's Director of Used Car
17 Sales Joshua Grant was in charge of
18 that particular area and aspect of
19 SAHARA's business, as he was the
20 person who ***established and
instituted SAHARA's policies and
practices*** within SAHARA's used car
21 department respect to: (1) the decision
22 to resell a vehicle as a certified pre
23 owned ("CPO") to the community, (2)
24 the processes by which those policies
25 were carried out, (3) the inspections
that occurred, and (4) the documents
that were generated by as a result of
the CPO process.

Exhibit 9, depo of Grant, 25: 9-24

26 ² Joshua Grant was also designated by
27 SAHARA as their 30(b)(6) representative with
28 respect to the CPO certification process, sales,
and required disclosures, policies and practices
in a CPO sales etc.. See Ex. 15, notice of 30(b)(6)
depo. for SAHARA

1 12. As Director of SAHARA's Used Car
2 Department, Joshua Grant was
3 responsible for overseeing **all** of
4 SAHARA's used car inventory, used
5 car purchasing, used car wholesaling,
6 used car pricing, used car
7 advertisement and oversaw the used
8 car mechanical operations.

Exhibit 9, depo of Grant, 20: 8-15

7 13. As Director of SAHARA's Used Car
8 Department, Joshua Grant would
9 coordinate with SAHARA's service
10 department with respect to the
11 inspections undertaken on SAHARA's
12 used vehicle inventory, including
13 having a certified pre-owned
14 inspection undertaken on the car that
15 was going to be resold to the
16 community as a CPO.

*Exhibit 9, depo of Grant, 20: 16-25,
21: 1-10*

14 14. With respect to Joshua Grant
15 "coordinating with the service
16 department" involving CPO vehicles,
17 he would bring the vehicle to the
18 service department, give the keys and
19 coordinate with the clerk in the service
20 department with respect to the type of
21 certification needed on the vehicle.

Exhibit 9, depo of Grant, 21: 1-9

20 15. The policies and practices relating
21 to CPO sales that Joshua Grant
22 established put into place as Director
23 of SAHARA's Used Car Department
24 **were never put in writing.**

*Exhibit 9, depo of Grant, 25: 25, 26: 1-
6*

24 16. Joshua Grant, as the Director of
25 SAHARA's Used Car Department, was
26 the one from SAHARA who made the
27 decision to resell the vehicle to the
28 community as a Dodge CPO vehicle

*Exhibit 9: depo of Grant 77: 11-17,
104: 25, 105: 1-10, 106: 18-23, 111: 1-
16*

1 17. Prior to becoming the Director of
2 SAHARA's Used Car Department,
3 Joshua Grant was the Director of Used
4 Car Sales for Avondale Chrysler Jeep
5 Dodge in Avondale Arizona, selling
6 used Dodge vehicles to the community
7 for nine (9) years, from 2004 through
8 2013.

*Exhibit 9, depo of Grant, 19: 16-25,
20: 1-5*

9 18. Joshua Grant has been selling
10 Dodge CPO vehicles to the community
11 for over eleven (11) years and has been
12 in the used car and vehicle dealership
13 industry for 13 years.

*Exhibit 9, depo of Grant, 19: 16-25,
20: 1*

14 19. Joshua Grant has been involved in
15 the sale of over 15,000 (thousand)
16 used vehicles to the community.

*Exhibit 9, depo of Grant, 33: 17-24,
34: 1-2*

17 20. The vast majority of Joshua
18 Grant's expertise and experience
19 revolves around and emphasizes the
20 sale of used vehicles to the community

Exhibit 9, depo of Grant, 34: 8-15

21 21. According to Joshua Grant, based
22 on his intimate familiarity and
23 experience in selling used vehicles to
24 the community, and in his capacity as
25 the 30(b)(6) representative of
26 SAHARA involving CPO vehicles,
27 SAHARA agrees with, follows and
28 subscribes to the advertising statement
regarding the sale of Dodge CPO
vehicles to the community that ***"our
CPO vehicle must pass a strident
certification process that
GUARANTEES only the finest
late model vehicles get certified."***

*Exhibit 9, depo of Grant, 150: 15-25,
151: 1-8*

1 22. In his capacity as the 30(b)(6)
2 representative of SAHARA involving
3 CPO vehicles in conjunction this
4 intimate familiarity and experience in
5 selling used vehicles to the
6 community, Joshua Grant has
7 acquired an understanding of what
8 things are important to used car
9 buyers when making a decision to buy
10 a used vehicle, **which include**
11 **safety, value, mechanical**
12 **condition, vehicle condition and**
13 **price.**

*Exhibit 9, depo of Grant, 34: 16-25,
35: 1-8*

10 23. Based on Joshua Grant's
11 professional experience in selling over
12 15,000 cars within the Dodge
13 environment, including SAHARA, and
14 in his capacity as the 30(b)(6)
15 representative of SAHARA involving
16 CPO vehicles, **a CPO vehicle**
17 **projects to the consumer: (1)**
18 **value, (2) quality, (3) safety, (4)**
19 **competence, (5) assurance, (6) piece**
20 **of mind and (7) trust.**

Exhibit 9, depo of Grant, 50: 5-22

18 24. Based on Joshua Grant's
19 professional experience in selling over
20 15,000 used cars within the Dodge
21 environment, including SAHARA, and
22 in his capacity as the 30(b)(6)
23 representative of SAHARA involving
24 CPO vehicles, **(1) value, (2) quality,**
25 **(3) safety, (4) competence, (5)**
26 **assurance, (6) piece of mind and (7)**
27 **trust are things that SAHARA**
28 **wants to instill and engender**
into the mind of a consumer
when purchasing a CPO vehicle.

*Exhibit 9, depo of Grant, 51: 4-13, 24-
25, 52: 1-18*

1 25. Based on Joshua Grant's
2 professional experience in selling over
3 15,000 used cars within the Dodge
4 environment, including SAHARA, and
5 in his capacity as the 30(b)(6)
6 representative of SAHARA involving
7 CPO vehicles, ***the things a***
8 ***consumer within the community***
9 ***would view and associate with a***
10 ***Dodge CPO vehicle would be: (1)***
11 ***value, (2) quality, (3) safety, (4)***
12 ***competence, (5) assurance, (6) piece***
13 ***of mind and (7) trust***

Exhibit 9, depo of Grant, 50: 23-25,
51:1-12

14 26. Based on Joshua Grant's
15 professional experience in selling over
16 15,000 used cars within the Dodge
17 environment, including SAHARA, and
18 in his capacity as the 30(b)(6)
19 representative of SAHARA involving
20 CPO vehicles, the buyer within the
21 community ***has the expectation***
22 when buying a Dodge CPO vehicle that
23 it has value, it has quality, ***it is safe,***
24 they have confidence and assurance in
25 buying it, they have peace of mind, and
26 they trust the dealership selling it to
27 them.

Exhibit 9, depo of Grant, 52: 19-25,
53: 1-6

28 27. Based on Joshua Grant's
professional experience in selling over
15,000 used cars within the Dodge
environment, including SAHARA, and
in his capacity as the 30(b)(6)
representative of SAHARA involving
CPO vehicles, ***one of the reasons***
why CPO vehicles to through
vehicle inspections is to ensure
that SAHARA does not sell a
vehicle that might be a safety
hazard to the community.

Exhibit 9, depo of Grant, 49: 7-19

1 28. Based on Joshua Grant's
2 professional experience with Dodge
3 CPO vehicles, and in his capacity as
4 the 30(b)(6) representative of
5 SAHARA involving CPO vehicles, **the**
6 **buyer within the community has**
7 **a right to expect** SAHARA is going
to always be truthful, honest and
accurate with them when it comes to
the sale of a CPO vehicle.

Exhibit 9, depo of Grant, 61: 7-19

8 29 Based on Joshua Grant's
9 professional experience in selling over
10 15,000 used cars within the Dodge
11 environment, including SAHARA, and
12 in his capacity as the 30(b)(6)
13 representative of SAHARA involving
14 CPO vehicles, SAHARA has ***vastly***
superior knowledge about the
condition of a CPO vehicle as opposed
to that of the consumer at time of sale.

*Exhibit 9, depo of Grant, 126: 10-25,
127: 1-12*

15 30. Based on Joshua Grant's
16 professional experience in selling over
17 15,000 used cars within the Dodge
18 environment, including SAHARA, and
19 in his capacity as the 30(b)(6)
20 representative of SAHARA involving
21 CPO vehicles, ***SAHARA considers it***
important for the car buyer to
make an informed choice when
purchase a CPO vehicle.

Exhibit 9, depo of Grant, 130: 6-14

1 31. Based on Joshua Grant's
2 professional experience in selling over
3 15,000 used cars within the Dodge
4 environment, including SAHARA, and
5 in his capacity as the 30(b)(6)
6 representative of SAHARA involving
7 CPO vehicles, to help ensure a buyer
8 within the community can **make an**
9 **informed choice and educated**
10 **decision**, it is important for SAHARA
11 to be completely truthful, honest and
12 accurate with the car buyer to make **full**
13 **disclosure** to the car buyer who is
14 thinking of purchasing a CPO vehicle.

*Exhibit 9, depo of Grant, 131: 21-24,
132: 1-6, 133: 1-12.*

11 32. Based on Joshua Grant's
12 professional experience with Dodge CPO
13 vehicles, and in his capacity as the
14 30(b)(6) representative of SAHARA
15 involving CPO vehicles, it is **important**
16 **for SAHARA to make full**
17 **disclosure to a used car buyer**
18 **involving things that might affect**
19 **the vehicle's value, safety, desire-**
20 **ability or marketability**

*Exhibit 9, depo of Grant, 65: 5-13,
130: 8-13*

18 33. According to Joshua Grant in his
19 capacity as the 30(b)(6) representative
20 of SAHARA involving CPO vehicles, and
21 his experience in his capacity as Director
22 of SAHARA's Used Car Department, the
23 reason for SAHARA **making full**
24 **disclosure** to the buyer within the
25 community about things that might
26 affect the vehicle's value, safety,
27 desirability or marketability is because
28 SAHARA **prefers to be upfront, and**
honest as possible, legally,
ethically and morally.

Exhibit 9, depo of Grant, 65: 1-20

1 34. Noah Grant, was the Finance and
2 Insurance ("F & I") manager from
3 SAHARA's who was responsible for
4 preparing the closing documents with
the Plaintiff relating to the vehicle.

Exhibit 10, depo of N. Grant, **28**: 10-16

5 35. Noah Grant began working for
6 SAHARA after it first opened and held
7 the F & I manager position for two
years.

Exhibit 10, depo of N. Grant, **13**: 8-16

8 36. Based on Noah Grant's vast and
9 intimate experience in working within
10 the Dodge dealership industry he has a
11 good understanding of Dodge products,
including the CPO program.

Exhibit 10, depo of N. Grant, **16**: 10-22

12 37. Noah Grant, before coming to
13 SAHARA, specifically received training
14 and was in sales meeting involving the
Dodge CPO program.

Exhibit 10, depo of N. Grant, 17: 4-8

15 38. Noah Grant had sold somewhere
16 between 500 to 1000 Dodge vehicles to
17 the community before becoming a F & I
manager at SAHARA.

Exhibit 10, depo of N. Grant, **20**: 19-25,
21: 1-6

18 39. Based upon Noah Grant's ***intimate***
19 ***familiarity and experience*** with
20 selling Dodge vehicles to the
21 community, Noah Grant also acquired
22 an understanding of what expectations
23 were important to the consumer within
the community when purchasing a used
24 vehicle.

Exhibit 10, depo of N. Grant, **21**: 7-14

1 40. Based upon Noah Grant's sales
2 experience in the Dodge environment,
3 he carried his sales experience with him
4 into the F&I department with respect to
5 a consumer's expectations involving
6 Dodge CPO vehicles.

*Exhibit 10, depo of N. Grant, 19: 16-25,
20: 1-4*

7 41. Based upon Noah Grant's
8 experience in selling between 500 to
9 1000 Dodge vehicles to the community,
10 the things consumers within the
11 community would consider important in
12 purchasing a used vehicle would include
13 **1) safety 2) reliability and 3)**
14 **affordability.**

Exhibit 10, depo of N. Grant, 21: 15-19

15 42. Based on Noah Grant's experience
16 in selling between 500 to 1000 Dodge
17 vehicles to the community, because it
18 would be important to disclose to the
19 consumer a vehicle's accident history, it
20 **would be equally important to**
21 **disclose to the consumer within**
22 **the community the nature and**
23 **extent of that accident** IF the
24 dealership KNEW of the nature and
25 extent of the previous accident.

Exhibit 10, depo of N. Grant, 25: 8-18

26 43. Based on Noah Grant's experience in
27 selling between 500 to 1000 Dodge
28 vehicles to the community, and his work
experience at SAHARA, ***if*** SAHARA had
knowledge about ***the actual nature***
and extent of the accident, meaning
they knew what parts were replaced and
repaired, the amount of previous
accident damage, **those facts would**
be important to disclose to a
consumer who is buying a CPO
Dodge.

*Exhibit 10, depo of N. Grant, 26: 13-24,
27: 1-5; 31: 20-25, 32: 1-4*

1 44. Based on Noah Grant's experience
2 in selling between 500 to 1000 Dodge
3 vehicles to the community, and his
4 work experience at SAHARA, based on
5 the way he closed deals, if he came into
6 receipt of information that the CPO
7 vehicle Mr. Poole was purchasing had
8 **\$4,088.70 in damage** to it based
upon a previous accident, **Noah
Grant would have disclosed this
information to Mr. Poole if he
had knowledge of it.**

*Exhibit 10, depo of N. Grant, 29: 9-24,
32: 1-4*

9 45. **The reason** why Noah Grant
10 would disclose to the consumer that a
11 CPO had sustained \$4,008.70 in
12 previous is because such information
13 might be important for the consumer
14 to know **based on safety concerns
regarding the vehicle.**

*Exhibit 10, depo of N. Grant, 29: 9-24,
32: 1-9*

15 46. Based on Noah Grant's experience
16 in selling between 500 to 1000 Dodge
17 vehicles to the community, and his
18 work experience at SAHARA, because
19 a consumer within the community
20 might associate a **safety issue** with a
21 previous accident, **he believes that**
22 **the nature and extent of that**
accident would also be
important information to
disclose to the buyer before they
purchased the vehicle.

*Exhibit 10, depo of N. Grant, 31: 20-25,
32: 1-4*

23 47. Travis Spruell was the sales person
24 involved in the Plaintiff's CPO vehicle
25 sale transaction
26
27
28

*Exhibit 12, depo of Spruell, 45: 18-25,
19: 1-4, Decl. of Plntf ¶ 1.*

1 48 Travis Spruell has been a vehicle
2 sales person in the car dealership
3 industry since the end of 2009,
beginning of 2010

*Exhibit 12, depo of Spruell, 14: 24-25,
15:1 -3*

4 49. Since the beginning of 2010 Travis
5 Spruell has sold used CPO vehicles at
6 local Ford, Chevrolet and Chrysler
dealerships (SAHARA).

Exhibit 12, depo of Spruell, 15: 6-18

7
8 50. Based on this experience in selling
9 used vehicles to the community and
10 talking with such consumers with
11 respect to what might be important to
12 them when purchasing a used car, **a
vehicle's safety** would be something
a consumer would take into account in
purchasing a used vehicle.

Exhibit 12, depo of Spruell 23: 14-25

13 51. Based on Travis Spruell's
14 experience in selling CPO vehicles to
15 the community, because a consumer
16 might be concerned about a previous
17 accident history when buying a used
18 vehicle, it would be important to
19 always be truthful, honest and
20 accurate **to disclose information
and facts** about : **1)** safety, **2)**
mechanical condition and **3)** its value.

*Exhibit 12, depo of Spruell 26: 20-25,
27: 1-2*

1 52. Based on Travis Spruell's
2 experience, in conjunction with what
3 what SAHARA has trained and taught
4 him to do, Mr. Spruell believes that
5 part of being truthful, honest and
6 accurate with the consumer in giving
7 full disclosures to them regarding
8 information that might affect a
9 vehicle's **1)** safety, **2)** mechanical
10 condition and **3)** its value, **so that**
11 **they can make an informed**
12 **decision** in purchasing a used vehicle.

*Exhibit 12, depo of Spruell 14: 24-25,
15: 1-3, 28: 7-25, 29: 1-5*

13 53. Travis Spruell believes that it is
14 important as a vehicle sales person at
15 SAHARA to always be truthful, honest
16 and accurate, and it would be **equally**
17 **important to disclose the nature**
18 **and extent of an accident to the**
19 **consumer** if the dealer had that
20 information

Exhibit 12, depo of Spruell, 32: 9-22

21 54. Based on Travis Spruell's experience
22 in selling hundreds of certified **CPO**
23 **vehicles** to the community, he believes
24 as a vehicle sales person, that if he knew
25 that the accident reflected on a Carfax
26 actually caused **\$4,088.70** in damage
27 to the vehicle, **he would have**
28 **disclosed this information to Mr.**
Poole in the normal course of selling a
CPO vehicle at SAHARA.

*Exhibit 12, depo of Spruell, 65: 2-25,
66: 1-10, 70: 21-25, 71: 1-13, 21, 25, 72:
1-25, 73: 1-4*

55. The reasons Mr. Spruell would have
disclosed the **\$4,088.70** in damage to
the vehicle to Mr. Poole is because that
would be part of being truthful, honest
and accurate to the consumer within the
community **to make full disclosure**
before they purchased the vehicle

*Exhibit 12, depo of Spruell, 65: 1-25
66: 1-10, 70: 21-25, 71: 1-13*

1 56. Based on the his experience in
2 dealing with hundreds of used car sales,
3 including CPO vehicle and getting to
4 know the consumer's expectations, Mr.
5 Spruell believes it would have been in
6 **important fact for the consumer**
7 within the community who is buying a
8 CPO vehicle to know that the CPO
9 vehicle they are about to purchase
10 sustained **\$4,088.70** in property
11 damage **before** they purchased the
12 vehicle.

*Exhibit 12, depo of Spuell, 65: 22-25,
66: 1-10, 71: 21-25, 72: 1-13.*

13 57. Mr. Spruell has no reason to believe
14 that the ACE was in the used car file
15 relating to the Plaintiff's vehicle, **but if**
16 **the ACE was in the file, Mr.**
17 **Spruell would have shown the**
18 **ACE to Mr. Poole and had him**
19 **sign it.**

*Exhibit 12, depo of Spruell, 68: 11-24,
69: 1-2*

20 58. The reason why Mr. Spruell would
21 have have Mr. Poole sign the ACE **was**
22 **to ensure that the nature and**
23 **extent of the previous accident**
24 **was disclosed to him to ensure he**
25 **had truthful, honest and accurate**
26 **with respect to what he was**
27 **buying.**

Exhibit 12, depo of Spruell, 69: 4-10

28 59. While SAHARA informed and
disclosed to the Plaintiff on the date of
purchase (May 26, 2014) that the vehicle
was in a previous accident via a Carfax,
which Plaintiff reviewed and signed,
Plaintiff was **never informed in any**
manner with respect to any of the
information or the contents of ACE, nor
was he shown the ACE.

*Exhibit 4; Carfax, Exhibit 6; Def's RFA
resp. to RFA # 36, 37 and 38, Decl. of
Plntf. ¶ 4.*

60 SAHARA never specifically and/or explicitly informed or communicated to the Plaintiff or gave him any information at time of sale that the vehicle had :

- a replaced right bumper bracket.
- a repaired left front frame end bracket.
- a replaced front bumper.
- a replaced radiator support.
- a replaced left outer and inner tie rod.
- a replaced aftermarket left stabilizer link
- a repaired front left wheel.
- a repainted left front fender.

61. When the previous accident was brought to the Plaintiff's attention during the sales process, Plaintiff ***specifically inquired*** about the accident and was told by SAHARA's sales person, Travis Spruell, that it was only a "minor" accident, that the vehicle had been through their 125 comprehensive inspection, and that if the vehicle was in any significant accident, they would not be selling the vehicle to him.

62. SAHARA ***admits*** never specifically and/or explicitly informed or communicated to the Plaintiff or gave him any information that the vehicle had sustained \$4,088.77 in previous collision damage at time of sale.

Exhibit 6; SAHARA's RFA resp. to Plnt'f RFA # 36, 37 and 38, Decl. of Plnt'f ¶ 4

Decl. of Plntf's ¶ 2

Exhibit 6, SAHARA's RFA resp. to Plnt'f RFA # 38, Decl. of Plnt'f ¶ 4

63. SAHARA **admits** has no document or record signed by the Plaintiff that specifically and/or explicitly discloses to the Plaintiff at time of sale that the vehicle had :

- a replaced right bumper bracket.
- a repaired left front end bracket.
- a replaced front bumper.
- a replaced radiator support.
- a replaced left outer and inner tie rod.
- a replaced aftermarket left stabilizer link
- a repaired front left wheel.
- a repainted left front fender.

64. The information contained in the ACE with respect to the monetary damage and all the items that were replaced and/or repaired would have been important to the Plaintiff in making his decision purchasing the vehicle.

65. Had the ACE been disclosed to the Plaintiff, he not only would not have purchased the vehicle, but he would not have purchased any vehicle from SAHARA.

66. Had the repaired or replaced items in fact # 63 been disclosed to the Plaintiff in the CPO inspection report, he would not have purchased the vehicle and would not have done any business with SAHARA.

67. According to Joshua Grant in his capacity as the 30(b)(6) representative of SAHARA involving CPO vehicles, a car buyer within the community **has every right to rely** on the contents and accuracy and truthfulness of a [CPO] vehicle inspection Ex. ³

³ The report referenced in the testimony is the CPO check list/inspection report at Exhibit 3 to the Exhibits support Plaintiff's Opposition.

Exhibit 6, SAHARA's RFA resp. to Plnt'f RFA # 36

Exhibit 2, ACE, Decl. of Plnt'f ¶ 5 & 6

Exhibit 2, ACE, Decl. of Plnt'f ¶ 5

Exhibit 2, ACE, Decl. of Plnt'f ¶ 5

Exhibit 9, depo of Grant, 127: 20- 25, 128: 1; Decl. of Plntf. ¶ 3.

68. None of the repaired and/or replaced items on the ACE including the ones listed in undisputed fact number 63 are listed on SAHARA's CPO check list/inspection report, including on the second page under the heading "**additional information**"

Exhibit 2, ACE; Exhibit 3, CPO inspection report

69. On May 8, 2014, (**only three days after Joshua Grant entered the vehicle into SAHARA's inventory**), the CPO inspection on the vehicle was undertaken by SAHARA's certified and trained technician and signed the CPO inspection report.

Exhibit 5, SAHARA's Resp. to Plntf's RFA # 2, # 4, and # 5.

70. As part of his normal job duties within his department,, Joshua Grant, as the Director of SAHARA's Used Car Department, was the one who was responsible for bringing vehicles over to SAHARA's service department for its 125 point CPO inspection.

Exhibit 9, depo of Grant, 21: 1-9

71. The vehicle underwent the Dodge 125 comprehensive CPO inspection on May 8, 2014 (three days **after** Joshua Grant personally received the ACE in his possession on May 5, 2014)

Exhibit 5, Def's resp. to Plntf's RFA Req. # 4, Exhibit 9; depo of Grant, 84: 5-14, 96: 24-25, 97: 1-8

72. At the time Joshua Grant, as Director of SAHARA's Used Car Sales Department, brought the vehicle to SAHARA's service department to undergo the CPO inspection, Joshua Grant **knew** about the ACE, he **knew** the ACE's contents, and was the person who took personal possession of it on May 5, 2015 from Mr. Hinton, (three days earlier).

Exhibit 9; depo of Grant, 84: 5-14, 96: 24-25, 97: 1-8, 98: 13-23, 99: 2-5; Exhibit 2, ACE; Exhibit 5, Def's resp. to Plntf's RFA Req. # 1, # 7 and # 10.

1 73. Joshua Grant, as SAHARA's Director
2 of Used Car Sales, **personally made**
3 the decision to resell the vehicle to the
community as a Dodge CPO.

*Exhibit 9; depo of Grant, 104: 25, 105:
1-10*

4 74. Joshua Grant, as Director of
5 SAHARA's Used Car Sales Department,
6 **had no policy or practice** that if he
7 personally had actual documentation of
8 previous repairs undertaken on a vehicle
9 **which he personally made the**
10 **decision to resell to the**
11 **community as a CPO, that would**
12 **NOT be important for him to pass**
13 **that information onto the service**
14 **department BEFORE the**
15 **technician undertook his 125**
16 **point CPO inspection.**

Exhibit 9, depo of Grant, 91: 10-20

17 75. Joshua Grant, in his capacity as
18 SAHARA's Director of Used Car Sales, if
19 he had specific, articulable, identifiable
20 information relating to an body shop
21 estimate [ACE] that would reflect the
22 nature and extent of the damage to the
23 vehicle, **it was NOT something that**
24 **he would have considered giving**
25 **the service department before the**
26 **CPO inspection was done.**

Exhibit 9, depo of Grant, 94: 7-19

27 76. **Joshua Grant, in his capacity**
28 **as SAHARA's Director of Used Car**
Sales Department did NOT deem
the nature and extent of a
previous accident to a vehicle as
being important in making the
determination as to whether or
not he would resell the vehicle to
the community as a CPO vehicle.

Exhibit 9, depo of Grant, 104: 6-11

1 77. Joshua Grant, as Director of
2 SAHARA's Used Car Department, ran a
3 Carfax on the vehicle on May 5, 2014

*Exhibit 9, depo of Grant, 99: 2-5, 19-21,
101: 7-23. Exhibit 4, Carfax.*

4 78. As SAHARA's Director of Used Car
5 sales, Joshua Grant had the Carfax in his
6 possession and it indicated the vehicle
7 was in an accident.

*Exhibit 4; Carfax; Exhibit 9, depo of
Grant, 102: 10-17.*

8 79. The Carfax matches the vehicle
9 make, model year and VIN of the
10 Plaintiff's vehicle as reflected on the
11 ACE

Exhibit 4, Carfax; Exhibit 2, ACE

12 80. It was **NOT** custom or practice for
13 either Joshua Grant or for SAHARA's
14 Used Car Department to bring the
15 Carfax over to the service department to
16 allow them to look at it **before** they did
17 their certified inspection

Exhibit 9, depo of Grant, 102:18-23

18 81. Joshua Grant **does not know or
19 recall** if he brought the Carfax
20 involving the Plaintiff's vehicle to
21 SAHARA's service department before
22 they did their CPO inspection on the
23 vehicle.

Exhibit 9, depo of Grant, 102:18-25

24 82. If SAHARA had prior knowledge of
25 certain damage to a vehicle from a body
26 shop estimate, SAHARA **would NOT**
27 **disclose the information on the**
28 **body shop estimate [ACE] to the**
consumer buying a CPO vehicle.

Exhibit 9, depo of Grant, 134: 13-22

1 83. According to Jeff Grant, with respect
2 to SAHARA making “full disclosure” to
3 the about important facts that might
4 affect a vehicle’s safety or value, if a
5 vehicle had a little over \$ 4,000.00 in
6 damage, and damage to certain
7 components, and if Jeff Grant had
8 **actual knowledge** of something
9 involving the **nature and extent of**
10 **the damage** to the vehicle, SAHARA
11 does **NOT** think information relating to
the nature and extent of the accident
should be communicated to the
consumer purchasing a CPO vehicle,
even if this information was in the
dealers’ knowledge.

*Exhibit 9, depo of Grant, 135: 20-25,
136: 1-14*

12 84. If SAHARA had actual knowledge
13 that certain components on a vehicle
14 have been damaged, and that vehicle is
15 going to be sold to the community as a
16 CPO, and had knowledge of the type of
17 information reflected on the [ACE],
18 SAHARA **does NOT believe that**
kind of information would be
important to the buyer who is
going to by CPO vehicle.

*Exhibit 9, depo of Grant, 137: 3-12, 23-
27, 139: 17-25, 140: 1-10*

19 85. Ray Gongora, SAHARA’s certified
20 CPO technician who undertook the
21 comprehensive 125 point CPO
22 inspection on the **vehicle considered**
23 **the information on the ACE, based**
24 **on his experience, to have been**
25 **important information. and**
26 **would have wanted to have the**
ACE in his possession before he
undertook his CPO inspection.⁴

Exhibit 11, depo of Gongora, 30: 10-15

27 ⁴ “Exhibit 2” referred to in Gongora’s
28 testimony was the ACE attached as Exhibit 2 to
Plaintiff’s Exhibits in Opposition to SAHARA’s
motion.

1 86. Ray Gongora **has no recollection**
2 if he received the ACE from anyone at
3 SAHARA regarding the vehicle.⁵

Exhibit 11, depo of Gongora, 31: 5-10

4 87. Joshua Grant, Director of SAHARA's
5 Used Car Department, who personally
6 received the ACE from the previous
7 owner of the vehicle, **has no**
8 **recollection** of whether he gave the
9 ACE to Ray Gongora, SAHARA's CPO
10 technician.

*Exhibit 9; depo of Grant 92: 18-25, 93:
1-10*

11 88. According to Mr. Gongora, some of
12 the things and components set forth in
13 ACE **are the same** as those that would
14 be covered by the CPO inspection
15 report.

Exhibit 11, depo of Gongora, 30: 4-9

16 89. According to Mr. Gongora, had the
17 received the ACE before he conducted
18 the CPO inspection on the vehicle, **he**
19 **would have specifically looked at**
20 **the different components that**
21 **were listed on the ACE** that
22 overlapped the same components that
23 are covered in the CPO inspection
24 report, and believes that would be the
25 prudent thing to do.

Exhibit 11, depo of Gongora, 31: 11-21

26 90. Because Joshua Grant, as Director of
27 SAHARA's Used Cart Department, had
28 actually received and had actual
possession of the ACE **on May 5,**
2014, whether or not Mr. Grant gave
the ACE to Mr. Gongora, **SAHARA**
knew or should have known that
the the left front wheel to the
vehicle had been damaged and
repaired as a result of the
previous collision to the vehicle.

*Exhibit 2, ACE at pages 2 & 3 lines
under heading "WHEELS" lines 29-34;
Exhibit 9; depo of Grant, 84: 5-14, 96:
24-25, 97: 1-8; Exhibit 5, Def's resp. to
Plntf's RFA Req. # 1, # 7 and # 10.*

⁵ "Exhibit 2" referred to in Gongora's
testimony was the ACE attached as Exhibit 2 to
Plaintiff's Exhibits in Opposition to SAHARA's
motion.

1 91. SAHARA's certified CPO technician
2 who undertook the CPO inspection on
3 the vehicle, (Ray Gongora), was
4 **trained to recognize the signs**
5 **and/or indications of prior**
6 **collision/ accident damage** to a
7 vehicle that was going to be resold to the
8 community as a CPO vehicle.

Exhibit 5; Def's resp. to Plnt's RFA # 20.

7 92 The ACE **clearly indicates** the left
8 front wheel as being "reconditioned"
9 and that the wheel was sent out to be
10 "rechromed," **or** the front left wheel was
11 replaced with a "recycled" wheel. **The**
12 **definition of "RCY" in the ACE**
13 **means "used parts."**

*Exhibit 2, ACE at pages 2 & 3 lines
under heading "WHEELS" lines 29-34,
Exhibit 7, Def's Resp. to Plnt's RFA
29.*

12 93. . Because Joshua Grant, as Director
13 of SAHARA's Used Cart Department,
14 had actually received and had actual
15 possession of the ACE **on May 5,**
16 **2014,** SAHARA actually knew or should
17 have known that the left front wheel was
18 either "reconditioned" (**meaning re-**
19 **chromed**), or it was a **recycled**
20 **wheel**.

*Exhibit 2, ACE at pages 2 & 3 lines
under heading "WHEELS" lines 29-34,
Exhibit 7, Def's Resp. to Plnt's RFA
29; Exhibit 9; depo of Grant, 84: 5-
14, 96: 24-25, 97: 1-8;*

19 94. According to Fiat Chrysler America
20 ("FCA") official factory position statement
21 regarding "reconditioned" wheels --
22 reconditioned wheels are defined as those
23 that have been "damaged," -- meaning
24 bent, broken cracked or sustained some
25 other physical damage.

*Exhibit 8, FAC position statement, Decl.
of Avillini ¶ 14.*

1 95. The FCA official factory position
2 statement is clear regarding
3 “reconditioned” wheels – “reconditioned”
4 wheel is defined as wheels that have been
5 “damaged,” -- meaning bent, broken
6 cracked or sustained some other physical
7 damage, **CAN RESULT IN A**
8 **SUDDEN CATASTROPHIC WHEEL**
9 **FAILURE WHICH COULD CAUSE**
10 **LOSS OF CONTROL AND RESULT**
11 **IN INJURY OR DEATH.**

Exhibit 8, FCA position statement

12 96. More specifically, FCA official
13 factory position statement states:
14 **“replating or chrome plated**
15 **wheels, or chrome plating of**
16 **original equipment is NOT an**
17 **acceptable procedure as this may**
18 **alter the mechanical properties**
19 **and affect fatigue.** FCA warranty
20 does not allow refinishing of wheels
21 under warranty.

Exhibit 8, FCA position statement

22 97. A photo of the left front chromed
23 wheel to the vehicle produced and
24 identified by SAHARA in discovery,
25 which was part of a group of photos
26 showing the repairs and damage to the
27 vehicle as a result of the previous
28 collision, ***shows a sizable chip taken***
out of the rim of the wheel as a
result of the previous collision.

Exhibit 14, photo of wheel, Decl. of
Avillini ¶ 16, Exhibit 17, SAHARA’s
initial disclosures

98. A chip taken out the the edge of the
wheel meets the definition of damage
under the FCA position statement on
“reconditioned” wheels.

Exhibit 8, FCA position statement;
Exhibit 14, photo of left wheel of vehicle
during time vehicle was being repaired,
Decl. of Avillini ¶ 16.

1 99. The FCA position statement
2 regarding “reconditioned” wheels
3 **would have or should have been**
4 **known** and/or easily accessible to
5 SAHARA’S given SAHARA is factory
authorized and franchised
Chrysler/Dodge dealer.

*Exhibit 8, FAC position statement, Decl.
of Avillini ¶ 15*

6 100. Given SAHARA’s would have or
7 should have known of the FCA official
8 factory position statement regarding
9 “reconditioned” wheels on Dodge
10 vehicles, SAHARA also **knew or**
11 **should have known** that the previous
12 repair to the left front wheel on the
vehicle did not meet factory repair
specifications, and could not have been
properly certified as a CPO vehicle.

*Exhibit 2, ACE, Exhibit 8, FAC position
statement, Decl. of Avillini ¶ 15*

13 101. Whether the left front wheel to the
14 vehicle was repaired by being
15 “rechromed” or replaced with a “used”
16 or “recycled” wheel, as clearly stated in
17 the ACE, either one would **not** meet
Chrysler/ Dodge Factory repair
specifications.

*Exhibit 2, ACE, Exhibit 8, FAC position
statement, Decl. of Avillini ¶ 16*

18 102. In addition to the wheel not being
19 repaired according to factory
20 specifications, there were other repairs
21 on the vehicle from the previous
22 collision that were not repaired
according to manufacturer specifications

*Decl. of Avillini ¶¶ 19 & 20, Exhibit 22,
Veh. Cond Rpt. of Avillini (w/o exhibits)*

23 103. Because the vehicle did not meet
24 Chrysler/Dodge manufacturer repair
25 specifications, the vehicle should never
26 have been certified as a CPO by
SAHARA or resold to the community a
CPO vehicle by SAHARA.

*Decl. of Avillini ¶¶ 14- 20; Exhibit 22,
Veh. Cond Rpt. of Avillini (w/o exhibits)*

1 104. SAHARA ***admits*** it ***actually***
2 ***knew about the ACE and had it in***
3 ***its possession*** on **May 5, 2014** when
4 SAHARA entered the vehicle in their
5 inventory, as well as on **May 8, 2014**
6 when SAHARA undertook the CPO
7 inspection on the vehicle and also on
8 **May 25, 2014** when SAHARA resold
9 the vehicle to the Plaintiff as a CPO
10 vehicle

*Exhibit 9; depo of Grant, 84: 5-14, 96:
24-25, 97: 1-8; Exhibit 2, ACE; Exhibit
5, Def's Resp. to Plntf's RFA 1, 7, & 10*

11 105. Because of the ***nature and extent***
12 of the previous collision/accident
13 damage, the vehicle sustained
14 diminished value, causing the Plaintiff's
15 vehicle at time of sale to worth
16 substantially less on the day he
17 purchased it from SAHARA before he
18 even drove it off the lot.

*Decl. of Avillini ¶¶ 22 and 31, Exhibit 19,
Diminished Value Report of Avillini*

19 105A. The photos produced by SAHARA
20 of the vehicle undergoing repairs and
21 the damaged and replaced parts in those
22 photos are entirely consistent with those
23 reflected on the ACE and identify the
24 same VIN number of the subject vehicle.

Decl. of Avillini ¶ 16.

25 106. As part of the sale transaction
26 involving the vehicle, SAHARA offered
27 and Plaintiff accepted SAHARA giving
28 him \$ 4,000.00 for his trade in which
went towards his down payment under
his contract.

*Decl. of Plntf. ¶ 6, Exhibit 18, Plntf's
Retail Installment Sale Contract.*

1 107. Plaintiff never would have entered
2 into the contract for the purchase of the
3 vehicle had he been fully informed of the
4 content of the ACE.

Decl. of Plntf. ¶ 5

5 108. Plaintiff has paid a current total of
6 \$22,641.94 on the vehicle and has
7 approximately \$16,766.11 left to pay.

Decl. of Plntf. ¶ 7

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109. Plaintiff has no expertise with Decl. of Plntf. ¶ 2
respect to vehicle, vehicle repair.

Dated this 19th day of October, 2017

By /s/ George O. West III
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
Attorney for Plaintiff
DERRICK POOLE

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PROOF OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

On October 20, 2017, I served the forgoing document(s) described as 1) **PLAINTIFF'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** on interested party(ies) in this action by either fax and/or email, or by placing a true and correct copy and/or original thereof addressed as follows:

JEFF BENDAVID, ESQ
Moran, Brandon, Bendavid, Moran
630 South Fourth Street
Las Vegas, NV 89101
j.bendavid@moranlawfirm.com

NATHAN KANUTE, ESQ
Snell & Wilmer
3883 Howard Hughes Pkwy
Suite 1100
Lass Vegas, NV 89169
nkanute@swlaw.com

☐ **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal service on that same day with first class postage thereon fully prepaid at Las Vegas, NV in the ordinary course of business.

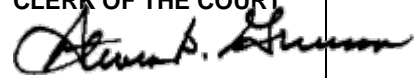
☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office, and/or to the attorney listed as the addressee below.

☐ **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule 7.26(a), as set forth herein.

☒ **(BY EMAIL SERVICE) (Wiznet/email)** Pursuant NRCP, Rule 5(b)(2)(D), and the EDCR on electronic service, I hereby certify that service of the aforementioned document(s) via email to pursuant to the relevant and pertinent provisions of EDCR and NRCP, as set forth herein.

Executed on this 20th day of October, 2017

/s/ George O. West III
GEORGE O. WEST III



EXH

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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

PLAINTIFF'S EXHIBITS IN SUPPORT
OF PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

DATE : November 9, 2017

TIME : 9:00 a.m.

Filed *concurrently* with :

1. Plaintiff's Separate Statement of Undisputed Facts]

2. Plaintiff's Opposition to Defendant's Motion for Summary Judgment

3. Plaintiff's *Response* to Defendant's Separate Statement of Undisputed Material Facts]

LIST OF EXHIBITS

1. First Amended Complaint
2. Allstate Collision Estimate of Record involving the vehicle
3. Certified Pre Owned Check List involving the vehicle
4. Car Fax involving the subject vehicle
5. SAHARA's initial response to Plaintiff's First Requests for Admissions
6. SAHARA's second amended response to Plaintiff's First Requests for Admissions
7. SAHARA's third amended response to Plaintiff's First Requests for Admissions
8. Fiat Chrysler Position Statement on Reconditioned Wheels
9. Condensed deposition transcript of Joshua Grant
10. Condensed deposition transcript of Noah Grant
11. Condensed deposition transcript of Raymond Gongora
12. Condensed deposition transcript of Travis Spruell
13. Photos of left front wheel to subject vehicle
14. Photos of the vehicle showing repairs to vehicle
15. 30(b)(6) deposition notice to SAHARA Re. Dodge CPO
16. Appraisal form on subject vehicle dated May 5, 2017
17. SAHARA's initial disclosures
18. Plaintiff's Retail Installment Sales Contract
19. Rocco Avillini's Diminished Value Report (with exhibits)
20. Legislative Digest to 2011 amendments to NRS 482.345
21. Plaintiff's first requests for admissions to SAHARA (with exhibits)
22. Rocco Avillini's Vehicle Condition Report (without exhibits)
23. CV of Rocco Avillini

Dated this 20th day of October, 2017

/s/ George O. West III

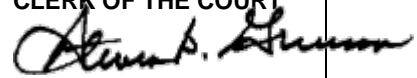
George O. West III

Consumer Attorneys Against Auto Fraud

Attorney for Plaintiff

DERRICK POOLE

EXHIBIT 1



ACOM

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

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.¹

19 ¹ 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 be 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.

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)]²
- 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 ² 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.

18
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 its 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.

26
27 39. At all relevant times herein mentioned, the Plaintiff was unaware of the
28 vehicle's deficiencies as herein described. ¹⁴ 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 17th day of March, 2017

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

EXHIBIT 2

Allstate Fire and Casualty Ins. Co.

SOUTHWEST AUTO-LAS VEGAS

222 S. Mill Ave

Suite 511

Tempe, AZ 85281

Phone: (800) 347-4488

Claim #:
Workfile ID:000320887250D01
afeFeb9a**Estimate of Record**Written By: FRED CUNNINGHAM, 3/31/2014 9:27:34 AM
Adjuster: CYNTHIA TRINIDAD, (702) 837-7123 Business

Insured:	DALE HINTON	Policy #:	000916685347	Claim #:	000320887250D01
Type of Loss:	Collision	Date of Loss:	03/26/2014 12:00 PM	Days to Repair:	7
Point of Impact:	11 Left Front	Deductible:	500.00		

Owner:	Inspection Location:	Appraiser Information:	Repair Facility:
DALE HINTON	UNIVERSAL MOTORCARS	fred.cunningham@allstate.com	UNIVERSAL MOTORCARS
9642 BORGATA BAY BLVD	5588 SPRING MOUNTAIN RD	(702) 630-2292	5588 SPRING MOUNTAIN RD
LAS VEGAS, NV 89147-8080	LAS VEGAS, NV		LAS VEGAS, NV
(702) 232-9622 Other	Repair Facility		(702) 754-6774 Business
DALEHINTON@AOL.COM	(702) 754-6774 Business		(702) 754-6043 Fax
			info@universaliv.com

VEHICLE

Year:	2013	Color:	GRAY Int: GRAY	License:	105 YYA	Production Date:	10/2012
Make:	DODG	Body Style:	4D P/U	State:		Odometer:	6632
Model:	RAM 1500 4X2 QUAD BIG HORN	Engine:	8-5.7L-FI	VIN:	1C6RR6GT8DS558275	Condition:	

TRANSMISSION	Air Conditioning	Satellite Radio	Reclining/Lounge Seats
Automatic Transmission	Intermittent Wipers	SAFETY	Retractable Seats
POWER	Tilt Wheel	Drivers Side Air Bag	WHEELS
Power Steering	Cruise Control	Passenger Air Bag	20" Or Larger Wheels
Power Brakes	Keyless Entry	Anti-Lock Brakes (4)	PAINT
Power Windows	Message Center	4 Wheel Disc Brakes	Clear Coat Paint
Power Locks	Steering Wheel Touch Controls	Traction Control	Metallic Paint
Power Mirrors	Navigation System	Stability Control	OTHER
Heated Mirrors	RADIO	Front Side Impact Air Bags	Fog Lamps
Power Driver Seat	AM Radio	Head/Curtain Air Bags	California Emissions
DECOR	FM Radio	Hands Free Device	TRUCK
Dual Mirrors	Stereo	Positraction	Power Rear Window
Aftermarket Film Tint	Search/Seek	SEATS	Trailer Hitch
Console/Storage	CD Player	Cloth Seats	Trailering Package
CONVENIENCE	Auxiliary Audio Connection	Bucket Seats	Running Boards/Side Steps

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 8-5.7L-FI GRAY

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
1	#	All Supplements Require Prior Allstate Approval		1	0.00	0.0	0.0
2	#	Supplement Fax#866-487-5751 or Email AZ SUPPS2@ALLSTATE.COM		1	0.00	0.0	0.0
3	FRONT BUMPER						
4		O/H bumper assy		0	0.00	2.6	0.0
5	**	Repl RECOND Bumper chrome w/o air suspension	68160853AB	1	585.00	Ind.	0.0
		NOTE: SALT LAKE CHROME..AVAIL PER KYLE..800-843-1956					
6		Add for fog lamps		0	0.00	0.4	0.0
7	<>	Repl Upper cover primed	68197697AA	1	169.00	Ind.	1.5
8		Add for Clear Coat		0	0.00	0.0	0.6
9		Repl RT Lamp bracket	68196980AA	1	0.00	Ind.	0.0
10		Repl RT Bumper bracket	68196981AA	1	239.00	Ind.	0.0
11		Repl Lower deflector w/painted bumper	68033135AA	1	96.20	Ind.	0.0
12	#	Repair L/F Frame end bracket		1	0.00	1.0	0.2
13		Repl LT Upper cover inner support	55277481AC	1	10.35	Ind.	0.0
14	GRILLE						
15		R&I R&I grille assy		0	0.00	Ind.	0.0
16	FRONT LAMPS						
17		Repl LT Headlamp assy w/o multi-beam	68096439AC	1	190.00	Ind.	0.0
		NOTE: VERIFIED LAMP WITH PART # ON LAMP					
18		Alm headlamps		0	0.00	0.5	0.0
19	RADIATOR SUPPORT						
20		Repl Radiator support	68197334AA	1	579.00	3.6	0.0
21	FENDER						
22		Repl LT Fender liner	68110687AD	1	71.45	0.5	0.0
23	*	Rpr LT Fender (STL)		0	0.00	3.5	2.6
		NOTE: PARTIAL REFINISH TO KEEP FROM HAVING TO BLEND INTO DOOR					
24		Overlap Major Non-Adj. Panel		0	0.00	0.0	-0.2
25		Add for Clear Coat		0	0.00	0.0	0.5
26	#	Refn Partial Refinish w/ Full Clear		0	0.00	0.0	-1.2
27		Repl Nameplate "HEMI 5.7 LITER"	68149700AA	1	54.50	0.2	0.0
28		R&I LT Protector		0	0.00	0.2	0.0
29	WHEELS						
30		R&I LT/Front R&I wheel		0	0.00 m	0.1	0.0
31	#	Subl Tire Mount and Balance		1	15.00 X	0.0	0.0
32	#	Subl Wheel reconditioned LF inc markup		1	300.00 X	0.0	0.0
		NOTE: WHEEL REPAIR THRU SINCITY WHEELS & TIRES 255-8473 - WILL HAVE TO BE SENT OUT TO BE					

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 8-5.7L-FI GRAY

RECHROMMED BY SINCITY AFTER WHEEL REPAIR							
33	*	Repl	RCY LT/Front Wheel, alloy 20" code: WPK +25%	1UC56SZ0AA	1	250.00 m	0.0 0.0
NOTE: TAKE OFF WHEEL - INS QUALITY..B&K AUTO QT # 767777..800-233-9640							
34	#	Subl	Shipping cost on wheel		1	30.00 X	0.0 0.0
35	FRONT SUSPENSION						
36	**	Repl	A/M LT Stabilizer link	NCP2653022	1	55.11 m	0.5 M 0.0
37	#		Check stabilizer bar		1	0.00	0.0 0.0
38	STEERING GEAR & LINKAGE						
39		Repl	LT Outer tie rod	68185640AA	1	54.50 m	Ind. M 0.0
40		Repl	LT Inner tie rod	68166678AA	1	56.60 m	1.3 M 0.0
41	MISCELLANEOUS OPERATIONS						
42	**	Repl	A/M Cover Car		1	5.00	0.3 0.0
43	#	Subl	2 Wheel Alignment		1	59.95 X	0.0 0.0
44	#		Wet Sand & Polish		1	3.00	0.7 0.0
NOTE: 0.4 1st Pril + 0.3 ea addtl' pnls							
45	OTHER CHARGES						
46	#		Towing		1	0.00	
SUBTOTALS						2,823.66	15.4 4.1

ESTIMATE TOTALS

Category	Basis	Rate	Cost \$
Parts			2,418.71
Body Labor	13.6 hrs @	\$ 44.00 /hr	598.40
Paint Labor	4.1 hrs @	\$ 44.00 /hr	180.40
Mechanical Labor	1.8 hrs @	\$ 85.00 /hr	153.00
Paint Supplies	4.1 hrs @	\$ 31.00 /hr	127.10
Miscellaneous			404.95
Subtotal			3,682.56
Sales Tax	\$ 2,545.81 @	8.1000 %	206.21
Total Cost of Repairs			4,088.77
Deductible			500.00
Total Adjustments			500.00
Net Cost of Repairs			3,588.77

Claim #:
Workfile ID:

000320887250D01
afefeb9a

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 8-5.7L-FI GRAY

ALLSTATE SUPPLEMENT REQUEST SHOP FORM

AZSUPPS2@ALLSTATE.COM or FAX 1-866-487-5751

SUPPLEMENT REQUEST PROCESS INSTRUCTIONS:

PLEASE FILL THIS FORM OUT COMPLETELY AND INCLUDE A WRITTEN SUPPLEMENT WITH ALL INVOICES THAT HAVE BEEN RECEIVED. YOU WILL BE CONTACTED WITHIN 24-48 HOURS.

1 CLAIM # _____
2 CUSTOMER: _____
3 VEHICLE: _____
4 SUPPLEMENT AMOUNT: \$ _____
5 SHOP NAME: _____
6 SHOP ADDRESS: _____
7 SHOP CITY/ZIP: _____
8 SHOP CONTACT: PHONE #: _____
9 SHOP EMAIL ADDRESS: _____
10 VEH AT SHOP AND READY FOR INSPECTION? Y () N ()
11 VEHICLE TORN DOWN? Y () N ()
REASON FOR SUPPLEMENT: _____

THIS ESTIMATE IS BASED ON THE USE OF BODY PARTS FOR YOUR MOTOR VEHICLE WHICH WERE NOT MANUFACTURED FOR OR BY THE ORIGINAL MANUFACTURER OF THE MOTOR VEHICLE. ANY WARRANTIES PROVIDED FOR THESE BODY PARTS ARE PROVIDED BY THE MANUFACTURER OR DISTRIBUTOR OF THESE PARTS, NOT BY THE MANUFACTURER OF YOUR MOTOR VEHICLE. PLEASE CONTACT YOUR INSURER TO DETERMINE YOUR RIGHTS REGARDING THE USE OF SUCH BODY PARTS.

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 8-5.7L-FI GRAY

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Unless otherwise noted all items are derived from the Guide DR3TM13, CCC Data Date 3/3/2014, and the parts selected are OEM-parts manufactured by the vehicles Original Equipment Manufacturer. OEM parts are available at OE/Vehicle dealerships. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships. OPT OEM or ALT OEM parts may reflect some specific, special, or unique pricing or discount. OPT OEM or ALT OEM parts may include "Blemished" parts provided by OEM's through OEM vehicle dealerships. Asterisk (*) or Double Asterisk (**) indicates that the parts and/or labor information provided by MOTOR may have been modified or may have come from an alternate data source. Tilde sign (~) Items Indicate MOTOR Not-Included Labor operations. The symbol (<>) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as Non OEM or A/M. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) Items indicate manual entries.

Some 2014 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a complete list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

SYMBOLS FOLLOWING PART PRICE:

m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category.
X=Miscellaneous Non-Taxed charge category.

SYMBOLS FOLLOWING LABOR:

D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category.
M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

OTHER SYMBOLS AND ABBREVIATIONS:

Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blend=Blend. BOR=Boron steel.
CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel.
HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non
Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace.
R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel.
Sect=Section. Subi=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Information Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:

BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA= National Highway
Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 8-5.7L-FI GRAY

IMPORTANT INFORMATION ABOUT THE NAMED INSURANCE COMPANY'S CHOICE OF PARTS POLICY.

THIS ESTIMATE MAY LIST PARTS FOR USE IN THE REPAIR OF YOUR VEHICLE THAT ARE MANUFACTURED BY A COMPANY OTHER THAN THE ORIGINAL MANUFACTURER OF YOUR VEHICLE. THESE PARTS ARE COMMONLY REFERRED TO AS AFTERMARKET PARTS OR COMPETITIVE PARTS, AND MAY INCLUDE COSMETIC OUTER BODY CRASH PARTS SUCH AS HOODS, FENDERS, BUMPER COVERS, ETC. THE INSURANCE COMPANY GUARANTEES THE FIT AND CORROSION RESISTANCE OF ANY AFTERMARKET/COMPETITIVE OUTER BODY CRASH PARTS THAT ARE LISTED ON THIS ESTIMATE AND ACTUALLY USED IN THE REPAIR OF YOUR VEHICLE FOR AS LONG AS YOU OWN IT. IF A PROBLEM DEVELOPS WITH THE FIT OR CORROSION RESISTANCE OF THESE PARTS, THEY WILL BE REPAIRED OR REPLACED AT THE INSURANCE COMPANY'S EXPENSE. THIS GUARANTEE IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PART. HOWEVER, IF YOU CHOOSE NOT TO USE ONE OR MORE OF THE AFTERMARKET/COMPETITIVE OUTER BODY CRASH PARTS THAT MAY BE LISTED ON THIS ESTIMATE IN THE REPAIR OF YOUR VEHICLE, THE INSURANCE COMPANY WILL SPECIFY THE USE OF ORIGINAL EQUIPMENT MANUFACTURER PARTS, EITHER NEW OR RECYCLED AT THE INSURANCE COMPANY'S OPTION, AT NO ADDITIONAL COST TO YOU. THE INSURANCE COMPANY DOES NOT SEPARATELY GUARANTEE THE PERFORMANCE OF ORIGINAL EQUIPMENT MANUFACTURER PARTS, AND MAKES NO REPRESENTATION ABOUT THE AVAILABILITY OF ANY MANUFACTURER'S GUARANTEE.

Claim #: 000320887250001
Workfile ID: afefeb9a

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 8-5.7L-FI GRAY

ALTERNATE PARTS SUPPLIERS

Line	Supplier	Description	Price
36	NAPA - FPPP Preston Keanum 2999 CIRCLE 75 PARKWAY ATLANTA GA 30339 (800) 538-6272	#NCP2653Q22 A/M LT Stabilizer link	\$ 55.11

Claim #: 000320887250001
Workfile ID: afefeb9a

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 8-5.7L-FI GRAY

ALTERNATE PARTS USAGE

Year: 2013 Color: GRAY Int: GRAY License: 105 YYA Production Date: 10/2012
Make: DODG Body Style: 4D P/U State: Odometer: 6632
Model: RAM 1500 4X2 Engine: 8-5.7L-FI VIN: 1C6RR6GT8DS558275 Condition:
QUAD BIG HORN

Alternate Part Type	# Of Available Parts	# Of Parts Selected
Aftermarket	15	2
Optional OEM	1	0
Reconditioned	3	1
Recycled	0	1

EXHIBIT 3



certified pre-owned
CHRYSLER | JEEP | DODGE | RAM

CERTIFIED PRE-OWNED VEHICLE INSPECTION CHECKLIST

This inspection checklist must be completed with *all* items checked, signed by responsible persons as indicated and retained along with repair orders in the vehicle's history file. Failure to do so will void the vehicle's certification.

	Meets Chrysler Standards	Not Applicable		Meets Chrysler Standards	Not Applicable
Qualification Standards			Mechanical Standards (continued)		
1. Under 75,000 miles	<input checked="" type="checkbox"/>		ROAD TEST		
2. Five model years or newer	<input checked="" type="checkbox"/>		46. Ease of starting	<input checked="" type="checkbox"/>	
3. No frame damage	<input checked="" type="checkbox"/>		47. Cold-idle quality	<input checked="" type="checkbox"/>	
4. Clean title	<input checked="" type="checkbox"/>		48. Gear selector operation	<input checked="" type="checkbox"/>	
5. Aftermarket accessories do not compromise safety, emissions or operation of vehicle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Steering performance		
Ownership Materials			49. Power steering performance	<input checked="" type="checkbox"/>	
6. Warranty Manual	<input checked="" type="checkbox"/>		50. Steering wheel center alignment	<input checked="" type="checkbox"/>	
7. Owner's Manual	<input checked="" type="checkbox"/>		51. Vehicle tracking performance	<input checked="" type="checkbox"/>	
8. Operational key	<input checked="" type="checkbox"/>		Equipment operation		
9. CARFAX® report	<input checked="" type="checkbox"/>		52. Cruise control	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Certified Pre-Owned Consumer Warranty Booklet	<input checked="" type="checkbox"/>		53. Overdrive	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mechanical Standards			54. Instrument panel/gauges	<input checked="" type="checkbox"/>	
PRE-ROAD TEST			55. Sound and/or entertainment system	<input checked="" type="checkbox"/>	
Underhood checks			Powertrain performance		
11. Hood release	<input checked="" type="checkbox"/>		56. Acceleration performance	<input checked="" type="checkbox"/>	
12. Brake fluid	<input checked="" type="checkbox"/>		57. Clutch operation (manual transmission)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Power steering fluid filled	<input checked="" type="checkbox"/>		58. Upshifting performance	<input checked="" type="checkbox"/>	
14. Wiper/washer fluid filled	<input checked="" type="checkbox"/>		59. Downshifting performance	<input checked="" type="checkbox"/>	
15. Battery condition/load test	<input checked="" type="checkbox"/>		60. Steady throttle performance	<input checked="" type="checkbox"/>	
16. Charging system operation	<input checked="" type="checkbox"/>		61. Transfer case/all-wheel-drive performance	<input type="checkbox"/>	<input type="checkbox"/>
17. Throttle linkage operation	<input checked="" type="checkbox"/>		62. Hot-idle performance	<input checked="" type="checkbox"/>	
Operational checks			Braking performance		
18. Key fob w/remote keyless entry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	63. Brake booster performance	<input checked="" type="checkbox"/>	
19. Door/liftgate/trunk	<input checked="" type="checkbox"/>		64. Vehicle tracking	<input checked="" type="checkbox"/>	
20. Seat adjuster	<input checked="" type="checkbox"/>		65. Antilock brake system	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21. Steering column adjuster	<input checked="" type="checkbox"/>	<input type="checkbox"/>	66. Overall stopping performance	<input checked="" type="checkbox"/>	
22. Ignition switch	<input checked="" type="checkbox"/>		Vehicle comfort		
23. Malfunction Indicator lamp/warning lamp	<input checked="" type="checkbox"/>		67. Interior noise level	<input checked="" type="checkbox"/>	
24. Air bag system	<input checked="" type="checkbox"/>		POST-ROAD TEST		
25. Trip computer/overhead console	<input type="checkbox"/>	<input type="checkbox"/>	68. Fluid leaks – visible inspection	<input checked="" type="checkbox"/>	
26. Heated seat	<input type="checkbox"/>	<input type="checkbox"/>	69. All fluid levels (underhood)	<input checked="" type="checkbox"/>	
27. Heating, ventilation, air conditioning system	<input type="checkbox"/>	<input type="checkbox"/>	70. Hot restart performance	<input checked="" type="checkbox"/>	
28. Turn signal/hazard lamps	<input checked="" type="checkbox"/>		Maintenance Standards		
29. Horn	<input checked="" type="checkbox"/>		Perform the following fluid inspection and/or changes:		
30. Brake lamps	<input checked="" type="checkbox"/>		71. Change engine oil, oil filter and use Mopar® Parts	<input checked="" type="checkbox"/>	
31. Headlamp/high beam/low beam	<input checked="" type="checkbox"/>		72. Inspect air filter	<input checked="" type="checkbox"/>	
32. Interior lamps	<input checked="" type="checkbox"/>		73. Automatic transmission fluid and filter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
33. Door locks (all switches)	<input checked="" type="checkbox"/>		74. Manual transmission fluid	<input type="checkbox"/>	<input checked="" type="checkbox"/>
34. Windows	<input checked="" type="checkbox"/>		75. Front differential fluid (4x4 only)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
35. Parking brake	<input checked="" type="checkbox"/>	<input type="checkbox"/>	76. Rear differential fluid (4x4/RWD/AWD)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
36. Fog lamps	<input checked="" type="checkbox"/>	<input type="checkbox"/>	77. Transfer case fluid (4x4/AWD)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
37. Windshield wiper system operation	<input checked="" type="checkbox"/>		78. Engine coolant level and test	<input checked="" type="checkbox"/>	
38. Wiper blades in good condition	<input checked="" type="checkbox"/>		79. Front brakes have 50% or more of lining remaining	<input checked="" type="checkbox"/>	
39. Rear window wiper and condition	<input type="checkbox"/>	<input checked="" type="checkbox"/>	80. Front and rear brake component condition	<input checked="" type="checkbox"/>	
40. Rearview mirror	<input checked="" type="checkbox"/>		81. Rear brakes have 50% or more of lining remaining	<input checked="" type="checkbox"/>	
41. Sideview mirrors	<input checked="" type="checkbox"/>		82. Perform outstanding vehicle campaigns	<input checked="" type="checkbox"/>	
42. Rear defroster	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
43. Seat belts	<input checked="" type="checkbox"/>				
44. Convertible top	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
45. Sunroof	<input type="checkbox"/>	<input checked="" type="checkbox"/>			

Dealership Name Sahara
 Year, Make and Model 2013 Dodge Ram 1500 Stock Number 9344
 Color Black R.O. Number(s) 6013972
 VIN 1C4RR6AT8DS558225
 Date Inspected 5/8/14 Original In-Service Date 4/13 Mileage 6716

Meets Chrysler Standards Not Applicable

Meets Chrysler Standards Not Applicable

Maintenance Standards (continued)

- | | | |
|---|-------------------------------------|--------------------------|
| 83. Identify non-Mopar accessories in Additional Information box | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 84. Tires match and are manufacturer's recommended size/load capacity | <input checked="" type="checkbox"/> | |
| 85. Wheels match and are correct size and offset | <input checked="" type="checkbox"/> | |
| 86. Tread depth is 4/32" remaining | <input checked="" type="checkbox"/> | |
| 87. Tire sidewall condition | <input checked="" type="checkbox"/> | |
| 88. Tire pressures are set to Chrysler specifications | <input checked="" type="checkbox"/> | |
| 89. Brake-line condition | <input checked="" type="checkbox"/> | |
| 90. Shocks and struts condition | <input checked="" type="checkbox"/> | |
| 91. CV joints boot condition | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 92. Exhaust system | <input checked="" type="checkbox"/> | |
| 93. Front suspension | <input checked="" type="checkbox"/> | |
| 94. Rear suspension | <input checked="" type="checkbox"/> | |
| 95. Steering components | <input checked="" type="checkbox"/> | |
| 96. Wheel bolts torqued to specifications | <input checked="" type="checkbox"/> | |
| 97. Tire-changing equipment (including spare, if applicable) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 98. Drive belts are tight and not damaged | <input checked="" type="checkbox"/> | |
| 99. Engine hoses | <input checked="" type="checkbox"/> | |
| 00. Emissions system hoses | <input checked="" type="checkbox"/> | |
| 01. State/local testing | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 02. Module scan tool check | <input checked="" type="checkbox"/> | |

Appearance Standards

- | | | |
|---|-------------------------------------|--------------------------|
| Exterior condition | | |
| 03. Body panels | <input checked="" type="checkbox"/> | |
| 04. Fascias | <input checked="" type="checkbox"/> | |
| 05. Bumpers | <input checked="" type="checkbox"/> | |
| 06. Decals/emblems/trim pieces in place | <input checked="" type="checkbox"/> | |
| 07. Glass/lamp covers | <input checked="" type="checkbox"/> | |
| 08. Wheel/wheel covers | <input checked="" type="checkbox"/> | |
| 09. Truck bed/bedliner | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Interior condition | | |
| 10. Instrument panel | <input checked="" type="checkbox"/> | |
| 11. Door panels | <input checked="" type="checkbox"/> | |
| 12. Seating | <input checked="" type="checkbox"/> | |
| 13. Headliner/package tray | <input checked="" type="checkbox"/> | |
| 14. Luggage compartment | <input checked="" type="checkbox"/> | |
| 15. Carpet/floor mats | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Detail Standards

- | | |
|--|-------------------------------------|
| Exterior detailing | |
| 16. Clean engine compartment | <input checked="" type="checkbox"/> |
| 17. Touch up/recondition minor surface scratches | <input checked="" type="checkbox"/> |
| 18. Remove tar, bugs and road oil | <input checked="" type="checkbox"/> |
| 19. Exterior wash and wax | <input checked="" type="checkbox"/> |
| 20. Wipe down all door jambs | <input checked="" type="checkbox"/> |

Detail Standards (continued)

- | | |
|---|-------------------------------------|
| Interior detailing | |
| 121. Clean ashtray/cigarette lighter | <input checked="" type="checkbox"/> |
| 122. Clean vinyl, plastic and leather surfaces | <input checked="" type="checkbox"/> |
| 123. Clean glass surfaces | <input checked="" type="checkbox"/> |
| 124. Vacuum and/or shampoo all interior carpets | <input checked="" type="checkbox"/> |
| 125. Free of odors/moisture and water leaks | <input checked="" type="checkbox"/> |

Satellite-Equipped Radios

Retrieve the Radio Electronic Serial Number (ESN)

Authorized Signature

My dealership has inspected all of the above items. The vehicle qualifies as a Factory-Backed-Certified-Pre-Owned Vehicle. Except where noted, all standards listed have been met.

Authorized Signature [Signature]

Title Used Car Tech

Date 5/8/14

Customer Signature

Signature [Signature]

Date _____

Additional Information

Chrysler, Jeep, Dodge, Ram and Mopar are registered trademarks of Chrysler Group LLC.
 CARFAX is a registered trademark of CARFAX, Inc.

EXHIBIT 4

This CARFAX Vehicle History Report provided free of charge by:



Sahara Chrysler Dodge Jeep Ram
5050 W Sahara Ave
Las Vegas, NV 89146
1-888-904-2502

SHOW ME THE CARFAX



CARFAX Vehicle History Report™

US \$39.99

Vehicle Information:

2013 RAM RAM TRUCK 1500 SLT

VIN: 1C6RR6GT8DS558275

CREW PICKUP

5.7L V8 SFI OHV 16V

REAR WHEEL DRIVE

Standard Equipment | Safety Options

CARFAX Report Provided By:

Sahara Chrysler Dodge Jeep Ram

5050 W Sahara Ave

Las Vegas, NV 89146

1-888-904-2502

www.saharachryslerdodgejeepram.com



Accident / Damage reported



CARFAX 1-Owner vehicle



Ram Certified Pre-Owned



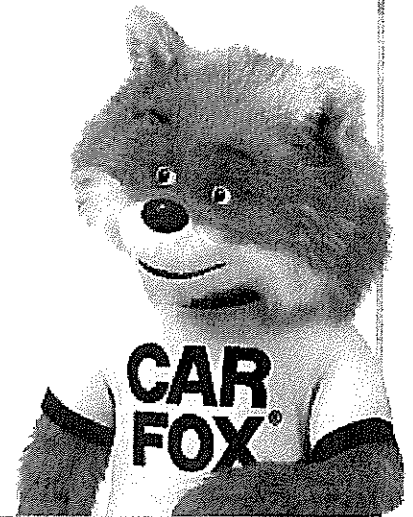
3 Service records available



6,716 Last reported odometer reading



\$260 Below retail book value



This CARFAX Vehicle History Report is based only on information supplied to CARFAX and available as of 5/10/14 at 1:09:22 PM (EDT). Other information about this vehicle, including problems, may not have been reported to CARFAX. Use this report as one important tool, along with a vehicle inspection and test drive, to make a better decision about your next used car.



Price Calculator™

Adjust the value of this 2013 Ram Ram Truck 1500 SLT based on the information available in this report

1) Retail Book Value

\$ 0

Enter retail book value here

2) CARFAX Price Adjustment™

\$260

Below retail book value

3) Adjusted Retail Value

Begin by entering the retail book value



Start by entering the Certified Pre-Owned retail book value from a pricing guide website.



This vehicle is worth less than average, based on information in this report.



Compare adjusted retail value to seller's asking price when making your decision.



Ownership History

The number of owners is estimated

Year purchased

Type of owner


Owner 1

2013

Personal



Estimated length of ownership	1 OWNER	10 months
Owned in the following states/provinces		Nevada
Estimated miles driven per year		7,494/yr
Last reported odometer reading		6,716

CARFAX Title History	Owner 1
CARFAX guarantees the information in this section	
Salvage Junk Rebuilt Fire Flood Hail Lemon	Guaranteed No Problem
Not Actual Mileage Exceeds Mechanical Limits	Guaranteed No Problem
 GUARANTEED - None of these major title problems were reported by a state Department of Motor Vehicles (DMV). If you find that any of these title problems were reported by a DMV and not included in this report, CARFAX will buy this vehicle back. Register View Terms View Certificate	

CARFAX Additional History	Owner 1
Not all accidents / issues are reported to CARFAX	
Total Loss No total loss reported to CARFAX.	<input checked="" type="checkbox"/> No Issues Reported
Structural Damage No structural damage reported to CARFAX.	<input checked="" type="checkbox"/> No Issues Reported
Airbag Deployment No airbag deployment reported to CARFAX.	<input checked="" type="checkbox"/> No Issues Reported
Odometer Check No indication of an odometer rollback.	<input checked="" type="checkbox"/> No Issues Indicated
Accident / Damage Accident reported on 03/26/2014. Damage reported on 03/26/2014.	<input type="checkbox"/> Accident Reported
Manufacturer Recall Check with an authorized RAM dealer for any open recalls.	<input checked="" type="checkbox"/> No Recalls Reported
Basic Warranty <u>Original warranty</u> estimated to have 24 months or 29,284 miles remaining.	<input checked="" type="checkbox"/> Warranty Active

Tell us what you know about this vehicle

CARFAX Detailed History	Owner 1
Purchased: 2013 Type: Personal Where: Nevada Est. miles/year: 7,494/yr Est. length owned: 5/29/13 - 4/1/14 (10 months)	Date: 11/27/2012 Mileage: 1 Source: Martin Swanty Chrysler Kingman, AZ 928-753-3131 martinswanty.chrysler.com Comments: Vehicle offered for sale
Low mileage! This owner drove	Date: 12/10/2012 Source: Martin Swanty Chrysler Comments: Vehicle offered for sale

less than the
industry average
of 15,000 miles
per year.



Kingman, AZ
928-753-3131
martinsw antychrysler
.com

12/13/2012		Martin Sw anty Chrysler Kingman, AZ 928-753-3131 martinsw antychrysler .com	Pre-delivery inspection completed Tire condition and pressure checked
04/18/2013	168	Prestige Chrysler Jeep Dodge Las Vegas, NV 702-309-8000 prestigechryslerjeep dodge.com	Vehicle sold
05/29/2013		Nevada Motor Vehicle Dept. Las Vegas, NV Title #NV006191479-4	Title issued or updated Registration issued or renew ed First ow ner reported Titled or registered as personal vehicle
12/09/2013	4,109	Prestige Chrysler Jeep Dodge Las Vegas, NV 702-309-8000 prestigechryslerjeep dodge.com	Vehicle serviced
03/26/2014	6,632	Nevada Damage Report	Accident reported Vehicle tow ed
04/01/2014		Dealer Inventory	Vehicle offered for sale
05/05/2014	6,716	Sahara Chrysler Dodge Jeep Ram Las Vegas, NV 702-466-0033 saharachryslerdodgej eepram.com	Vehicle offered for sale
05/06/2014		Chrysler Group Certified Dealer Las Vegas, NV	Offered for sale as a Ram Certified Pre-Ow ned Vehicle Certification includes: Up to 7-year/100,000-mile Pow ertrain Limited Warranty 3-month/3,000-mile Maximum Care Warranty 125-Point inspection
05/08/2014		Sahara Chrysler Dodge Jeep Ram Las Vegas, NV 702-466-0033 saharachryslerdodgej eepram.com	Vehicle serviced



I'm here to help! Print and bring my SmartBuyer Checklist
w hen you go to test drive this 2013 Ram Ram Truck 1500
SLT.

Tell us w hat you know about this vehicle

Have Questions? Consumers, please visit our Help Center at www.carfax.com. Dealers or Subscribers, please visit our Help Center at www.carfaxonline.com.



Glossary

[view Full Glossary](#)
Accident / Damage Indicator

CARFAX receives information about accidents in all 50 states, the District of Columbia and Canada. Different information in a vehicle's history can indicate an accident or damage, such as: salvage auction, fire damage, police-reported accident, crash test vehicle, damage disclosure, collision repair facility and automotive recycler records. Not every accident or damage event is reported and not all reported are provided to CARFAX. Details about the accident or damage event when reported to CARFAX (e.g. severity, impact location, airbag deployment) are included on the Vehicle History Report. CARFAX recommends you obtain a vehicle inspection from your dealer or an independent mechanic.

- According to the National Safety Council, Injury Facts, 2007 edition, 7% of the 245 million registered vehicles in the U.S. were involved in an accident in 2005. Over 75% of these were considered minor or moderate.
- CARFAX depends on many sources for its accident / damage data. CARFAX can only report what is in our database on 5/10/14 at 1:09:22 PM (EDT). New data will result in a change to this report.

CARFAX Price Adjustment™

Accidents, service records, number of owners and many other history factors can affect a vehicle's value. The CARFAX Price Adjustment is a tool that analyzes millions of used car transactions to measure how the combination of all the information reported to CARFAX affects the value of a particular vehicle. The vehicle's retail book value plus the CARFAX Price Adjustment will give you a more accurate measure of the vehicle's value. Use this tool, along with a vehicle inspection and test drive, to make a better decision about your next used car.

First Owner

When the first owner(s) obtains a title from a Department of Motor Vehicles as proof of ownership.

Ownership History

CARFAX defines an owner as an individual or business that possesses and uses a vehicle. Not all title transactions represent changes in ownership. To provide estimated number of owners, CARFAX proprietary technology analyzes all the events in a vehicle history. Estimated ownership is available for vehicles manufactured after 1994 and titled solely in the US including Puerto Rico. Dealers sometimes opt to take ownership of a vehicle and are required to in the following states: Maine, Massachusetts, New Jersey, Ohio, Oklahoma, Pennsylvania and South Dakota. Please consider this as you review a vehicle's estimated ownership history.

Title Issued

A state issues a title to provide a vehicle owner with proof of ownership. Each title has a unique number. Each title or registration record on a CARFAX report does not necessarily indicate a change in ownership. In Canada, a registration and bill of sale are used as proof of ownership.

Follow Us: [facebook.com/CARFAX](https://www.facebook.com/CARFAX) [@CarfaxReports](https://twitter.com/CarfaxReports) [CARFAX on Google+](#)

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Covered by United States Patent Nos. 7,113,853; 7,778,841; 7,596,512; 8,600,823; 8,595,079; 8,606,648; 7,505,838.

5/10/14 1:09:22 PM (EDT)

I have reviewed and received a copy of the CARFAX Vehicle History Report for this 2013 RAM RAM TRUCK vehicle (VIN: 1C6RR6GT8DS558275), which is based on information supplied to CARFAX and available as of 5/10/14 at 1:09 PM (EDT).

 Customer Signature

 Date

 Dealer Signature

 Date

CARFAX[®]

VEHICLE HIGHLIGHTS

2013 RAM RAM TRUCK 1500 SLT

VIN: 1C6RR6GT8DS558275

Body Style: CREW PICKUP

Engine Size: 5.7L V8 SFI OHV 16V

Drivetrain: REAR WHEEL DRIVE

Certified on 05/06/2014



Original Manufacturer's Warranty:

Basic Warranty Active

Please confirm remaining factory warranty and extended warranty options with your dealer!

The original manufacturer's warranty includes:
36 months or 36,000 miles

Courtesy of
Sahara Chrysler Dodge

Jeep Ram

5050 W Sahara Ave

Las Vegas, NV 89146

1-888-904-2502

www.saharachryslerdodgejeepram.com

Information excerpted from the CARFAX Vehicle History Report and/or Safety & Reliability Ratings; see full reports for additional information, glossary of terms, source attributions, disclaimers & limitations. Go to carfax.com for complete Buyback Guarantee terms and conditions.

OWNERSHIP HISTORY:

Number of Owners:



Last owned in the following state/province:

Nevada

STATE DMV-REPORTED TITLE PROBLEMS:

None of these major title problems were reported by a state Department of Motor Vehicles:



Salvage, Junk, Rebuilt, Fire, Flood, Hail, Lemon

Guaranteed No Problem

Not Actual Mileage, Exceeds Mechanical Limits

Guaranteed No Problem

ACCIDENTS AND OTHER ISSUES:

No issues reported to CARFAX on the following:

Total Loss

☒ No Issues Reported

Structural Damage

☒ No Issues Reported

Airbag Deployment

☒ No Issues Reported

Odometer Rollback

☒ No Issues Reported

Accident and damage reported on this vehicle. Please see the full CARFAX Vehicle History Report for more details.

**Ask your dealer
for the full CARFAX[®]
Vehicle History Report[™]**

CARFAX[®] SmartBuyer Checklist

Vehicle Information:

2013 RAM RAM TRUCK 1500 SLT
 VIN: 1C6RR6GT8DS558275
 CREW PICKUP
 5.7L V8 SFI OHV 16V
 REAR WHEEL DRIVE

CARFAX Report Provided By:

Sahara Chrysler Dodge Jeep Ram
 5050 W Sahara Ave
 Las Vegas, NV 89146

1-888-904-2502

www.saharachryslerdodgejeepram.com

Notes & Observations:

Enter your notes or additional questions here.

Salesperson:

Appointment Time:

Price:

Color:

CARFAX Vehicle History Report Summary:

Accident / Damage reported



CARFAX 1-Owner vehicle



Ram Certified Pre-Owned



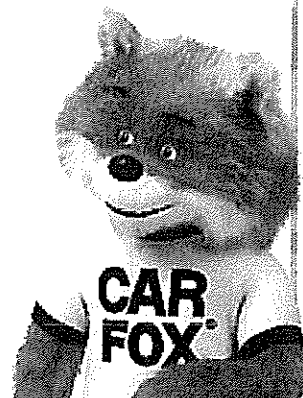
3 Service records available



6,716 Last reported odometer reading



\$260 Below retail book value

**PRINT AND TAKE THIS CHECKLIST WITH YOU**

This checklist utilizes information from your CARFAX report to help you make an informed used car purchase.

General Questions

Review the manufacturer's certification process and the items covered.

Has the seller accounted for the CARFAX Price Adjustment in their asking price? Use the CARFAX Price Calculator to compare.

Test Drive and Visual Inspection

Turn on the ignition without starting the car. Do all the warning lights and gauges work?

Ensure the airbag light appears momentarily and goes out upon starting the vehicle.

Is the odometer consistent with the last reading of 6,716 on the CARFAX report summary above?

Do the tires appear to be in good shape and without uneven wear?

Test all internal controls. Do all lights, turn signals, windows and the heater and air conditioner work?

Mechanical Questions

Accident / Damage reported: You may want to have the dealer, a mechanic, or body shop inspect the repair.

Does the vehicle appear to have been well maintained?

When should you schedule the next regular service?



CARFAX® Warranty Check™

[Print Report](#)

CARFAX has estimated the remaining original manufacturer warranty coverage based on information reported to us on this 2013 RAM RAM TRUCK 1500 SLT (1C6RR6GT8DS558275).

VIN: 1C6RR6GT8DS558275

Estimated start date of warranty: 05/07/2013

Last CARFAX reading reported on 05/05/2014: 6,716 miles

Today's Date: May 10, 2014

Enter the current mileage and click 'Recalculate Warranty' to update the remaining warranty coverage.

Enter current mileage:

[Recalculate Warranty](#)

Type of Coverage:	Original Warranty:	Estimated Remaining Coverage:
Basic	36 months or 36,000 miles	26 months or 29,284 miles
Drivetrain	60 months or 100,000 miles	50 months or 93,284 miles
Emissions	96 months or 80,000 miles	86 months or 73,284 miles
Corrosion	60 months or 100,000 miles	50 months or 93,284 miles
Transferable	Powertrain includes daily rental and SRT vehicles. Transferable, no deductible. Sprinter and Ram chassis cab excluded in 2010.	Same
Roadside Assistance	No data reported to CARFAX	
Safety belt & inflatable restraint	No data reported to CARFAX	
Specific Components	No data reported to CARFAX	
Notes:	Corrosion: Coverage applies to outer panels. Inner panels are covered under corrosion for 3 years only. Emissions: Manufacturer covers emissions components under basic warranty. Emissions coverage may vary by state. Refer to owners manual for specific details. Transferable: Powertrain includes daily rental and SRT vehicles. Transferable, no deductible. Sprinter and Ram chassis cab excluded in 2010. Roadside Assistance: Administered by Cross Country. Safety Restraint: Seatbelts and related seatbelt components for vehicles sold and registered in KS are warranted against defects in workmanship and materials for 10/Unlimited. Specific Components: Wear items covered 1/12,000. Diesel: 5/100,000 no deductible. Notes: Noise emission warranty unlimited (heavy duty).	

- CARFAX Warranty Check provides an **estimate** of this vehicle's remaining warranty coverage. It does not take into account some vehicle history events such as some title brands that may void the original manufacturer warranty or ownership transfers that may decrease warranty coverage. This warranty information is only valid for vehicles manufactured for the United States. Complete warranty coverage information is available for this vehicle at the RAM web site.

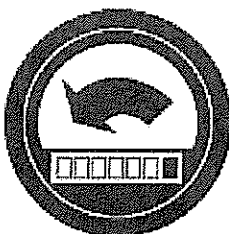
CARFAX VEHICLE HISTORY REPORT COURTESY OF

**CARFAX BUYBACK GUARANTEE****CARFAX Buyback Coverage for:****Guarantee Coverage:** 05/10/2014 - 05/10/2015**CARFAX Vehicle Description:** 2013 RAM RAM TRUCK 1500 SLT**VIN:** 1C6RR6GT8DS558275**Body Style:** CREW PICKUP**Driveline:** REAR WHEEL DRIVE**Engine:** 5.7L V8 SFI OHV 16V**CARFAX will buy this vehicle back if**

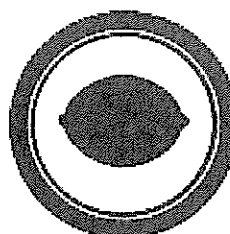
you find that any of these severe problems were reported by a Department of Motor Vehicles and were not included in this report.



SEVERE DAMAGE
Salvage/Junk
Rebuilt/Reconstructed
Dismantled
Fire/Flood/Hail



ODOMETER PROBLEMS
Exceeds Mechanical Limits
Not Actual Mileage



LEMON HISTORY
Manufacturer Buyback

Terms and Conditions Apply

CARFAX agrees to buy this vehicle back from the holder of this Vehicle History Report if the report indicates the vehicle qualifies for the CARFAX Buyback Guarantee and if a Branded Title listed above (as fully defined in the Terms and Conditions) actually exists for this vehicle. View Terms and Conditions at <http://www.carfaxonline.com/legal/bbgTerms>.

EXHIBIT 5

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

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

12 **DERRICK POOLE,**

13 **Plaintiff,**

14 **v.**

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

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.**

DEFENDANT NEVADA AUTO
DEALERSHIP INVESTMENTS LLC
D/B/A SAHARA CHRYSLER, JEEP,
DODGE AND COREPOINTE
INSURANCE CO. RESPONSE TO
PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSIONS

24 **Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS LLC d/b/a**
25 **SAHARA CHRYSLER, JEEP, DODGE AND COREPOINTE INSURANCE CO., by and**
26 **through their counsel of record, JEFFERY A. BENDAVID, ESQ. and STEPHANIE J.**
27 **SMITH, ESQ. of Moran Brandon Bendavid Moran, hereby submits responses to**
28 **PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS.**



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8888

1 identity of documents protected by such privileges or doctrines, a continuing objection to
2 each and every Request for Admission is hereby made.

3 5. Defendant objects to the Requests for Admission to the extent they are
4 irrelevant, immaterial, not reasonably calculated to lead to the discovery of relevant and
5 admissible evidence, and are unduly burdensome and oppressive because they seek
6 information on matters unrelated to the subject matter of the present lawsuit.
7

8 6. Defendant objects to the Requests for Admission to the extent they seek
9 information available from public sources and, as such, subject Defendant to undue burden
10 and oppression.
11

12 7. Defendant objects to the Requests for Admission to the extent they seek
13 disclosure of confidential commercial, financial, and/or proprietary information without
14 establishing the relevancy of such information to the issues raised in this litigation.
15

16 **REQUEST FOR ADMISSION NO. 1**

17 Admit that prior to selling the VEHICLE to the Plaintiff, YOU acquired the VEHICLE from
18 a private third party by the name of Dale Hinton on May 5, 2014.

19 **ANSWER TO REQUEST FOR ADMISSION NO. 1**

20 Admit.

21 **REQUEST FOR ADMISSION NO. 2**

22 Admit YOU entered the VEHICLE into YOUR inventory on May 5, 2014.
23

24 **ANSWER TO REQUEST FOR ADMISSION NO. 2**

25 Admit.
26
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8426
FAX: (702) 384-8868

1 **REQUEST FOR ADMISSION NO. 3**

2 Admit that after YOU entered the VEHICLE into YOUR vehicle inventory, YOU knew the
3 vehicle was involved in a previous collision/accident on March 26, 2014.

4 **ANSWER TO REQUEST FOR ADMISSION NO. 3**

5 Admit.

6 **REQUEST FOR ADMISSION NO. 4**

7 Admit that the Dodge certified pre owned inspection on the VEHICLE YOU sold to the
8 Plaintiff was undertaken by YOU on May 8, 2014.

9 **ANSWER TO REQUEST FOR ADMISSION NO. 4**

10 Admit.

11 **REQUEST FOR ADMISSION NO. 5**

12 Admit that the Dodge certified pre owned inspection undertaken by YOU was conducted by
13 YOUR certified and trained technician.

14 **ANSWER TO REQUEST FOR ADMISSION NO. 5**

15 Admit.

16 **REQUEST FOR ADMISSION NO. 6**

17 Admit YOU sold the VEHICLE to the Plaintiff on May 25, 2014.

18 **ANSWER TO REQUEST FOR ADMISSION NO. 6**

19 Admit.

20 **REQUEST FOR ADMISSION NO. 7**

21 Admit that at the YOU ENTERED the VEHICLE into YOUR vehicle inventory YOU had
22 possession of the Allstate collision estimate, attached to these requests as Exhibit 1.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

830 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8888

1 **ANSWER TO REQUEST FOR ADMISSION NO. 7**

2 Defendant admit that the document attached as Exhibit 1 appears to be the document that
3 was in possession of Defendant.

4 **REQUEST FOR ADMISSION NO. 8**

5 Admit that the Allstate collision estimate attached to these requests as Exhibit 1 involves the
6 same VEHICLE YOU sold to the Plaintiff on May, 25, 2014.

7 **ANSWER TO REQUEST FOR ADMISSION NO. 8**

8 Defendant admits that Exhibit 1 appears to have the same VIN as the subject vehicle of this
9 litigation.

10 **REQUEST FOR ADMISSION NO. 9**

11 Admit that the Allstate collision estimate, attached to these requests as Exhibit 1, indicates
12 the repairs being done to the VEHICLE are the result of a collision/accident the VEHICLE
13 was involved in on March 26, 2014.

14 **ANSWER TO REQUEST FOR ADMISSION NO. 9**

15 Defendant admits that Exhibit 1 is a collision estimate, and that the document speaks for
16 itself.

17 **REQUEST FOR ADMISSION NO. 10**

18 Admit that YOU acquired possession of the Allstate collision estimate, attached to these
19 requests at Exhibit 1, from Dale Hinton.

20 **ANSWER TO REQUEST FOR ADMISSION NO. 10**

21 Admit.
22
23
24
25
26
27
28



MORAN BRANDON
BENAUID MORAN
ATTORNEYS AT LAW

830 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 394-8424
FAX: (702) 394-8888

1 **REQUEST FOR ADMISSION NO. 11**

2 Admit that the photos attached as Exhibit 2 to these requests depict portions of the repairs to
3 the VEHICLE which were the result of the previous collision /accident the VEHICLE was
4 involved in on March 26, 2014.
5

6 **ANSWER TO REQUEST FOR ADMISSION NO. 11**

7 Defendant admits only that the photos appear to depict the subject vehicle, however,
8 Defendant did not take these photos and therefore cannot authenticate them.
9

10 **REQUEST FOR ADMISSION NO. 12**

11 Admit the Carfax YOU obtained on the VEHICLE on May 10, 2014, attached hereto to
12 these requests as Exhibit 3, indicates the only collision/accident the VEHICLE was involved
13 in was on March 26, 2014.

14 **ANSWER TO REQUEST FOR ADMISSION NO. 12**

15 Defendant admits that it obtained a CARFAX for the subject vehicle of this litigation on
16 May 10, 2014, and that the document speaks for itself.
17

18 **REQUEST FOR ADMISSION NO. 13**

19 Admit that at the time YOU entered the VEHICLE into YOUR vehicle inventory on May 5,
20 2014, YOU intended to resell that VEHICLE to the community.

21 **ANSWER TO REQUEST FOR ADMISSION NO. 13**

22 Defendant admits only that it entered the subject vehicle into it vehicle inventory on May 5,
23 2014.
24

25
26 / / /

27 / / /
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8888

1 **REQUEST FOR ADMISSION NO. 14**

2 Admit that sometime after YOU entered the Plaintiff's VEHICLE into YOUR vehicle
3 inventory on May 5, 2014, but prior to the VEHICLE undergoing the Dodge certified pre
4 owned inspection on May 8, 2014, YOU undertook the necessary steps and/or procedures to
5 make an initial determination if YOU were going to (sic) resell the VEHICLE to the
6 community as a Dodge Certified Pre-Owned Vehicle.
7

8 **ANSWER TO REQUEST FOR ADMISSION NO. 14**

9 Defendant admits only that it made the decision to submit the subject vehicle of this
10 litigation for inspection prior to May 8, 2014, to determine if it could be a Certified Pre-
11 Owned vehicle. Defendant denies the remainder of this request.
12

13 **REQUEST FOR ADMISSION NO. 15**

14 Admit that sometime after the Plaintiffs VEHICLE underwent the Dodge certified pre
15 owned inspection by YOUR service department, YOU made the final decision that YOU
16 were going to resell the VEHICLE to the community as a Dodge certified pre owned
17 vehicle.
18

19 **ANSWER TO REQUEST FOR ADMISSION NO. 15**

20 Admit.

21 **REQUEST FOR ADMISSION NO. 16**

22 Admit that based upon the Allstate collision estimate, attached as Exhibit 1 to these
23 requests, that when YOU entered the VEHICLE into YOUR vehicle inventory, YOU
24 knew the nature and extent of the repairs to the VEHICLE as a result of the previous
25 collision/accident the VEHICLE was involved in on March 23, 2014.
26



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ATTORNEYS AT LAW

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1 **REQUEST FOR ADMISSION NO. 19**

2 Admit that the service technician in YOUR service department was certified and/or trained
3 to undertake the Dodge certified pre owned inspection on the VEHICLE YOU sold to the
4 Plaintiff.

5
6 **ANSWER TO REQUEST FOR ADMISSION NO. 19**

7 Admit.

8 **REQUEST FOR ADMISSION NO. 20**

9 Admit that YOUR service technician who undertook the Dodge certified pre owned
10 inspection on the VEHICLE YOU sold to the Plaintiff was trained to recognize the signs
11 and/or indications of prior collision/accident damage to a vehicle that was going to be resold
12 to the community as a Dodge certified pre owned.

13
14 **ANSWER TO REQUEST FOR ADMISSION NO. 20**

15 Admit.

16 **REQUEST FOR ADMISSION NO. 21**

17 Admit that the items that were replaced and/or repaired on the VEHICLE, as identified on
18 the Allstate collision report attached as Exhibit 1, were present during the Dodge certified
19 pre owned inspection undertaken by YOUR service technician on May 8, 2014.

20
21 **ANSWER TO REQUEST FOR ADMISSION NO. 21**

22 Defendant admits insofar as the documents speak for themselves.

23
24 **REQUEST FOR ADMISSION NO. 22**

25 Admit that on the certified pre-owned inspection report involving the VEHICLE YOU sold
26 to the Plaintiff, attached to these requests as Exhibit 4, is a true and correct copy of the
27 original prepared by YOU.



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EXHIBIT 6

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

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

11 **DERRICK POOLE,**

12 Plaintiff,

13 v.

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

14
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.

DEFENDANT NEVADA AUTO
DEALERSHIP INVESTMENTS LLC
D/B/A SAHARA CHRYSLER, JEEP,
DODGE'S SECOND AMENDED
RESPONSE TO PLAINTIFF'S FIRST
SET OF REQUESTS FOR
ADMISSIONS

24 Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS LLC d/b/a
25 SAHARA CHRYSLER, JEEP, DODGE AND COREPOINTE INSURANCE CO., by and
26 through their counsel of record, JEFFERY A. BENDAVID, ESQ. and STEPHANIE J.
27 SMITH, ESQ. of Moran Brandon Bendavid Moran, hereby submits second amended
28 responses to PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS.



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BENDAVID MORAN
ATTORNEYS AT LAW

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FAX: (702) 384-6888

1 identity of documents protected by such privileges or doctrines, a continuing objection to
2 each and every Request for Admission is hereby made.

3 5. Defendant objects to the Requests for Admission to the extent they are
4 irrelevant, immaterial, not reasonably calculated to lead to the discovery of relevant and
5 admissible evidence, and are unduly burdensome and oppressive because they seek
6 information on matters unrelated to the subject matter of the present lawsuit.
7

8 6. Defendant objects to the Requests for Admission to the extent they seek
9 information available from public sources and, as such, subject Defendant to undue burden
10 and oppression.
11

12 7. Defendant objects to the Requests for Admission to the extent they seek
13 disclosure of confidential commercial, financial, and/or proprietary information without
14 establishing the relevancy of such information to the issues raised in this litigation.

15 8. Defendant objects to Plaintiff's definition of "YOU" and "YOUR" as it lists
16 "your attorneys and their employees and agents" as being part of "YOU" and "YOUR",
17 accordingly this definition violates attorney-client confidentiality, and a party's attorney is
18 not a party to the litigation in which they represent that party.
19

20 **REQUEST FOR ADMISSION NO. 36**

21 Admit YOU have no DOCUMENT or RECORD signed by the Plaintiff specifically and/or
22 explicitly disclosing and/or revealing that the VEHICLE the Plaintiff purchased from YOU
23 on May 25, 2014 had:
24

- 25 • a replaced right bumper bracket.
- 26 • a repaired left front end bracket.
- 27 • a replaced front bumper.
- 28



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BENAUID MORAN
ATTORNEYS AT LAW

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- a replaced radiator support.
- a replaced left outer and inner tie rod.
- a replaced aftermarket left stabilizer link.
- a repaired front left wheel.
- a repainted left front fender.

ANSWER TO REQUEST FOR ADMISSION NO. 36

Admit.

REQUEST FOR ADMISSION NO. 37

Admit YOU did not specifically and/or explicitly inform and/or communicate to the Plaintiff on the day he purchased the VEHICLE from YOU on May 25, 2014 that the VEHICLE he was purchasing had:

- a replaced right bumper bracket.
- a repaired left front end bracket.
- a replaced front bumper.
- a replaced radiator support.
- a replaced left outer and inner tie rod.
- a replaced aftermarket left stabilizer link.
- a repaired front left wheel.
- a repainted left front fender.

ANSWER TO REQUEST FOR ADMISSION NO. 37

Admit.



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1 **REQUEST FOR ADMISSION NO. 38**

2 Admit YOU did not specifically and/or explicitly inform and/or communicate to the
3 Plaintiff on the day he purchased the VEHICLE from YOU on May 25, 2014 that the
4 VEHICLE had sustained \$4,088.77 in previous collision damage.
5

6 **ANSWER TO REQUEST FOR ADMISSION NO. 38**

7 Admit.

8 DATED this 21st day of September, 2017
9

10 **MORAN BRANDON BENDAVID MORAN**
11

12 /s/: Jeffery A. Bendavid, Esq.

13 **JEFFERY A. BENDAVID, ESQ.**

14 Nevada Bar No. 6220

15 **STEPHANIE J. SMITH, ESQ.**

16 Nevada Bar No. 11280

17 630 South 4th Street

18 Las Vegas, NV 89101

19 *Attorney for Defendants, Nevada Auto*

20 *Dealership Investments LLC d/b/a Sahara*

21 *Chrysler and Corepointe Insurance Co.*
22
23
24
25
26
27
28



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BENDAVID MORAN**
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EXHIBIT 7

1 **JEFFERY A. BENDAVID, ESQ.**
Nevada Bar No. 6220
2 **STEPHANIE J. SMITH, ESQ.**
Nevada Bar No. 11280
3 **MORAN BRANDON BENDAVID MORAN**
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6 j.bendavid@moranlawfirm.com
7 *Attorney for Defendants, Nevada Auto*
8 *Dealership Investments LLC d/b/a Sahara*
Chrysler and Corepointe Insurance Co.

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

11 **DERRICK POOLE,**
12
13 **Plaintiff,**

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

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,**

DEFENDANT NEVADA AUTO
DEALERSHIP INVESTMENTS LLC
D/B/A SAHARA CHRYSLER, JEEP,
DODGE'S THIRD AMENDED
RESPONSES TO PLAINTIFF'S FIRST
SET OF REQUESTS FOR
ADMISSIONS

23 **Defendant.**

24 **Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS LLC d/b/a**
25 **SAHARA CHRYSLER, JEEP, DODGE AND COREPOINTE INSURANCE CO., by and**
26 **through their counsel of record, JEFFERY A. BENDAVID, ESQ. and STEPHANIE J.**
27 **SMITH, ESQ. of Moran Brandon Bendavid Moran, hereby submits its third amended**
28 **responses to PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS.**



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1 identity of documents protected by such privileges or doctrines, a continuing objection to
2 each and every Request for Admission is hereby made.

3 5. Defendant objects to the Requests for Admission to the extent they are
4 irrelevant, immaterial, not reasonably calculated to lead to the discovery of relevant and
5 admissible evidence, and are unduly burdensome and oppressive because they seek
6 information on matters unrelated to the subject matter of the present lawsuit.
7

8 6. Defendant objects to the Requests for Admission to the extent they seek
9 information available from public sources and, as such, subject Defendant to undue burden
10 and oppression.
11

12 7. Defendant objects to the Requests for Admission to the extent they seek
13 disclosure of confidential commercial, financial, and/or proprietary information without
14 establishing the relevancy of such information to the issues raised in this litigation.

15 8. Defendant objects to Plaintiff's definition of "YOU" and "YOUR" as it lists
16 "your attorneys and their employees and agents" as being part of "YOU" and "YOUR",
17 accordingly this definition violates attorney-client confidentiality, and a party's attorney is
18 not a party to the litigation in which they represent that party.
19

20 **REQUEST FOR ADMISSION NO. 9**

21 Admit that the Allstate collision estimate, attached to these requests as Exhibit 1, indicates
22 the repairs being done to the VEHICLE are the result of a collision/accident the VEHICLE
23 was involved in on March 26, 2014.
24

25 **ANSWER TO REQUEST FOR ADMISSION NO. 9**

26 Defendant admits that pursuant to Exhibit 1, an Allstate collision estimate indicates that
27 repairs being done are from a collision/accident that the Vehicle was in on March 26, 2017.
28



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1 **REQUEST FOR ADMISSION NO. 11**

2 Admit that the photos attached as Exhibit 2 to these requests depict portions of the repairs to
3 the VEHICLE which were the result of the previous collision /accident the VEHICLE was
4 involved in on March 26, 2014.
5

6 **ANSWER TO REQUEST FOR ADMISSION NO. 11**

7 Defendant admits that the photos in Exhibit 2 depict the subject vehicle.

8 **REQUEST FOR ADMISSION NO. 12**

9 Admit the Carfax YOU obtained on the VEHICLE on May 10, 2014, attached hereto to
10 these requests as Exhibit 3, indicates the only collision/accident the VEHICLE was involved
11 in was on March 26, 2014.
12

13 **ANSWER TO REQUEST FOR ADMISSION NO. 12**

14 Defendant admits that it obtained a CARFAX for the subject vehicle of this litigation on
15 May 10, 2014, and that Exhibit 3 indicates the only collision/accident the Vehicle at that
16 time, was involved in was on March 26, 2014.
17

18 **REQUEST FOR ADMISSION NO. 17**

19 Admit that based upon the Allstate collision estimate, attached as Exhibit 1 to these
20 requests, when YOU sold the VEHICLE to the Plaintiff on May 25, 2014, YOU knew
21 the nature and extent of the repairs to the VEHICLE as a result of the March 26, 2014
22 collision/accident.
23

24 **ANSWER TO REQUEST FOR ADMISSION NO. 17**

25 Defendant admits that it had the Allstate collision estimate when it sold the subject vehicle
26 to the Plaintiff, and that Exhibit 1 reflects repairs on the Vehicle from a March 26, 2014
27 collision/accident.
28



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1 **REQUEST FOR ADMISSION NO. 22**

2 Admit that on the certified pre-owned inspection report involving the VEHICLE YOU sold
3 to the Plaintiff, attached to these requests as Exhibit 4, is a true and correct copy of the
4 original prepared by YOU.
5

6 **ANSWER TO REQUEST FOR ADMISSION NO. 22**

7 Defendant admits that Exhibit 4 is a true and correct copy of the certified pre-owned vehicle
8 checklist.
9

10 **REQUEST FOR ADMISSION NO. 23**

11 Admit that at the time YOU sold the VEHICLE to the Plaintiff on May 25, 2014. The
12 VEHICLE had a replaced right bumper bracket.

13 **ANSWER TO REQUEST FOR ADMISSION NO. 23**

14 Defendant admits that Exhibit 1 states a replaced right bumper bracket on the Vehicle.
15

16 **REQUEST FOR ADMISSION NO. 24**

17 Admit that at the time YOU sold the VEHICLE to the Plaintiff on May 25, 2014 the
18 VEHICLE had a repaired left front end bracket.

19 **ANSWER TO REQUEST FOR ADMISSION NO. 24**

20 Defendant admits that Exhibit 1 states a repaired left front end bracket on the Vehicle.
21

22 **REQUEST FOR ADMISSION NO. 25**

23 Admit that at the time YOU sold the Vehicle to the Plaintiff on May 25, 2014 the VEHICLE
24 had a replaced front bumper.

25 **ANSWER TO REQUEST FOR ADMISSION NO. 25**

26 Defendant admits that Exhibit 1 states a replaced front bumper on the Vehicle.
27
28



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1 **REQUEST FOR ADMISSION NO. 26**

2 Admit that at the time YOU sold the VEHICLE to the Plaintiff on May 25, 2014 the
3 VEHICLE had a replaced radiator support.

4 **ANSWER TO REQUEST FOR ADMISSION NO. 26**

5 Defendant admits that Exhibit 1 states a replaced radiator support on the Vehicle.

6 **REQUEST FOR ADMISSION NO. 27**

7 Admit that at the time YOU sold the VEHICLE to the Plaintiff on May 25, 2014 the
8 VEHICLE had replaced left outer and inner tie rods.

9 **ANSWER TO REQUEST FOR ADMISSION NO. 27**

10 Defendant admits that Exhibit 1 states a replaced left outer tie rod and left inner tie rod on
11 the Vehicle.

12 **REQUEST FOR ADMISSION NO. 28**

13 Admit that at the time YOU sold the VEHICLE to the Plaintiff on May 25, 2014 the
14 VEHICLE had a replaced aftermarket left stabilizer link.

15 **ANSWER TO REQUEST FOR ADMISSION NO. 28**

16 Defendant admits that Exhibit 1 states a repaired A/M left stabilizer link on the Vehicle.

17 **REQUEST FOR ADMISSION NO. 29**

18 Admit that at the time YOU sold the VEHICLE to the Plaintiff on May 25, 2014 the
19 VEHICLE had a repaired front left wheel.

20 **ANSWER TO REQUEST FOR ADMISSION NO. 29**

21 Defendant admits that Exhibit 1 states a Wheel Reconditioned LF or a RCY LT/Front
22 Wheel on the Vehicle.



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1 **REQUEST FOR ADMISSION NO. 30**

2 Admit that at the time YOU sold the VEHICLE to the Plaintiff on May 25, 2014 the
3 VEHICLE had a repainted left front fender.

4 **ANSWER TO REQUEST FOR ADMISSION NO. 30**

5 Defendant admits that Exhibit 1 reflects a partially refinished LT Fender on the Vehicle.

6 **REQUEST FOR ADMISSION NO. 31**

7 Admit the cost of the property damage sustained to the VEHICLE as a result of the previous
8 collision/accident the VEHICLE was involved in on March 26, 2014 was \$4,088.77.

9 **ANSWER TO REQUEST FOR ADMISSION NO. 31**

10 Defendant admits that Exhibit 1 states a Total Cost of Repairs of \$4,088.77.

11 **REQUEST FOR ADMISSION NO. 32**

12 Admit that none of the replaced or repaired items identified in request numbers through 23
13 through 30 were notated or stated anywhere on the certified pre owned inspection report,
14 attached as Exhibit 4.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24



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1 **ANSWER TO REQUEST FOR ADMISSION NO. 32**

2 Defendant admits that Exhibit 4, the certified preowned checklist, does not specifically
3 notate or state any of the items in RFA 23-30.

4 DATED this 2nd day of October, 2017

6 **MORAN BRANDON BENDAVID MORAN**

8 /s/: Jeffery A. Bendavid, Esq.

9 **JEFFERY A. BENDAVID, ESQ.**

10 Nevada Bar No. 6220

11 **STEPHANIE J. SMITH, ESQ.**

12 Nevada Bar No. 11280

13 630 South 4th Street

14 Las Vegas, NV 89101

15 *Attorney for Defendants, Nevada Auto*

16 *Dealership Investments LLC d/b/a Sahara*

17 *Chrysler and Corepointe Insurance Co.*



**MORAN BRANDON
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EXHIBIT 8



AUTHENTIC PERFORMANCE

RECONDITIONED WHEEL USAGE

FCA US LLC POSITION

FCA US LLC does not recommend that customers use "reconditioned" wheels (wheels that have been damaged and repaired) because they can result in a sudden catastrophic wheel failure which could cause loss of control and result in injury or death.

For clarification:

- Cosmetic refinishing for the purpose of repairing a superficial flaw is an acceptable procedure providing it is limited to paint or clear coat only, the wheel is not modified in any way, and there is no exposure to paint curing heat over 200 degrees Fahrenheit.
- Damaged wheels are those which have been bent, broken, cracked or sustained some other physical damage which may have compromised the wheel structure.
- Repaired indicates that the wheel has been modified through bending, welding, heating, straightening, or material removal to rectify damage.
- Re-plating of chrome plated wheels, or chrome plating of original equipment painted or polished wheels is not an acceptable procedure as this may alter mechanical properties and affect fatigue life. Additionally, FCA US LLC Global Warranty Administration does not allow refinishing of wheels under warranty.

This statement supersedes any previously released information by FCA US LLC.

Release Date: August 11, 2010

For more information, log on to www.MoparRepairConnection.com.

EXHIBIT 9

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,)
)
 Plaintiff,)

vs.)

No. A-16-737120-C

Dept. No. XXVII

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.)

VIDEOTAPED DEPOSITION OF JOSHUA GRANT
30(b)(6) Representative from Sahara Chrysler

Taken on Wednesday, December 14, 2016

By a Certified Court Reporter

At 9:34 a.m.

At Thorndal, Armstrong

1100 East Bridger

Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

HUEBNER COURT REPORTING, INC. (702) 374-2319

<p style="text-align: right;">14</p> <p>1 know the answer or you can't recall the answer. 2 Again, though, if you say I can't recall here 3 today and then you can recall it at trial, that 4 might be another problem with respect to it. 5 If there is a document that you might 6 want to look at that might refresh your 7 recollection on things, there is no problem in 8 doing that. If you want to do that -- in fact, 9 most of the time, I will probably be having those 10 documents to allow you to refresh your 11 recollection on things. 12 Do you have any questions before we 13 move forward? 14 A. No. I don't believe so. 15 Q. With whom are you currently employed? 16 MR. TERRY: Before we go on, outside we 17 talked about a stipulation given that he has 18 percipient knowledge based on his dealing with 19 bringing the truck in and the evaluation of the 20 truck, that you are able to examine him today as 21 a percipient witness, as well as a 30(b)(6). And 22 we stipulated to that today. 23 MR. WEST: That's correct. Counsel and 24 I, before the depo, he graciously informed me 25 this particular witness does have percipient HUEBNER COURT REPORTING, INC. (702) 374-2319</p>	<p style="text-align: right;">16</p> <p>1 will go ahead and lodge it. Okay? 2 With whom are you currently employed, 3 sir? 4 A. Currently, with Desert 215 Superstore, 5 which is part of Nevada Auto Group Investments. 6 Q. What is your current position at Desert 7 215? 8 A. I am the general manager. 9 Q. How long have you held that position, 10 approximately? 11 A. Three weeks. 12 Q. Prior to that, where were you employed? 13 A. I was employed with the same 14 corporation, and I had been there as their used 15 car director. 16 Q. When you say same corporation, let's 17 break it down -- 18 A. Okay. 19 Q. -- in dealer location. 20 A. Dealer locations. 21 Q. Okay. So you are at 215 now? 22 A. Yes. 23 Q. Prior to coming over to 215, were you 24 employed at Sahara Dodge on Sahara? 25 A. Yes. HUEBNER COURT REPORTING, INC. (702) 374-2319</p>
<p style="text-align: right;">15</p> <p>1 observations, was involved -- at least partially 2 involved in the transaction itself at issue here, 3 and he has been noticed only as a 30(b)(6) 4 representative to give certain testimony on 5 certain topics. 6 However, we have agreed in the interest 7 of time and economy that I will be asking him 8 questions regarding his percipient knowledge with 9 respect to certain aspects of this transaction 10 that he knows about, so we will be taking this 11 deposition in both his capacity as a 30(b)(6) and 12 as an individual. 13 However, we both have the understanding 14 that any questions outside the topics that have 15 been designated for him to testify though, he 16 would only be testifying in his individual 17 capacity. Any testimony with respect to his 18 percipient observations outside the topics would 19 not be binding on the corporation. 20 Is that your understanding, Counsel? 21 MR. TERRY: Yes. 22 BY MR. WEST: 23 Q. That is just all gobbledygook with 24 respect to it. If there is an objection that 25 needs to be made, your very well-learned counsel HUEBNER COURT REPORTING, INC. (702) 374-2319</p>	<p style="text-align: right;">17</p> <p>1 Q. Just for clarity, when I say Sahara 2 Dodge, we will be talking about the Dodge dealer 3 from where this truck was initially purchased 4 from, just so we have an understanding with that. 5 A. Okay. 6 Q. If we say Dodge 215, we will mean the 7 one on the Beltway. Is that fair? 8 A. Fair enough. 9 MR. TERRY: Is it Dodge 215 or Desert 10 215? 11 THE WITNESS: Desert. 12 BY MR. WEST: 13 Q. Okay. So Desert 215. 14 Prior to becoming the general manager 15 over at Desert 215, where were you employed? 16 A. Sahara Dodge. 17 Q. What was your title prior to leaving 18 there? 19 A. Used car director. 20 Q. How long did you hold the used car 21 director position at Sahara Dodge? 22 A. Three and a half years. Since they 23 opened. 24 Q. Again, those are estimates. You may 25 not know the exact date or months that you might HUEBNER COURT REPORTING, INC. (702) 374-2319</p>

18

1 have been employed or when you changed jobs, but
 2 it is an estimate?
 3 **A. We opened in August of 2013, and I**
 4 **started with the company when they opened there.**
 5 **Q. So you were an original employee when**
 6 **Sahara Dodge first opened?**
 7 **A. Yes.**
 8 **Q. Did your job title as used car director**
 9 **ever change there?**
 10 **A. No.**
 11 **Q. So you were the used car director at**
 12 **Sahara Dodge for two and a half years, the whole**
 13 **time?**
 14 **A. Yes.**
 15 **Q. Prior to being the used car director at**
 16 **Sahara Dodge, where were you employed?**
 17 **A. At the Avondale Auto Group.**
 18 **Q. Which auto group?**
 19 **A. Avondale Auto Group.**
 20 **Q. Avondale?**
 21 **A. Avondale.**
 22 **Q. Where are they located?**
 23 **A. Avondale, Arizona.**
 24 **MR. WEST: Brian, don't get too casual**
 25 **on me.**

HUEBNER COURT REPORTING, INC. (702) 374-2319

19

1 **MR. TERRY: This room can be very, very**
 2 **cold or this room can be very, very hot.**
 3 **MR. WEST: I am being facetious.**
 4 **MR. TERRY: Watch out, I may take off**
 5 **my tie.**
 6 **MR. WEST: Loosen it a little, at**
 7 **least.**
 8 **BY MR. WEST:**
 9 **Q. So Avondale, Arizona, what was -- was**
 10 **it a particular franchise dealership?**
 11 **A. It was Dodge Chrysler Jeep and a couple**
 12 **other franchises as well.**
 13 **Q. Were you working within the Dodge**
 14 **franchise?**
 15 **A. Dodge and Chrysler Jeep, yes.**
 16 **Q. What was your position at Avondale**
 17 **Dodge?**
 18 **A. I was their used car director as well.**
 19 **Q. How long did you hold that position?**
 20 **A. From 2004 to 2013.**
 21 **Q. Wow, you were there for quite some**
 22 **time.**
 23 **A. Yes.**
 24 **Q. Were you the used car director the**
 25 **entire time?**

HUEBNER COURT REPORTING, INC. (702) 374-2319

20

1 **A. Yes.**
 2 **Q. So it is safe to say you have been in**
 3 **the used car or the vehicle dealership business**
 4 **involving used cars for 13 years at least?**
 5 **A. At least.**
 6 **Q. I think we don't need to go back any**
 7 **further.**
 8 **With respect to your position as the**
 9 **used car director at Sahara Dodge, can you give**
 10 **me a description or a thumbnail sketch of what**
 11 **your responsibilities included?**
 12 **A. Yes. I was responsible for inventory,**
 13 **for purchases, for wholesale, as well as pricing,**
 14 **some advertisement for the used car department.**
 15 **I oversaw the used car mechanical operations.**
 16 **Q. When you say you oversaw the used car**
 17 **mechanical operations, what was entailed in that?**
 18 **A. I would coordinate with the service**
 19 **department, the inspections of vehicles, and the**
 20 **repairs.**
 21 **Q. Would that also include having a CPO, a**
 22 **certified pre-owned inspection, done on a used**
 23 **car if it was going to be resold to the community**
 24 **as a CPO?**
 25 **A. Yes, it would.**

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1 **Q. When you say you coordinated with the**
 2 **service department, what exactly was entailed in**
 3 **that coordination with the service department**
 4 **when it had to do with a certified pre-owned**
 5 **Dodge car?**
 6 **A. I would give the keys to the vehicle**
 7 **and would coordinate with the clerk of that**
 8 **department what kind of certification we would do**
 9 **on that particular vehicle.**
 10 **Q. Let me go back to something that we**
 11 **need to cover before we get into the subject**
 12 **matters.**
 13 **A. Okay.**
 14 **Q. I have had this marked as Exhibit 1,**
 15 **which is a copy of the deposition notice for this**
 16 **witness.**
 17 **(Deposition Exhibit 1 marked.)**
 18 **BY MR. WEST:**
 19 **Q. I would like you to take a look at**
 20 **Exhibit 1. Have you seen that document before**
 21 **today? Please take your time and look at it.**
 22 **And you also might want to take a look**
 23 **at Exhibit 1 attached to Exhibit 1.**
 24 **A. So your question, for clarification, is**
 25 **have I seen this or have I seen the attachment?**

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1 Q. Both the deposition and the attachment.
 2 MR. TERRY: Just for clarification,
 3 when the original second amended notice of taking
 4 deposition came over, Exhibit 1 was not attached.
 5 We agreed to -- it was originally attached to a
 6 prior one, so. We agree it is to be used today.
 7 THE WITNESS: So, yes, I have seen the
 8 attached exhibit.
 9 BY MR. WEST:
 10 Q. Today you have actually been designated
 11 by Sahara Dodge to testify about certain matters
 12 within your knowledge or matters that you have
 13 become aware of with respect to certain topics --
 14 A. Right.
 15 Q. -- involving certain procedures and
 16 things.
 17 With respect to Page 4 of Exhibit 1
 18 that has to do with all of the subject matters
 19 and topics that goes on to Page 5, have you
 20 reviewed all of those different topics and
 21 subject matters before you came here today?
 22 A. Yes.
 23 Q. Do you feel comfortable reading those
 24 topics and subject matters, testifying on behalf
 25 of the corporation with respect to Sahara Dodge
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1 as to those topic matters here today involving
 2 CPO cars and used cars in general?
 3 A. Yes.
 4 Q. Is that based primarily upon your
 5 experience?
 6 A. Yes.
 7 Q. Is that based primarily on your
 8 experience as a used car manager?
 9 A. Yes.
 10 Q. Those different policies and practices
 11 that were in place involving certified pre-owned
 12 Dodge vehicles, did they change at any point in
 13 time between 2013, 2014, 2015?
 14 A. Not to my knowledge.
 15 Q. And would you be the person who would
 16 know that if they did change?
 17 A. Yes.
 18 Q. Because that is part of your
 19 obligations within your job position to know if
 20 there were any changes in policy?
 21 A. Yes.
 22 Q. So you started in Sahara Dodge August
 23 of 2014, was it?
 24 A. '13.
 25 Q. '13. I'm sorry. Thank you.
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1 So from 8/13 until the time you left
 2 Sahara Dodge and went to Desert 215, had any of
 3 the policies, practices, or procedures involving
 4 certified pre-owned vehicles changed during your
 5 tenure as the used car manager? Were they all
 6 the same?
 7 A. In what regard?
 8 Q. Well, in 2014 -- in 2013, 2014, 2015,
 9 and we will get into this a little more
 10 specifically, but in a general sense, there were
 11 certain policies, practices, and procedures that
 12 the used car department followed and took into
 13 account with respect to the choices and decisions
 14 of CPO'ing a given vehicle for certified
 15 pre-owned resale to the community, correct?
 16 A. Yes.
 17 Q. And those were all standardized
 18 procedures, correct?
 19 A. Yes. From the manufacturer, yes.
 20 Q. Correct. We will talk about what the
 21 manufacturer's guidelines are.
 22 But in addition to the manufacturer's
 23 guidelines and in following those, did Sahara
 24 Dodge have any written policies, practices, or
 25 procedures with respect to how CPO vehicles would
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1 be chosen to be CPO vehicles, how they would be
 2 inspected, those types of things?
 3 MR. TERRY: You are talking different
 4 than what the manufacturer's requirements were?
 5 BY MR. WEST:
 6 Q. In addition to the manufacturer's
 7 requirements, right.
 8 A. I don't think they changed, no.
 9 Q. Let me ask it this way. That was a
 10 poor question. While you were the used car
 11 manager at Sahara Dodge, the way in which you or
 12 your department made the decision or the choice
 13 to decide to resell a vehicle as a certified
 14 pre-owned to the community, the processes by
 15 which you did that, the inspections that
 16 happened, the documents that were generated
 17 because of that process, did any of that change
 18 from the entire time when you were the used car
 19 manager or did they all stay the same?
 20 A. They stayed the same.
 21 Q. Were you in charge of establishing
 22 those policies as the used car manager over at
 23 Sahara Dodge?
 24 A. Yes.
 25 Q. Did you put those policies in writing?
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1 **A. No.**

2 **Q.** Was that something that when you

3 established that policy, that was just a policy

4 that you might have established involving CPOs,

5 but it wasn't a written policy, correct?

6 **A. Correct.**

7 **Q.** And that policy, I am assuming and

8 correct me if I am wrong, was this has to be done

9 a certain way every single time, correct?

10 **A. Correct.**

11 **Q.** And would you agree that within the car

12 dealership industry, that standardized practices

13 are the best way to go about doing business to

14 make sure things are done right?

15 **A. That is a very general question, but**

16 **yes.**

17 **Q.** Why are standardized practices

18 important for a dealership to adopt and follow in

19 the car dealership industry when it comes to

20 sales? Based on your experience, of course.

21 **A. Routine, keep you out of trouble.**

22 **Q.** Correct. You want uniformity?

23 **A. Correct.**

24 **Q.** With everybody being on the same page

25 to avoid any issues downstream, correct?

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1 **A. Correct.**

2 **Q.** If people follow the procedures and

3 they do them correctly, and they do them the same

4 way every single time, and those procedures are

5 followed, that avoids headaches down the road,

6 correct?

7 **A. Correct.**

8 **Q.** Has that been your experience?

9 **A. Yes.**

10 **Q.** So you feel comfortable sitting here

11 today talking about all of the various policies,

12 practices, and procedures that Sahara Dodge had

13 in effect during the time frame that you were the

14 used car manager?

15 **A. Yes.**

16 **Q.** You feel comfortable talking about all

17 of the factors, criteria, information,

18 conditions, or other standards that Sahara Dodge

19 would take into account in making the

20 determination as to whether or not to resell a

21 vehicle as a certified pre-owned to the

22 community?

23 **A. Yes.**

24 **Q.** And that would apply to the entire time

25 frame that you were the used car manager,

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1 correct?

2 **A. It would.**

3 **Q.** And that would be based upon your

4 personal knowledge and experience because you

5 were the person in charge of that process,

6 correct?

7 **A. Yes.**

8 **Q.** I would like you to take a look at

9 Page 6 of Exhibit 1.

10 **A. Okay.**

11 **Q.** At the bottom, there is a document

12 request. Number 1 asks for any documents,

13 including, but not limited to, any and all

14 protocols, manuals, guidelines, rules,

15 checklists, standards, procedures, handbooks,

16 instructions, guide books, or any other document

17 whether generated by you, meaning Sahara Dodge,

18 or by the manufacturer that were in effect at the

19 time relating to the acquisition and inspection

20 of the certified pre-owned vehicle identified in

21 Exhibit 1.

22 Exhibit 1 is a generalized

23 advertisement with respect to certified pre-owned

24 vehicles in general.

25 My question to you is, and I think you

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1 partially answered it and you could have

2 completely answered it: Are there any -- other

3 than the manufacturing guidelines that you

4 received from the manufacturer's CPO manual, are

5 there any other written policies, practices, or

6 procedures that were either generated by you or

7 by Sahara Dodge to your knowledge that Sahara

8 Dodge actually generated and drafted with respect

9 to the used car department as it related to CPO

10 vehicle sales to the community?

11 **A. Not that I'm aware of.**

12 **Q.** You certainly didn't do any.

13 **A. Correct.**

14 **Q.** And you are not aware of anyone within

15 the service department that may have generated

16 any types of written policies and practices or

17 procedures relating to that?

18 **A. No.**

19 **Q.** So as you sit here today, you are not

20 aware of any responsive documents to Item

21 Number 1, correct? No written policies exist

22 other than what has been --

23 **A. Other than what has been -- yes.**

24 **Q.** Other than the manufacturer?

25 **A. The manufacturer, yeah, and what we**

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1 **provided, yeah.**

2 **Q.** I just want to make sure, just for

3 clarity, that there is no policy, handbook, or

4 anything written down on paper or anything that

5 you generated or anybody in the dealership

6 generated that said this is how we are going to

7 make the decision to CPO cars, this is what has

8 to happen. Nothing like that?

9 **A. No. We follow the manufacturer's**

10 **guidelines to a T.**

11 **Q.** Item Number 2 to Exhibit 1 asks for

12 documents, any written policies, practices, or

13 procedures that were in effect at the time you,

14 Sahara Dodge, acquired the Plaintiff's vehicle

15 into Sahara Dodge's inventory that refer,

16 reflect, or relate to any requirement, process,

17 method, manner in which you are required to

18 undertake any inspection of the vehicle in which

19 you intend to display or sell as a certified

20 pre-owned identified in Exhibit 1.

21 With respect to the vehicle at issue

22 here again, there was nothing written with

23 respect at the time that the vehicle at issue

24 came into acquisition into your inventory, I

25 think it was in May of 2015, nothing written with

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1 respect to the decision to CPO that car, correct,

2 other than the manufacturer's recommendations,

3 correct?

4 **A. Correct.**

5 **Q.** Thank you.

6 Number 3 asks for any and all documents

7 generated by you, Sahara Dodge, that refer,

8 reflect, or relate to the CPO sale, CPO

9 inspection, CPO eligibility involving the

10 vehicle.

11 Your lawyer has given me a whole host

12 of documents relating to that. We are going to

13 go over those.

14 **A. Okay.**

15 **Q.** As you sit here today, do you believe

16 all responsive documents in Number 3 have been

17 provided?

18 **A. I believe so.**

19 **Q.** Before you came here to the deposition

20 today, other than talking with Mr. Terry, what

21 have you done to prepare for your deposition here

22 today? Have you talked to anybody other than

23 Mr. Terry, reviewed any documents, anything like

24 that?

25 **A. Met with the paralegal.**

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1 **Q.** I don't want to know what was said. I

2 just want to know --

3 **A. Yeah. There was a meeting with the**

4 **paralegal. They gathered documents and whatnot**

5 **that were going to relate to the trial, yes.**

6 **Q.** Before you came to the deposition here

7 today, did you review the deal file with respect

8 to Mr. Poole?

9 **A. Yes.**

10 **Q.** Did you review the deal file with

11 respect to Mr. Hinton who was the person who

12 traded in the car that was ultimately resold to

13 Mr. Poole?

14 **A. Yes.**

15 **Q.** Did you talk to anybody in service or

16 in sales regarding this particular case in

17 preparation for your deposition here today?

18 **A. No.**

19 **Q.** As you sit here today, do you have a

20 pretty good understanding based upon your review

21 of the documents as to the type of transaction

22 that occurred, how the vehicle at issue was

23 acquired into Sahara Dodge's inventory, how it

24 was CPO'd, that type of thing?

25 **A. Yes.**

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1 **Q.** And that testimony would be based on

2 both your review of those documents and your

3 personal familiarity and experience with that

4 process, correct?

5 **A. Yes.**

6 **Q.** Number 4 asks for all CarFax,

7 AutoChecks, or other similar report obtained by

8 you, Sahara Dodge, prior to certifying the

9 vehicle as CPO and given -- and presented to the

10 Plaintiff.

11 Are you aware that there were some

12 CarFax reports that were generated on the vehicle

13 that were given to Mr. Poole?

14 **A. Yes.**

15 **Q.** Have you reviewed those?

16 **A. Yes.**

17 **Q.** Based upon you being a used car manager

18 within the dealership industry for over ten

19 years, how many vehicles would you say,

20 estimating, that you have been responsible for

21 selling to the community throughout your tenure

22 in the industry?

23 **MR. TERRY: Just any vehicle or CPO?**

24 **MR. WEST: Used vehicles. It is a big**

25 **number.**

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1 **THE WITNESS: Throughout the auto**
2 **groups, probably over 15,000 I would say.**
3 BY MR. WEST:
4 Q. Were you ever a salesman?
5 A. Yes.
6 Q. For how long?
7 A. About a year and a half.
8 Q. So is it a fair statement that the vast
9 majority of your expertise or experience within
10 the auto dealership industry really revolves
11 around and emphasizes resale used cars to the
12 community?
13 A. Yeah, that's a fair statement.
14 Q. Yes?
15 A. Yes, that's a fair statement.
16 Q. Now, given your intimate familiarity
17 and experience in selling used vehicles to the
18 community, have you acquired an understanding of
19 what things are important to used car buyers when
20 they make a decision to buy a used vehicle?
21 A. Yes.
22 Q. What are some of them? I know there's
23 a lot.
24 A. Yeah. Value, dependability.
25 Q. Vehicle condition?

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1 A. Yeah.
2 Q. Yes?
3 A. Yes.
4 Q. Mechanical condition?
5 A. Yes.
6 Q. Safety?
7 A. Yes.
8 Q. Price?
9 A. Always.
10 Q. But price is a variable that can go
11 either way depending on all of the other things
12 we have talked about, value, dependability,
13 vehicle condition, mileage, those types of
14 things?
15 A. Yes.
16 Q. Whether a car is listed as a CPO versus
17 a non-CPO in a comparable vehicle, correct?
18 A. Correct.
19 Q. Has it been your experience in dealing
20 with the Dodge CPO program that a CPO -- strike
21 that.
22 Has it been your experience as a used
23 car manager within the Dodge environment that if
24 a certified pre-owned Dodge is listed for sale as
25 a certified pre-owned versus a comparable car

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1 that is not CPO'd, that CPO vehicle will command
2 a higher price at time of listing for sale?
3 A. Yes and no.
4 Q. What's yes and what's no about it?
5 A. I think there would be a better value
6 in a certified vehicle, if that answers your
7 question better. Not necessarily a higher or
8 lower price.
9 Q. Has it been your experience as a used
10 car manager within the Dodge environment that a
11 vehicle that is certified as a certified
12 pre-owned Dodge will bring anywhere between 5 to
13 10 percent higher value than a comparable
14 non-certified CPO vehicle? I am talking listing
15 of the price, not the negotiations.
16 A. In just our dealership or are you
17 comparing this with the market?
18 Q. Within the Dodge environment.
19 A. Within the Dodge environment. I can't
20 answer that question. Everybody prices their
21 cars differently.
22 Q. So do you have any knowledge or opinion
23 or any answer with respect to as a general
24 proposition, does a Dodge CPO vehicle that is
25 listed and held out to the community as a

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1 certified pre-owned, would that vehicle as a
2 general rule be listed for a higher price than a
3 comparable vehicle that was not CPO'd?
4 A. Possibly.
5 Q. Do you have any estimation or estimate
6 as to when that happens more so? Is it
7 50 percent more of the time, 80 percent,
8 20 percent?
9 A. I don't have that statistic for you.
10 Q. Okay. Let's take the vehicle at issue
11 here --
12 A. Okay.
13 Q. -- for an example. This was a 2003
14 Dodge Ram Big Horn 1500, 5.7 Hemi, had 6,700
15 miles on it approximately. That car went through
16 the process. It was designated, sold -- excuse
17 me. Designated, listed, and advertised as a
18 Dodge CPO vehicle?
19 A. Uh-huh.
20 Q. If you took that exact same vehicle,
21 the same options, the same mileage, but it was
22 not designated as a CPO vehicle for whatever
23 reason --
24 A. Okay.
25 Q. -- would the Dodge, as we just

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1 policies behind a CPO certified Dodge vehicle?

2 **A. I don't see reason to doubt that, no.**

3 **Q.** Would you agree that all of the

4 different advertisements in Exhibit 2 advertise

5 with respect to purchasing a Dodge CPO vehicle to

6 a car buyer within the community a CPO's value, a

7 CPO's quality, a CPO's safety, a CPO's confidence

8 and assurance in buying a CPO, peace of mind, and

9 trust?

10 **MR. TERRY:** That's what these documents

11 say is what you are asking him to agree with?

12 **MR. WEST:** I will rephrase the

13 question.

14 **BY MR. WEST:**

15 **Q.** All of these various advertisements we

16 have been over in Exhibit 2, would you agree that

17 the language, what is being communicated in these

18 advertisements regarding the Dodge CPO process in

19 purchasing a Dodge CPO vehicle, instill in the

20 car buyer a sense of value, a sense of quality, a

21 sense of safety, a sense of confidence and

22 assurance, peace of mind, and trust when they buy

23 a CPO Dodge vehicle?

24 **MR. TERRY:** Let me object on grounds of

25 speculation. You are asking him to testify if

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1 these materials actually instill that in every

2 person who purchases a CPO vehicle. That's

3 speculation.

4 **MR. WEST:** I am just saying in general.

5 Not every person.

6 **THE WITNESS:** In general, I would agree

7 with you in their advertisements, their purpose.

8 **BY MR. WEST:**

9 **Q.** In going back to Page 17 of Exhibit 2,

10 which is the list of what it is worth, this list

11 appears to try and communicate that there are

12 certain benefits that are -- you could put a

13 value to if you purchase a CPO vehicle over a

14 non-CPO vehicle, correct?

15 **A. Yes.**

16 **Q.** So would you agree, as a used car

17 manager and being familiar with the Dodge used

18 car environment with respect to CPOs, that this

19 checklist goes directly to -- that a CPO vehicle,

20 if a consumer buys one, there is a built-in

21 additional value to buying a CPO vehicle because

22 you get all of these things as opposed to not

23 buying a CPO vehicle, true?

24 **A. I agree with that.**

25 **Q.** And Page 17 actually has a box to try

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1 and evaluate those various things about how much

2 you would pay for a 125-point inspection process,

3 correct?

4 **A. Yes.**

5 **Q.** And if a consumer went out and did

6 that, had to pay for that, that would cost money,

7 correct?

8 **A. Correct.**

9 **Q.** And same with all of these other

10 things, correct?

11 **A. Yes.**

12 **Q.** But the consumer doesn't have to do

13 those things because they are buying a CPO

14 vehicle from Sahara Dodge, correct?

15 **A. Correct.**

16 **MR. TERRY:** Doesn't have to go out and

17 independently do those things?

18 **MR. WEST:** That's the question.

19 **BY MR. WEST:**

20 **Q.** Based on your experience in the used

21 car environment for over ten years, especially

22 with Dodge CPO vehicles, does a car buyer in the

23 community have the right to expect that Sahara

24 Dodge is going to always be truthful, honest, and

25 accurate with them when it comes to the sale of

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1 their CPO vehicle?

2 **MR. TERRY:** Do they have the right to

3 expect truthfulness, is that your question?

4 **MR. WEST:** Yeah. I will have her

5 repeat it for you just so we have clarity.

6 **(Record read as follows:**

7 **"Q.** Based on your experience in

8 the used car environment for over

9 ten years, especially with Dodge

10 CPO vehicles, does a car buyer in

11 the community have the right to

12 expect that Sahara Dodge is going

13 to always be truthful, honest, and

14 accurate with them when it comes to

15 the sale of their CPO vehicle?"

16 **MR. TERRY:** Object. Speculation.

17 **BY MR. WEST:**

18 **Q.** Based on your experience?

19 **A. Yes.**

20 **Q.** Is that something that you instill into

21 your sales staff?

22 **A. Yes.**

23 **Q.** Is that something, to your knowledge,

24 that is instilled into your service staff?

25 **A. Yes.**

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