

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 1

Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
George O. West III Esq, State Bar No. 7951
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Telephone : (702) 318-6570
Email: gowesq@cox.net

CRAIG B. FRIEDBERG [SBN 4606]
Law Offices of Craig B. Friedberg, Esq.
Craig B. Friedberg, Esq, State Bar. No. 4606
4760 S. Pecos Road, Suite 103
Las Vegas, NV 89121
Telephone: (702) 435-7968
Email: attcbf@cox.net

Attorneys for Appellant Derrick Poole

Appendix Alphabetical Index

Vol.	Date	Description	Page Numbers
5	12/23/17	Case Appeal Statement	1012-1050
1	5/22/16	Complaint for Damages and Equitable and Declaratory Relief and Demand for Jury Trial	001-015
4	11/12/17	Decision and Order Granting Defendants' Motion For Summary Judgment	845-848
1	8/16/17	Defendants' Nevada Auto Dealership Investments LLC D/B/A Sahara Chrysler Jeep, Dodge and Corepoint Insurance Co's Answer to First Amended Complaint	034-047
1	10/2/17	Defendants' Nevada Auto Dealership Investments LLC's and Corepoint Insurance Company's Motion For Summary Judgment	048-225
3	11/3/17	Defendants' Motion to Strike Fugitive Documents Filed by Plaintiff on Order Shortening Time	644-750
4	11/3/17	Defendants' Motion to Strike Declaration of Rocco Avellini Attached to Plaintiff's Opposition on Order Shortening Time	751-783
5	12/19/17	Defendant's Nevada Auto Dealership Investment LLC's Motion for Attorney's Fees and Costs	869-1008
6	1/25/18	Defendant Nevada Auto Dealership Investments LLC's Reply in Support of Motion for Attorney's Fees and Costs	1322-1393
1	5/15/17	First Amended Complaint for Damages and Equitable and Declaratory Relief and Demand for Jury Trial	016-033
7	3/28/18	Judgment	1404-1405
4	12/8/17	Motion to Retax and Settle Costs	855-865
5	12/23/17	Notice of Appeal	1009-1011
4	12/1/17	Notice of Entry of Decision and Order Granting Defendants' Motion for Summary Judgment	849-854
7	3/28/18	Notice of Entry of Judgment	1406-1409
6-7	3/20/18	Notice of Entry of Order (On Defendants' Motion For Attorney's Fees and Costs and Plaintiff's Motion to Retax and Settle Costs	1398-1403
3	10/22/17	Notice of Errata on Plaintiff's Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	639-643

4	12/9/17	Order Denying Defendant Nevada Auto Dealership Investments LLC d/b/a Sahara Chrysler Jeep Dodge Ram's Motion to Strike Fugitive Documents and Motion to Strike the Declaration of Rocco Avillini Attached to Plaintiff's Opposition to Defendants' Motion for Summary Judgment	866-868
6	3/9/18	Order Granting, in Part, Defendants' Motion for Fees and Costs and Order Granting, in Part, Plaintiff's Motion to Retax Costs	1394-1397
2-3	10/21/17	Plaintiff's Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment	339-638
1-2	10/20/17	Plaintiff's Opposition to Defendant Sahara Motion For Summary Judgment	226-303
4	11/6/17	Plaintiff's Opposition to Defendants' Motion to Strike Fugitive Documents on OST	784-789
4	11/6/17	Plaintiff's Opposition to Defendants' Motion To Strike Declaration of Rocco Avillini in Support Of Plaintiff's Opposition to Defendants' Motion For Summary Judgment	790-844
5-6	1/15/18	Plaintiff's Opposition to Defendants' Motion for Attorney's Fees and Costs	1120-1321
2	10/20/17	Plaintiff's Response to Defendants Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	304-310
2	10/21/17	Plaintiff's Separate Statement of Undisputed Material Facts in Support of Plaintiff's Opposition To Defendants' Motion for Summary Judgment	311-338
5	12/28/17	Transcript of Proceedings (Defendants' Motion for MSJ and Motions to Strike)	1051-1119

Appendix Chronological Index

Vol.	Date	Description	Page Numbers
1	5/22/16	Complaint for Damages and Equitable and Declaratory Relief and Demand for Jury Trial	001-015
1	5/15/17	First Amended Complaint for Damages and Equitable and Declaratory a Demand for Jury Trial	016-033
1	8/16/17	Defendant Nevada Auto Dealership Investments LLC D/B/A Sahara Chrysler Jeep, Dodge and Corepoint Insurance Co's Answer to First Amended Complaint	034-047
1	10/2/17	Defendants Nevada Auto Dealership Investments LLC's and Corepoint Insurance Company's Motion For Summary Judgment	048-225
1-2	10/20/17	Plaintiff's Opposition to Defendant Sahara Motion For Summary Judgment	226-303
2	10/20/17	Plaintiff's Response to Defendants Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	304-310
2	10/21/17	Plaintiff's Separate Statement of Undisputed Material Facts in Support of Plaintiff's Opposition To Defendants' Motion for Summary Judgment	311-338
2-3	10/21/17	Plaintiff's Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment	339-638
3	10/22/17	Notice of Errata on Plaintiff's Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	639-643
3	11/3/17	Defendants' Motion to Strike Fugitive Documents Filed by Plaintiff on Order Shortening Time	644-750
4	11/3/17	Defendants' Motion to Strike Declaration of Rocco Avellini Attached to Plaintiff's Opposition on Order Shortening Time	751-783
4	11/6/17	Plaintiff's Opposition to Defendants' Motion to Strike Fugitive Documents on OST	784-789
4	11/6/17	Plaintiff's Opposition to Defendants' Motion To Strike Declaration of Rocco Avellini in Support Of Plaintiff's Opposition to Defendants' Motion For Summary Judgment	790-844

4	11/12/17	Decision and Order Granting Defendants' Motion For Summary Judgment	845-848
4	12/1/17	Notice of Entry of Decision and Order Granting Defendants' Motion for Summary Judgment	849-854
4	12/8/17	Motion to Retax and Settle Costs	855-865
4	12/9/17	Order Denying Defendant Nevada Auto Dealership Investments LLC d/b/a Sahara Chrysler Jeep Dodge Ram's Motion to Strike Fugitive Documents and Motion to Strike the Declaration of Rocco Avillini Attached to Plaintiff's Opposition to Defendants' Motion for Summary Judgment	866-868
4-5	12/19/17	Defendant Nevada Auto Dealership Investment LLC's Motion for Attorney's Fees and Costs	869-1008
5	12/23/17	Notice of Appeal	1009-1011
5	12/23/17	Case Appeal Statement	1012-1050
5	12/28/17	Transcript of Proceedings (Defendants' Motion for MSJ and Motions to Strike)	1051-1119
5-6	1/15/18	Plaintiff's Opposition to Defendants' Motion for Attorney's Fees and Costs	1120-1321
6	1/25/18	Defendant Nevada Auto Dealership Investments LLC's Reply in Support of Motion for Attorney's Fees and Costs	1322-1393
6	3/9/18	Order Granting, in Part, Defendants' Motion for Fees and Costs and Order Granting, in Part, Plaintiff's Motion to Retax Costs	1394-1397
6-7	3/20/18	Notice of Entry of Order (On Defendants' Motion For Attorney's Fees and Costs and Plaintiff's Motion to Retax and Settle Costs	1398-1403
7	3/28/18	Judgment	1404-1405
7	3/28/18	Notice of Entry of Judgment	1406-1409

June 28, 2016

CLIENT INFORMATION		VEHICLE INFORMATION			
NAME	Derrick Poole	YEAR/MAKE	2013 Dodge		
ADDRESS	9311 Heavenly View Ct.	MODEL	Ram 1500 4x2 4 Dr. SLT Blue		
CITY	Las Vegas	VIN	1C5RR6GT8DS558275		
STATE/ZIP	NV/89117	MILEAGE	17,468 @ DOL		
		ENGINE	8 Cyl/5.7L/FI		
		TRANSMISSION	AUTO	Y	MANUAL
		DRIVE	2WD	Y	4WD AWD

VEHICLE OPTIONS							
ABS	Y	Cassette		Leather Seats		P/Seats Dual	Towing Package Y
A/Conditioning	Y	CD Multi		Moon Roof		P/Steering	Y Traction Control Y
A/Cond. Dual Zone	Y	CD Single	Y	MP3	Y	P/Door Locks	Y Wheels Alloy Y
Air Bags Dual	Y	Cruise Control	Y	Navigation		P/Windows	Y Wheels Prem.
Air Bags Side	Y	DVD		Prkg. Sensors	Y	Rear Defrost	Wheels 19"
A/B Cut Off Sensor	Y	Entertainmt Syst.		Prem. Package		Rear Spoiler	Wheels 20"
Anti-Theft System	Y	Heated Mirrors		Prem. Sound	Y	Sport Package	3rd Row Seats
Back Up Camera		Heated Seats		Privacy Glass		Stability Control	Y
Blue Tooth	Y	Integrated Ph.		P/Seats	Y	Tinted Glass	Y

The following is my initial Vehicle Condition Report [VCR] outlining my findings after the inspection of the subject vehicle.

Additional Inspection Information

Please be advised that due to the nature of damage to improperly repaired collision or mechanical damaged vehicles it is sometimes necessary to conduct additional inspections and/or to dismantle certain parts to verify and analyze all remaining damage to the subject vehicle. In many instances when dealing with your original repairer or dealer this VCR may be sufficient information for them to complete a re-repair estimate for your review and authorization before any corrective measures begin. Please be advised that the re-repair process to a prior collision or mechanically damaged vehicle is different than the process that took place during the initial repair. All corrective measures must be performed by a facility familiar with the re-repair process of improperly repaired collision or mechanically damaged vehicles.

ASSIGNMENT:

I was retained by Mr. Derrick Poole to complete a Vehicle Condition Assessment for the subject vehicle listed above. This report contains my expert opinions as to the quality of the completed repairs, whether this vehicle should have been advertised, displayed and sold as a Chrysler CPO vehicle by the dealer. The nature and extent of the vehicle's deficiencies that existed at time of sale that was actually known or should have been known by the dealer, and the vehicle's inherent loss in value as a result of the subject accident.

INSPECTION AND LOCATION:

I inspected the subject vehicle at the office of Wreck Check Car Scan Center on May 20, 2016 at approximately 9:00 AM. My inspection included photographing the subject vehicle, product thickness readings of all exterior panels, inspecting the engine and trunk area, interior, underside and the front and rear suspensions.

QUALIFICATIONS:

My curriculum vitae is attached to this report. I am recognized in the automotive community as an expert in inspecting vehicles for the purpose of determining quality of collision and mechanical repair work, how collisions, and the damage caused by a particular collision or improper or substandard repairs can affect a vehicle's safety and safety systems, any deficiencies in repairs, and calculating vehicle inherent and repair related diminished value. In addition my experience extends to the evaluation of Actual Cash Value of vehicle, collision monitoring, determining total loss of damaged vehicles, dealer fraud and lemon law.

I have been qualified to testify in arbitration and trial on a multitude of occasions on the issues stated in the paragraph immediately herein above.

RESEARCH AND INVESTIGATION CONDUCTED:

Our office communicated with the vehicle owner and the Law Office of George O. West several days prior to my inspection at which time they briefly discussed the overall condition of the vehicle at the time after the purchase and also scheduled my inspection.

My inspection revealed several issues surrounding the vehicle condition that resulted in improper repairs and remaining damage due to the previous collision, which is also reflected on the Allstate body shop estimate dated March 26, 2017 that are listed below:

1. Improper alignment of the right and left wheel and tires. See photographs 7 & 8.
2. Improper gaps between exterior body panels. See photographs 9, 13, 14, 15 & 16.
3. Improper alignment of frame to body supports. See photographs 10, 11, 19, 20 & 22.
4. Witness marks on bolts. See photographs 12, 17.
5. Improper & abnormal tire wear. See photographs 21.

Also, my inspection revealed that it was evident that the subject vehicle suffered an impact to the left front and front causing damage, repair and/or replacement of the items listed on the Allstate Insurance damage estimate dated March 26, 2016, attached at Exhibit 3.

The damage was photographed without removing any shields or body parts and in clear view during my inspection.

It is also my opinion that any automotive professional in the business of selling Certified Pre-Owned vehicles to the community who undertook the CPO inspection, and who had the body shop estimate in their possession, knew or should have know the nature and extent of the prior collision damage and the nature and extent of subsequent repairs. Furthermore, when Mr. Poole discloses the prior collision damage to any potential buyer he will never be able to recover financially to be made whole as the car has also sustained diminished value.

ITEMS REVIEWED AND RELIED UPON TO DATE:

1. All photographs taken upon my inspection, which are produced with this report, including those specifically identified and attached to this report.
2. 17 Photographs of new 2017 Dodge Ram 1500s taken by Rocco Avellini at 215 Dodge's dealership on August 31, 2016 at approximately 7:30AM depicting no offset of any beds to such vehicles.
3. The Allstate Insurance estimate dated March 26, 2014, which I am informed and believe was prepared approximately two months prior to the dealer entering the subject vehicle into its inventory and three months prior to purchase date of June 26, 2016.
4. Photographs of the repair to the subject vehicle, which I am informed were produced by the dealer in discovery process in this case, that were undertaken to the vehicle based upon the March 26, 2014 Insurance Estimate, which are attached to this report as Exhibit 3.
5. Portions of the deposition transcripts of Joshua Grant and Raymond Gongora.
6. The Chrysler CPO inspection checklist relating to the subject vehicle.
7. The Chrysler CPO Manual dated September 2013, which I am informed and believe was the CPO manual in effect at the time the vehicle was put in the dealer's inventory and sold to Mr. Poole. It is also my understanding that the 2013 CPO manual was produced and identified by the dealer in discovery as the CPO manual that was in effect at the relevant time period.
8. Carmax vehicle history report dated May 10, 2014 involving the subject vehicle.

DESCRIPTION OF PHOTOGRAPHS:

My findings are explained below and the photographs attached to this report will outline my opinions and the issues surrounding the improper repairs, safety issues and remaining damage to the subject vehicle:

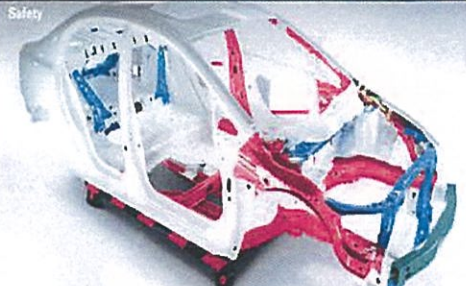
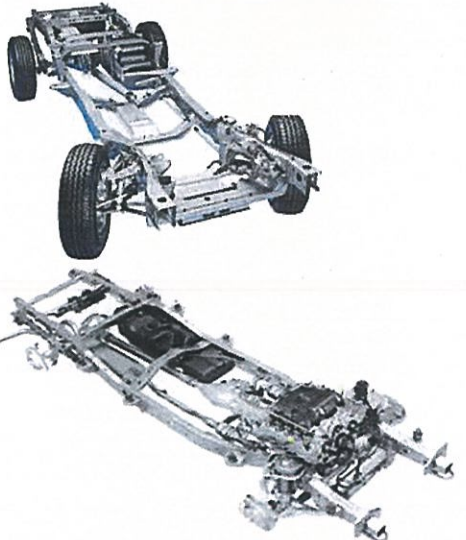
1. Left front and side view.
2. Right front and side view.
3. Left rear and side view.
4. Right rear and side view.
5. View of the instrument cluster showing the vehicle's current mileage.
6. View of the manufacturers information label showing the production date and the vehicle identification number.
7. Overview of the left front wheel and tire showing the position to the left front fender. Note that the [Yellow Arrow] wheel and tire is recessed into the fender wheel house. The position of the left front wheel and tire is different from the position of the right front wheel and tire shown at in the following photograph.

8. Overview of the right front wheel and tire showing the position to the right front fender. Note that the [Red Arrow] right front wheel and tire extends further from the right front fender which is evidence that the front portion of the frame and upper structure has a remaining sway condition.
9. Overview of the improper gap between the left front fender and the left front door which is evidence that the front portion of the frame and the upper structure has a remaining sway condition.
10. Overview of the misaligned right center body to frame support which is evidence of a remaining structural sway condition.
11. Overview of the left center body to frame support showing minor misalignment. This support is opposite of the support shown in photograph 10.
12. Rust forming on the witness marks on the front bumper nuts which is evidence that the front bumper was replaced as outlined on line 5 of exhibit 3.
13. Improper gap between the left portion of the front bumper and front grill which is evidence of the front portion of the frame having a remaining sag condition.
14. Improper gap between the right portion of the front bumper and front grill which is evidence of the front portion of the frame having a remaining sag condition.
15. Overview of the left portion of the subject vehicle. Note that the alignment of the pick-up bed and the rear portion of the cab assembly [yellow box – red arrow] is flush as opposed to the same area on the right side.
16. Overview of the right portion of the subject vehicle. Note that the alignment of the pick-up bed and the rear portion of the cab assembly [red box – yellow arrow] is not in alignment which is evidence that the center portion of the frame and cab assembly has a remaining structural condition. The passenger cabin extends further than the pick – up box.
17. Overview of the front bumper extension and support. Note that the position of the bolt and washing is misaligned [yellow box & arrow] and the witness marks on the bolt head.
18. Overview of the underside of the left front suspension showing a new part label on the strut assembly.
19. Overview of the misaligned frame to body support which is evidence of a remaining structural condition.
20. Overview of the misaligned body to frame support which is evidence of a remaining structural condition.
21. Improper & abnormal tire wear to the outer portion which is due to the misaligned front frame and structure.
22. Overview of the one of the properly aligned body to frame on the subject vehicle.

EXTENT OF DAMAGE AS THE RESULT OF THE MARCH 26, 2016 ACCIDENT:

AREAS OF DAMAGE	
Structural Components <i>Inc. Sidemembers, Rails, Floors, Rocker Panels, Hinge Pillars, Roof Panels</i>	Major Welded on Body Panels: <i>Inc. Aprons, Radiator Support, Rear Body Panel, Quarter Panels Inner & Outer</i>
1.	1. Front cooling radiator support replaced.
Major Bolted on Body Parts: <i>Inc. All Bolted On Body Parts</i>	Major Suspension & Mechanical Components:
1. Front bumper chrome replaced w/reconditioned part. 2. Upper bumper cover replaced. 3. Right front bumper bracket replaced. 4. Left front headlamp assembly. 5. Left front fender replaced.	1. Left front wheel replaced w/reconditioned part. 2. Two wheel alignment. 3. Left front stabilizer bar link replaced w/imitation part. 4. Left outer tie rod replaced. 5. Left inner tie rod replaced.
Frame/Uni-body Damage: <i>See Diagrams Below</i>	# of Panels Requiring Paint: <i>Inc. Inner & Outer Panels</i>
1.	1. Front bumper upper cover. 2. Left front fender.
Supplemental Restraint System Deployment	
Drivers Side:	Passenger Side:
1.	1.

Areas of damage marked unknown will need an additional inspection or further testing due to the inability to fully view or diagnose the damage.

THE SUBJECT VEHICLE IS A			
	N	UNI-BODY CONSTRUCTION	Many structural and body parts welded together to construction UNI-BODY. Attached to the Uni-body are front and rear suspension cross members.
	Y	FULL FRAME CONSTRUCTION	Frame is a component consisting of steel beams which houses the engine and passenger compartment.
<p>Over the years there has been some confusion regarding the words used to identify the two types of vehicle construction. Prior to popularity of uni-body construction the majority of the vehicle were assembled utilizing full frame construction however even after the majority of the vehicles were assembled utilizing uni-body construction the use of the word "frame" continued. There should be no confusion regarding the two types of vehicle construction, a uni-body vehicle does not have a full frame.</p>			

CERTIFICATION GENERAL INFORMATION:

Due to the nature and extent of the subject accident and the nature and extent of the repairs to the vehicle, this vehicle should not have been considered as or sold as a "Certified Pre-Owned" vehicle which will decrease the amount of money the vehicle owner can recover upon resale or trade in.

OPINIONS BASED UPON INFORMATION REVIEWED TO DATE:

1. The dealer knew or should have known the precise nature and extent of the collision damage caused by the previous collision, as well as the precise nature and extent and the repairs to the vehicle as a result of the previous collision when the dealer sold the CPO to Mr. Poole.

2. The dealer should not have never displayed or sold the vehicle as a Chrysler/Dodge CPO vehicle.
3. The vehicle has sustained diminished value due to the previous collision to the vehicle in or about March of 2013, which the dealer knew or should have known about at time of sale. This is addressed in a separate diminished value report submitted with this vehicle condition report.
4. The previous repairs done to the vehicle were not done correctly and were not to factory specifications.

The opinions expressed in this report are based on my experience, education, training, research and information supplied to me for review in regards to this matter to date. I may conduct additional analysis on this matter if I am presented with supplemental information, such as from any rebuttal report submitted by the opposing party, and therefore, I reserve the right to revise, delete, or change my opinions expressed in this report based upon such supplemental information. All opinions, conclusions and or recommendations included in this report are intended for the use in potential litigation or settling this matter and not for other purpose and can not be duplicated without the permission of Rocco J. Avellini.

Sincerely:



Rocco J. Avellini
Wreck Check Car Scan Centers

Exhibit “12”

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*
Dealership Investments LLC d/b/a Sahara
Chrysler and Corepointe Insurance Co.
8

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

11 DERRICK POOLE,

12 Plaintiff,

13
14 v.

Case No.: A-16-737120-C

Dept. No.: XXVII

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

19
20 Defendant.

**DEFENDANT NEVADA AUTO
DEALERSHIP INVESTMENTS LLC
D/B/A SAHARA CHRYSLER, JEEP,
DODGE AND COREPOINTE
INSURANCE CO.'S INITIAL
EXPERT WITNESSES
DISCLOSURE**

21
22
23 Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS LLC d/b/a
24 SAHARA CHRYSLER, JEEP, DODGE AND COREPOINTE INSURANCE CO., by and
25 through their counsel of record, JEFFERY A. BENDAVID, ESQ. and STEPHANIE J.
26 SMITH, ESQ. of Moran Brandon Bendavid Moran, hereby discloses the following experts
27 in accordance with NRCP 16.1(a)(2):
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1. THOMAS LEPPER, CFEI
Thomas Lepper Associates
810 Rose Drive
Benicia, CA 94510
(707) 751-3836

Mr. Lepper is a Certified Fire and Explosion Investigator and is a forensic automotive expert. He will be providing opinions regarding the Certified Pre-Owned Vehicle (CPO) status of plaintiff's vehicle as detailed in his expert report attached hereto as Exhibit A. His curriculum vitae, fee schedule, and testimony list are attached hereto as Exhibit B.

DATED this 14th day of June 2017.

MORAN BRANDON BENDAVID MORAN

/s/: Jeffery A. Bendavid, Esq.
JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
STEPHANIE J. SMITH, ESQ.
Nevada Bar No. 11280
630 South 4th Street
Las Vegas, NV 89101
*Attorney for Defendants, Nevada Auto
Dealership Investments LLC d/b/a Sahara
Chrysler and Corepointe Insurance Co.*



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

Exhibit A

THOMAS LEPPER ASSOCIATES

**Automotive, Tire, and Fire Consultants • Licensed Locksmith
Offices in Southern and Northern California**

**(866) 812-4204 Toll Free • (707) 751-3836 Office • (707) 751-3833 Fax
tom@thomaslepper.com**

**WRITTEN REPORT PREPARED FOR
MR. BRIAN K. TERRY**

**THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER
1100 EAST BRIDGER AVENUE
LAS VEGAS, NEVADA 89125**

**CASE TITLE: DERRICK POOLE VS. SAHARA CHRYSLER JEEP
YOUR CLIENT: SAHARA CHRYSLER JEEP
OUR FILE NUMBER: 1607R10**

Case Title: Derrick Poole vs. Sahara Chrysler Jeep
Your Client: Sahara Chrysler Jeep
Page 2

April 27, 2017

Mr. Brian K. Terry
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
1100 East Bridger Avenue
Las Vegas, Nevada 89125

Re: Case Title: Derrick Poole vs. Sahara Chrysler Jeep
Your Client: Sahara Chrysler Jeep
Claimant: Derrick Poole
Our File No: 1607R10

Dear Mr. Terry:

ASSIGNMENT:

We were assigned to inspect, photograph, and review all supplied documentation regarding the claimant's 2012 Ram 1500, Vehicle Identification Number 1C6RR6GT8DS558275, to determine if it was appropriate for this vehicle to be sold as a Certified Pre-Owned Vehicle (CPO) by Chrysler Jeep Dodge Ram.

CONCLUSION:

The 2012 Ram 1500, currently owned by the claimant, fell within the manufacturer's build tolerances. The vehicle qualifies as a Certified Pre-Owned Vehicle and properly holds a Chrysler Certificate as a CPO.

The CARFAX Vehicle Report documented that the vehicle was involved in a minor accident on March 26, 2014, while in the use by the original owner. The CARFAX report was signed by the claimant when he purchased this truck.

The complaints reported on the claimant's vehicle were largely a result of repairs after the 2014 frontal impact and did not affect the credibility of Chrysler's Certified Pre-Owned Certificate. Other areas of the vehicle were within manufacturer build tolerances as explained below.

DISCUSSION:

Inspection date:	August 3, 2016
Inspected at:	Desert 215 Desert Superstore 8030 Rafael Rivera Way Las Vegas, Nevada
Year, Make & Model:	2013 Ram 1500
Color & Body:	Dark Gray, Four-Door Pick-up
Nevada License Plate:	707 • VPT
Registration Sticker:	07 2017
Vehicle Identification Number:	1C6RR6GT8DS558275
Date of Manufacture:	NOV 12
Odometer:	19,100
Service Sticker:	None
Transmission:	Automatic
Drive:	Rear – Wheel
Keys:	Yes
Driveable:	Yes
Brakes:	Vacuum Booster – ABS
Airbags:	All – Not Deployed

The following documents were reviewed in preparation of this report:

- Dealer Operations Manual/125-Point Inspection and Reconditioning Standards, dated September 2013;
- Allstate Fire and Casualty Insurance Company Estimate of Record and photographs of damages from March 26, 2014 incident; dated March 31, 2014;
- 215 Desert Superstores, ExpressAlign Total Alignment Sheet, dated February 15, 2016;
- Desert 215 Superstore Repair Order 600002353/1, dated February 15, 2016;
- George O. West's Stipulation Regarding Defendants' Pre-Arbitration Vehicle Inspection, dated July 29, 2016;
- Notes and photographs from our August 3, 2016 inspection;

- CARFAX Vehicle History Report Generated August 12, 2016;
- ALLDATA Collision S3500 – Build specifications on claimant’s vehicle

The exterior and underside of the claimant vehicle were examined and measured on August 3, 2016. The damages that were reported after the previous frontal impact were repaired within industry standards and do NOT disqualify the vehicle from CPO status.

The Certified Pre-Owned (CPO) checklist has been placed in this report. This check list was completed using the measurements, photographs, and notations found in this report. This inspection also verified the results of the Pre-Purchase CPO checklist.

August 13, 2016 Inspection Results

Certified Pre-Owned Vehicle Inspection Check List – August 13, 2016 Inspection

Qualifications Standards		Comments
1	Under 75,000 Miles	The truck had 6,716 miles on the Odometer at CPO inspection Truck had 19,100 miles at the time of this inspection
2	Five model years or newer	Model year 2013
3	No frame damage	No frame damage found during the CPO inspection or during the subject inspection
4	Clean Title	Yes
5	Aftermarket accessories do not compromise Safety, emissions or operation of vehicle	Agree
Ownership Material		
6	Warranty Manual	Checked present during the dealer’s CPO inspection
7	Owner’s Manual	Checked present during the dealer’s CPO inspection
8	Operational key	Checked present during the dealer’s CPO inspection
9	CARFAX report	Checked present during the dealer’s CPO inspection
10	Certified Pre-Owned Consumer Warranty Booklet	Reportedly provided during the sale process
Mechanical Standards		
PRE-ROAD TEST		
Under hood checks		
11	Hood Release	Primary and Secondary latches operated properly during this inspection

12	Brake fluid	Was found filled to the proper level with the brake fluid in good condition
13	Power steering fluid filled	Was found filled to the proper level
14	Wiper / washer fluid filled	Was found at an acceptable level
15	Battery condition / load test	Correct battery and passed test
16	Charging system operation	Operated properly during this inspection
17	Throttle linkage operation	Throttle system operated properly during this inspection
Operational checks		
18	Key fob w/remote keyless entry	Not tested during this inspection
19	Door / lift gate / trunk	Doors opened and latched properly
20	Seat adjuster	Operated properly during this inspection
21	Steering column adjuster	Did not test
22	Ignition switch	Rotated smoothly and operated properly during this inspection
23	Malfunction indicator lamp / warning lamp	Operated properly during this inspection
24	Air bag systems	No fail lights or alerts noted
25	Trip computer / overhead console	In good condition
26	Heated seat	N / A
27	Heating, ventilation, air conditioning system	Operated properly during this inspection
28	Turn signal / hazard lamps	Operated properly during this inspection, all bulbs in good condition
29	Horn	Operated properly during this inspection
30	Brake lamps	Operated properly during this inspection, all bulbs in good condition
31	Headlamp / high beam / low beam	Operated properly during this inspection, all bulbs in good condition
32	Interior lamps	Operated properly during this inspection, all bulbs in good condition
33	Door locks (all switches)	Operated properly during this inspection
34	Windows	Operated properly during this inspection
35	Parking brake	Operated properly during this inspection and held the vehicle stationary in Drive and Reverse

36	Fog lamps	The fog lights presently fit properly in their housings and in their openings in the front bumper as shown in photograph seven and eight. The metal and plastic brackets retaining the left front fog light were impact bent and repaired as shown in photographs nine through eleven. The right side fog light is in good condition.
37	Windshield wiper system operational	Operated properly during this inspection
38	Wiper blades in good condition	Were in acceptable condition
39	Rear window wiper and condition	N / A
40	Rearview mirror	In good condition
41	Side view mirrors	In good condition
42	Rear defroster	N/A
43	Seat belts	Operated properly during this inspection
44	Convertible top	N/A
45	Sunroof	N/A
Road Test		
46	Ease of starting	Started and ran smoothly
47	Cold-Idle quality	Good, elevated idle when cold
48	Gear selector Operation	Operated properly during this inspection
Steering Performance		
49	Power steering performance	Operated smoothly and properly from full left turn to full right turn during this inspection.
50	Steering wheel center alignment	Centered
51	Vehicle tracking performance	Tracked true
Equipment Operation		
52	Cruise control	Did not test during this inspection
53	Overdrive	N/A
54	Instrument panel / gauges	Operated properly during this inspection
55	Sound and / or entertainment system	Operated properly during this inspection
Powertrain Performance		
56	Acceleration Performance	Normal

57	Clutch operation (manual transmission)	N/A
58	Upshifting performance	Transmission operated properly during this inspection
59	Downshifting performance	Transmission operated properly during this inspection
60	Steady throttle performance	Normal
61	Transfer case / all-wheel drive performance	N/A
62	Hot-idle performance	Good
Braking Performance		
63	Brake booster performance	Good
64	Vehicle tracking	Tracked true
65	Anti-lock brake system	Operated properly when tested during this inspection
66	Overall stopping performance	Very Good
Vehicle Comfort		
67	Interior Noise level	Normal
Post-Road Test		
68	Fluid leaks – visible inspection	No leaks
69	All fluid levels (under hood)	At their proper levels
70	Hot restart performance	Started and ran well
Maintenance Standards		
Perform the following fluid inspection and / or changes:		
71	Change engine oil, oil filter and use Mopar parts	N/A
72	Inspect air filter	Normal
73	Automatic transmission fluid and filter	N/A
74	Manual transmission fluid	N/A
75	Front differential fluid (4x4 only)	N/A
76	Rear differential fluid (4x4 / RWD / AWD)	N/A
77	Transfer case fluid (4x4 / AWD)	N/A
78	Engine coolant level and test	Normal
79	Front brakes have 50% or more of lining remaining	Yes
80	Front and rear brake component condition	Good

81	Rear brakes have 50% or more of lining remaining	Yes
82	Perform outstanding vehicle campaigns	N/A
83	Identify non-Mopar accessories In Additional Information box	None
84	Tires match and are manufacture's size / load capacity	Yes
85	Wheels match and are correct size and offset	Yes
86	Tread depth is 4/32" remaining	Remaining tread all measured deeper than 4/32"
87	Tire sidewall condition	Good
88	Tire pressures are set to Chrysler specifications	N/A
89	Brake line condition	Good
90	Shocks and struts condition	Normal
91	CV joints boot condition	N/A
92	Exhaust condition	Good
93	Front suspension	Good
94	Rear suspension	Good
95	Steering components	Good, Left steering tie-rod had been replaced in the past
96	Wheel bolts torqued to specifications	N/A
97	Tire changing equipment (including spare, if applicable)	Did not check
98	Drive belts are tight and undamaged	Yes
99	Engine hoses	Good
100	Emission system hoses	Good
101	State / local testing	N/A
102	Module scan tool check	N/A
Appearance Standards		
Exterior Condition		
103	Body panels	Good
104	Fascia	Good

105	Bumpers	A small dent was found on the right end of the front bumper as shown in photograph fifteen. This damage occurred by the later, after-sale right front impact. A small distortion was found at the bottom lip of the right side of the front bumper as shown in photograph sixteen. This damage could also have been caused by the later, after-sale slight right front impact.
106	Decals / emblems / trim pieces in place	Yes
107	Glass / lamp covers	Good
108	Wheels / wheel covers	Good
109	Truck bed / bed liner	Placed within build tolerances
Interior Condition		
110	Instrument panel	Good
111	Door panels	Good
112	Seating	Good
113	Headliner / package tray	Good
114	Luggage compartment	N/A
115	Carpet / floor mats	Normal
Detail Standards		
Exterior Detailing		
116	Clean engine compartment	Good
117	Touch up / recondition minor surface scratches	N/A
118	Remove tar, bugs and road oil	N/A
119	Exterior wash and wax	N/A
120	Wipe down all doorjams	N/A
Interior Detailing		
121	Clean ashtray / cigarette lighter	N/A
122	Clean vinyl, plastic and leather surfaces	N/A
123	Clean glass surfaces	N/A
124	Vacuum and / or shampoo all interior carpets	N/A
125	Free of odors / moisture and water leaks	N/A

A CARFAX Vehicle History Report was generated on August 12, 2016, using the vehicle's Vehicle Identification Number. The following entries of interest include:

- March 26, 2014 – Accident Reported with disabling damages. Odometer reading at time of accident 6,632 miles;
- May 05, 2014 – Vehicle offered for sale at Sahara Chrysler, Dodge, Jeep, Ram, Las Vegas, Nevada. Odometer reading 6,716 miles;
- May 06, 2014 – Vehicle offered for sale as a Ram Certified Pre-Owned Vehicle; Chrysler Group, Certified Dealer in Las Vegas;
- May 30, 2014 – Sold as a Chrysler Certified Pre-Owned vehicle, Certified Dealer in Las Vegas.

The claimant represented that numerous areas of the vehicle had been damaged and inadequately or improperly repaired and should not have been sold by Chrysler as a Certified Pre-Owned Vehicle. These areas of dispute include:

The front bumper was misaligned:

The front bumper was mounted centered on the frame and within the tolerances of the distance from the front edges of the front fenders as shown in photographs seventeen and eighteen. No damages were located to the front bumper mounts as shown in photographs nineteen through twenty-two.

The rear edge of the front bumper did not properly align with the front tires:

The tires and wheels were properly placed, within tolerances, in relation to the front of the frame. The left side distance from the rear edge of the front bumper to the left front tire was five inches. The right side distance from the rear edge of the front bumper to the right front tire was four and one quarter inches. The differences in the bumper measurements were due to the recent impact damage to the right side of the front bumper.

The pickup bed's side-to-side measurement was off by an inch:

The ears mount on the pick-up frame were found robotically welded disproportionately on each side of the frame rails; however, the pick-up bed mounts weld areas are within manufacturer tolerances. The diagonal measurements and placement of the pickup bed

was also within manufacturing tolerances as shown in Attachment II, Gap and Flush Dimensions.

The cab mounts were not properly centered:

The right side cab mount bolts were not centered in their mount bushings, although no displacement was discovered to the cab. However, the weld areas for the mounts are within tolerance specifications. How or why the cab mount bolts appear to be bent has not yet been determined.

The motor mounts were off-center in their mount pockets;

The mount ears on the motor mounts were found robotically welded disproportionately on each side of the frame rails; however, these weld areas are within tolerances. The appearance of accident displacement is only due to the large tolerances allowed in the manufacturer specifications.

The issues that the claimant represented above did not affect the 2013 Ram 1500 SLT from achieving a Chrysler Certified Pre-Owned Certificate. All measurements taken during the course of this inspection were within manufacturer's specified tolerances.

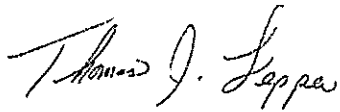
A service representative from Desert 215 Superstore stated that these issues are common manufacturing tolerances and was not accident or repair related.

After a comprehensive review and inspection of this vehicle it is my opinion that the vehicle was correctly certified as a Certified Pre-Owned Vehicle and able to be sold as such by Sahara Chrysler Jeep.

The conclusions expressed in this report are based on sound technical judgment and information available at the time of this report. Should additional or conflicting information become available at a later date, we reserve the right to modify our opinions and conclusion accordingly. Thank you for allowing us to be of service. If you have any questions regarding this report, or if you need any further assistance, please contact this office.

Respectfully submitted,

Case Title: Derrick Poole vs. Sahara Chrysler Jeep
Your Client: Sahara Chrysler Jeep
Page 12

A handwritten signature in black ink, reading "Thomas J. Lepper". The signature is written in a cursive, flowing style.

Thomas J. Lepper, CFEI
Automotive, Tire, and Fire Consultant

Enclosures:	Attachment I:	52 Photographs
	Attachment II:	CARFAX Vehicle Report
	Attachment III:	ALLDATA Collision - Gap and Flush Dimensions
		ALLDATA Collision - Gap and Flush Dimensions Index
	Attachment IV:	ALLDATA Collision – Collision Information and Specifications

Exhibit “13”

SUPP

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Email : gowesq@cox.net
Websites : www.caaaf.net
www.americasautofraudattorney.com
(702) 318-6570
(702) 664-0459 [fax]

Attorney for Plaintiffs
DERRICK POOLE

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

v

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

Defendants,

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

**PLAINTIFF'S SEVENTH SUPPLE-
MENT**

1 Plaintiff, by and through his attorney of record, pursuant to NRCP, Rule 16.1,
2 hereby makes his supplemental disclosures of witnesses and documents.

3 **DOCUMENTS**

- 4 **1.** Text messages between Plainiff and Travis (sales person at Sahara) bates
5 stamps PLNTF'S SEVENTH SUPP 072 to 086

6
7 Dated this 24th day of August, 2017

8 /s/ George O. West III
9 George O. West III
10 *Consumer Attorneys Against Auto Fraud*
11 Attorney for Plaintiff
12 **DERRICK POOLE**
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

●●○○○ Verizon

7:36 PM

24%



Travis- Sahara Dodge

iMessage

May 5, 2016, 8:28 PM

Hey Derrick,
It's Travis at Sahara CJDR.
I'm sorry, I tried and its been
to long. I don't have the Carfax
information anymore.
I'm sure you could go to the
Carfax website and get a new
one there

Yeah but it'll cost me \$39 for
one time

Really, didn't know they
charged like that.

I'm sorry but I can't pull one I

I'm sorry but, I can't pull one. I tried.

Wish I could help.

Hey I just ran the car fax and it says it was in an accident, I wasn't ever given any information on an accident



iMessage



Verizon

7:36 PM

24%



Travis- Sahara Dodge

It's been a long time I don't remember if it was or wasn't.

But, I would have had to of shown you the Carfax.

It's part of are paperwork to show you and would have had to sign it.

The deal wouldn't have gone through if you didn't sign it

through if you didn't sign it.

Read through it. It will tell you when and what it was. Sometimes there is an accident on are pre-owned.

It doesn't say what it was but I was denied a refi and didn't understand why they said it had to do with the truck and all it says is accident on the carfax, it doesn't give me any other info

Can you find out more info than myself?



iMessage



Verizon

7:36 PM

24%



Travis- Sahara Dodge

I'll ask and see.
But, that doesn't make any
sense that that would refi
because of an accident??
Was it certified?

Yeah it was certified

Ok, that's what I thought.
What bank did you try the refi
at?

State Farm

Ok, I'm thinking that it wasn't
because of the accident, we
wouldn't put a vehicle on the
lot with a major accident on it.

Especially if it was certified,,
in your car Carfax it will say
minor accident no airbags
deployed something like that.
If they said - no because of
the truck.



iMessage



●●○○○ Verizon

7:36 PM

24%



Travis- Sahara Dodge

State Farm

Ok, I'm thinking that it wasn't because of the accident, we wouldn't put a vehicle on the lot with a major accident on it.

Especially if it was certified,, in your car Carfax it will say minor accident no airbags deployed something like that.

If they said - no because of the truck.

It would have been more likely,, because of your equity position in the truck.

You should try a credit union.

They do better with refi's on vehicles.

Clark County Credit Union.
Would be my first pick.

I actually have equity in the truck, over \$4k. They did say something due to a major accident of more than \$10k, so



iMessage



●●○○○ Verizon

7:36 PM

23%



Travis- Sahara Dodge

I actually have equity in the truck, over \$4k. They did say something due to a major accident of more than \$10k, so I'm trying to find out if there is something I need to be worried about and why I was denied. Maybe they made a mistake and I'm just trying to figure it

out if they did

Ok, Let me do this,
I can't do it now, because the
back of the house is gone.
Tomorrow,, I'll pull the
records and look my self.
If I don't contact you before
11:am shoot me a text.
I get running in the mornings
with meeting and could get
sidetracked.

Ok sounds good thank you

No worries.

Talk to you tomorrow



iMessage



●●○○ Verizon

7:36 PM

23%



Travis- Sahara Dodge

No worries.
Talk to you tomorrow.

May 6, 2016, 5:38 PM

Hey Travis wanted to check in
and see if you had any new info

I have the girls in back pulling
it. Let me go check.
Sorry
Told you I would get
sidetracked!

No problem

May 6, 2016, 6:59 PM

Sorry I will Have get it
tomorrow. They left.

No problem, tomorrow is fine, I
have my gal working on it too
to see what she can find

Ok Cool



iMessage



Verizon

7:36 PM

23%



T



Travis- Sahara Dodge

Ok. Cool.

May 7, 2016, 2:25 PM

Hey Travis checking to see if
you e had any luck

You've *

Let me see. Give me a few.
With a customer.

Ok thanks

May 7, 2016, 8:50 PM

Hey any good news

Sorry Brother,
Truly not trying to put you off.
Day ran off on me.
Back to back deals.
Monday for sure.

May 9, 2016, 10:04 AM



iMessage



Verizon

7:36 PM

23%



Travis- Sahara Dodge

May 9, 2016, 10:04 AM

Hey Travis just a reminder to
see what you can find

May 9, 2016, 3:34 PM

Sorry, took so long

They were working on it,,
They are not able to pull it on

They are not able to pull it off
the scan doc's,,
because it was so long ago.

I thought it would be easier.
It's going to take longer than I
thought.

Now,,,
, I'm trying to get then to pull
the file.

Ok thanks

May 11, 2016, 2:11 PM

Hey Travis any word?

Not yet. I am waiting on them.



iMessage



Verizon

7:36 PM

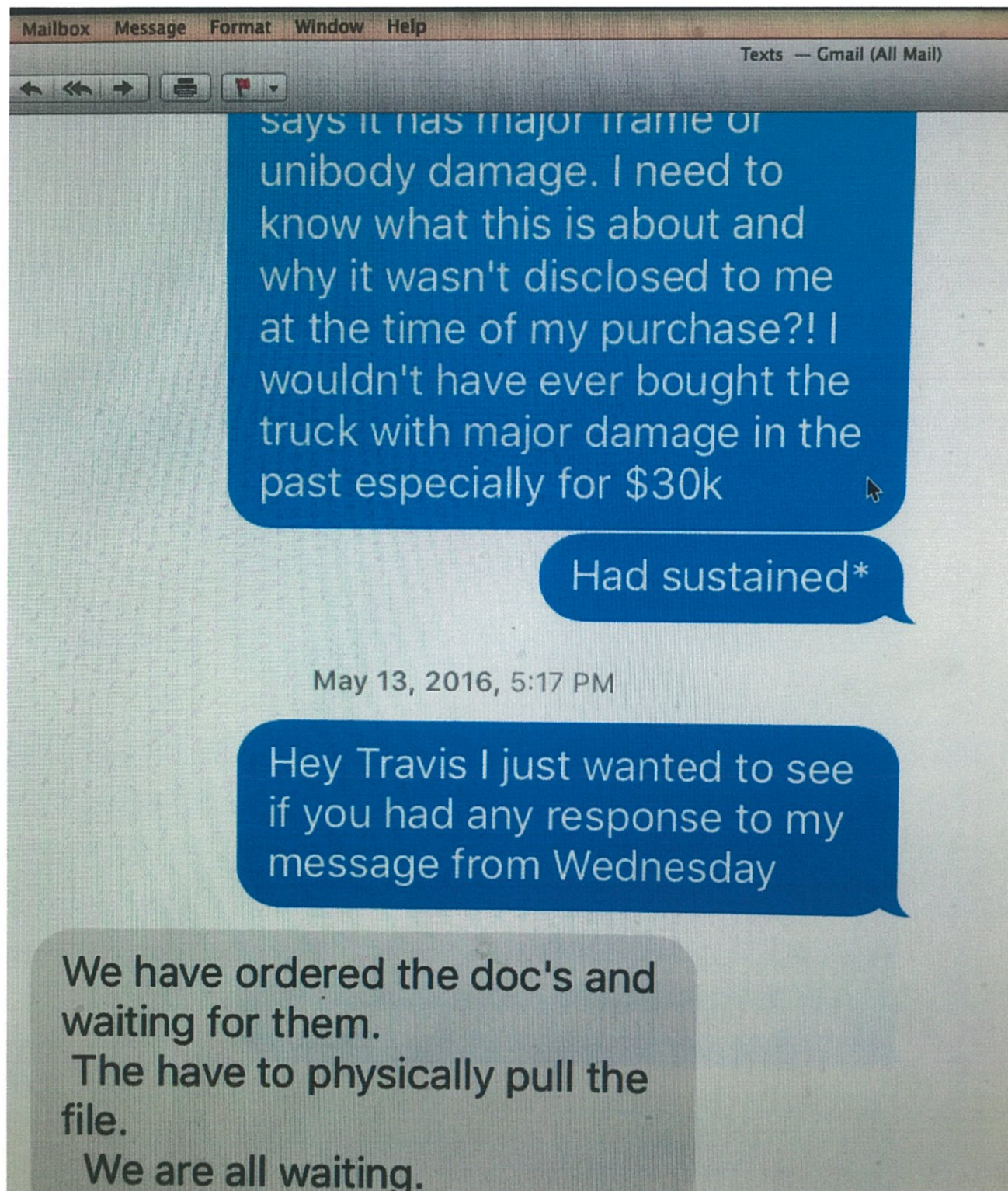
23%



Travis- Sahara Dodge

Hey Travis I just did an

Hey Travis I just did an autocheck.com report and it says it has major frame or unibody damage. I need to know what this is about and why it wasn't disclosed to me at the time of my purchase?! I wouldn't have ever bought the





1 **PROOF OF SERVICE**

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

4 On August 24, 2017, I served the forgoing document(s) described as 1) **PLAINTIFF'S**
5 **SEVENTH SUPPLEMENT** 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:

6 **JEFF BENDAVID, ESQ**

7 Moran, Brandon, Bendavid, Moran
8 630 South Fourth Street
Las Vegas, NV 89101
j.bendavid@moranlawfirm.com

9 **NATHAN KANUTE, ESQ**

10 Snell & Wilmer
11 3883 Howard Hughes Pkwy
Suite 1100
12 Las Vegas, NV 89169
nkanute@swlaw.com

13 [] **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of
14 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
15 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,
and/or to the attorney listed as the addressee below.

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

19 [x] **(BY EMAIL SERVICE) (Wiznet/email)** Pursuant NRCP, Rule 5(b)(2)(D), and
20 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
21 NRCP, as set forth herein.

22 Executed on this 24th day of August, 2017

23
24 /s/ George O. West III
25 GEORGE O. WEST III
26
27
28

Exhibit “14”

Poole v. Nevada Auto Dealership Investments, LLC, et al.

**Deposition of:
Rocco J. Avellini**

September 22, 2017



**WESTERN REPORTING
SERVICES, INC.**

500 South Rancho Drive, Suite 8A
Las Vegas, Nevada 89106
Telephone **702.474.6255**
Facsimile 702.474.6257

www.westernreportingservices.com

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 DERRICK POOLE,)
)
5 Plaintiff,)
)
6 vs.) Case No. A-16-737120-C
)
7)
 NEVADA AUTO DEALERSHIP)
8 INVESTMENTS LLC, a Nevada)
 Limited Liability Company d/b/a)
9 SAHARA CHRYSLER, JEEP, DODGE,)
 WELLS FARGO DEALER SERVICES)
10 INC., COREPOINTE INSURANCE)
 COMPANY, and DOES 1 through)
11 100, Inclusive,)
)
12)
 Defendants.)
13)

16 DEPOSITION OF ROCCO J. AVELLINI
17 Taken on Friday, September 22, 2017
18 At 1:36 p.m.
19 At 630 South Fourth Street
20 Las Vegas, Nevada

25 Reported by: Marnita J. Goddard, RPR, CCR No. 344

1 (Discussion off the record)

2 Q. (BY MS. SMITH) We're going to get you
3 copies of those documents.

4 Now, during your time serving as an expert,
5 have you ever been struck as an expert witness?

6 A. Struck?

7 Q. Yes.

8 A. Partially.

9 Q. Do you have any details about that?

10 A. Yes. It was a case in California where the
11 judge felt that I didn't have expert knowledge of
12 air bag deployment, which I thought was kind of
13 strange.

14 Q. Have you ever had any of your testimony
15 excluded?

16 A. Not that I'm aware of, no.

17 Q. What about any of your written reports
18 excluded?

19 A. Not that I'm aware of. You said my written
20 reports?

21 Q. Yes.

22 A. Not that I'm aware of.

23 Q. Have you ever testified on behalf of a
24 dealership on a certified pre-owned matter?

25 A. No. For a dealership?

1 Q. Yes.

2 A. No.

3 Q. Have you served for other plaintiffs on
4 certified pre-owned matters?

5 A. I believe I have, yes.

6 Q. Specifically, Chrysler, Dodge, Ram CPO --
7 I'm sorry.

8 When I say "CPO," I'm going to use that term
9 to refer to certified pre-owned. Are you comfortable
10 with that?

11 A. I am.

12 Q. So any matters in which you testified
13 specifically about Chrysler, Jeep, Dodge, Ram CPO
14 standards?

15 A. Off the top of my head, I do not know. If
16 you would like, I can go through the list that I have.

17 Q. No, that's okay. Just nothing you recall?

18 A. I have testified in CPO cases. I don't
19 remember if they were Chrysler or not.

20 Q. Have you ever been involved in developing
21 any CPO standards for any type of vehicle?

22 A. No.

23 Q. Have you performed any CPO inspections for
24 any dealership?

25 A. No. I viewed, but I didn't take part in.

1 report; is that right?

2 A. That is indicated on -- yes, ma'am.

3 Q. So did you have any other individuals
4 helping you to proofread your reports?

5 A. No.

6 Q. Okay.

7 A. That's maybe why it happened.

8 Q. Who contacted you about this case?

9 A. Mr. West.

10 Q. At any point in time, did you have any
11 conversations with Derrick Poole?

12 A. I did. At the time -- at the inspection
13 which took place at my office on May 20th of '16.

14 Q. Was Mr. West at those -- was Mr. West
15 present during those conversations?

16 A. He was present at the inspection. I don't
17 know if he was present during all the conversations.

18 Q. Did Mr. Poole give you any information about
19 the subject vehicle?

20 A. Just that he purchased the vehicle and there
21 was an issue with the prior accident.

22 Q. So when I say "subject vehicle" -- I may
23 also say "truck" -- I am referring to the 2013 Dodge
24 Ram 1500 that's at issue in this matter. I believe it
25 is VIN 1C6RR6GT8DS558275. Is that all right?

1 A. Explain significant.

2 Q. Let me try and rephrase that.

3 Hearing that a vehicle had sustained damages
4 that required \$4,088.77 of repair work, what
5 information could you glean from hearing that amount?

6 A. Without --

7 MR. WEST: Let me object. Vague and
8 ambiguous to the extent in a vacuum or with respect to
9 everything else that he's considered? Lacks
10 foundation.

11 But you can answer.

12 Q. (BY MS. SMITH) Based on your extensive
13 experience in performing car repairs and as a repair
14 shop owner, if someone told you their vehicle had
15 \$4,088.77 of repairs, would that signify anything to
16 you?

17 A. Not at all.

18 Q. So that could be -- could that just be
19 cosmetic damage?

20 A. I couldn't tell you until I saw the car. As
21 in this situation, there was a fender, a bumper, and
22 suspension. So if someone didn't tell me what was
23 listed on the estimate, I couldn't tell you. I don't
24 think anyone could. Were you saying someone called me
25 up and said they have \$4,000 worth of damage, you

1 A. Yes, sir.

2 Q. Can you find that for me?

3 A. I will.

4 MR. WEST: Counsel, go ahead. I'll give you
5 time to find it.

6 MS. SMITH: After the CPO manual?

7 MR. WEST: It is the first page before you
8 get to the pictures of the car, of the truck, and its
9 repair.

10 MS. SMITH: Okay.

11 Q. (BY MR. WEST) The Fiat Chrysler US LLC
12 position "Reconditioned Wheel Usage" statement, where
13 did you find this, sir?

14 A. I originally found it on the internet and I
15 have it saved in my computer.

16 Q. To your knowledge, based upon your skill,
17 experience, and expertise, is this the current
18 position statement with respect to reconditioned
19 wheels on Chrysler vehicles?

20 A. Yes. And many other manufacturers.

21 Q. Now, with respect to this position
22 statement, in the first paragraph it says, "FCA US LLC
23 does not recommend that customers use, quote,
24 reconditioned, unquote, wheels, wheels that have been
25 damaged and repaired, because they can result in a

1 sudden catastrophic wheel failure which could cause
2 loss of control and result in injury or death."

3 Do you see that?

4 A. Yes, sir.

5 Q. Have you read the statements underneath
6 that, in that document, that says "for clarification"
7 and sets forth all the various specifics with respect
8 to what's considered reconditioned wheel?

9 A. Correct.

10 Q. Is it your opinion based upon your
11 knowledge, experience, expertise in the industry that
12 using a reconditioned wheel as defined in this FCA US
13 LLC position statement can be a safety and danger to
14 the community if it is not adhered to?

15 A. Yes.

16 Q. Is it your opinion based upon your skill,
17 training, expertise, and what you looked at in this
18 case that the reconditioned wheel usage statement in
19 your report applies to certified pre-owned vehicles?

20 A. Yes.

21 Q. Even if this reconditioned wheel
22 statement -- strike that.

23 Looking at the Allstate collision estimate,
24 sir, at the part we talked about, wheels, do you see
25 at the bottom where it says at line 32 -- do you see

Exhibit “15”

THE MECHANIC

MECHANICAL REPAIR SERVICE CONTRACT FOR MANUFACTURER CERTIFIED VEHICLES

CONTRACT NO. CY 278715

ADMINISTRATOR:

175 WEST JACKSON BLVD.
CHICAGO, ILLINOIS 60604
TOLL FREE: 1-800-621-2130

FOR EMERGENCY ROADSIDE ASSISTANCE:
TOLL FREE 1-866-803-5420

Contract No. CY 278715

I. General Vehicle

VIN

Certified Number

Make

Model

Year

Current Odometer Reading

Vehicle Code

Vehicle Class

Manufacturer
Certified
Vehicle



Diesel



Check All That Apply:

4x4/AWD



Turbo/Supercharged



Name

Street

City

State

Zip Code

Telephone

Hm ()

Wk ()

II. Service Contract Period

This Service Contract begins on the manufacturer's original In-Service Date (See Key Terms) and at odometer miles "0". This Service Contract ends when the Months indicated below from the In-Service Date is reached or when the Miles indicated below are registered on the odometer, whichever occurs first.

Term:

Months

Miles

III. Coverage Plan

If no Coverage Plan box has been checked, Platinum Coverage Plan will apply.

Gold

☐

Platinum

☒

Additional Benefits

Rental Reimbursement and Emergency Roadside Assistance apply to all Coverage Plans.

Standard Deductible:

\$100 Per Visit

Optional Deductible:

☐

Disappearing Deductible (The deductible is \$0 if covered repairs are performed at the Selling Dealer and \$100 per visit when performed elsewhere.)

Price: \$

Dealer Number

Name

Street

City

State

Zip Code

Telephone

()

NVAUTO000077

JOINT APPENDIX 215

Price: \$ _____				
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> Dealer Information </div>				
Dealer Number	Name	Street		
City	State	Zip Code	Telephone () _____	
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> Lien Holder Information </div>				
I, the undersigned holder of this Service Contract, hereby authorize the following Lien Holder. 1. To receive any refund for credit to my account in the event this Service Contract is canceled; and 2. To cancel the Service Contract in the event I default in my obligation to such Lien Holder.				
Name _____		Address _____		

Service Contract Purchase Date	<div style="border: 1px solid black; padding: 5px; display: flex; justify-content: space-between;"> Month Day Year </div>
--------------------------------	--

In-Service Date	<div style="border: 1px solid black; padding: 5px; display: flex; justify-content: space-between;"> Month Day Year </div>
-----------------	--

Must be completed accurately. See Key Terms for "In-Service Date" definition.

Notice to Customer:

- The purchase of this Service Contract is not required to obtain financing or to purchase or lease this vehicle.
- You are required to obtain authorization prior to beginning any repairs covered by this Service Contract. Refer to Service Contract Section VII, "Your Responsibilities" for instructions.
- You must follow the maintenance procedures listed in Service Contract section V, "Maintenance Requirements." If your failure to follow the procedures causes a breakdown, you may be denied coverage.
- The benefits provided under Dealer Warranties required by state law are not covered by this Service Contract.
- If the manufacturer's warranty has been declared void, this Service Contract does not cover the vehicle until the end of what would have been the manufacturer's warranty.

Signed By _____
Customer

Signed By _____
Dealer's Representative

AWS-282-ID (R05/07)
(Stock Reorder Number)

LIEN HOLDER COPY

AWS-282-ID (05/05)

Exhibit “16”

SUPP

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Email : gowesq@cox.net
Websites : www.caaaf.net
www.americasautofraudattorney.com
(702) 318-6570
(702) 664-0459 [fax]

Attorney for Plaintiffs
DERRICK POOLE

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

v

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

Defendants,

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

PLAINTIFF'S SIXTH SUPPLEMENT
[CORRECTED]

1 Plaintiff, by and through his attorney of record, pursuant to NRCP, Rule 16.1,
2 hereby makes his supplemental disclosures of witnesses and documents.

3 **COMPUTATION OF DAMAGES**

4
5 1. Reimbursement of monthly payments made on the vehicle. \$3,927.18 for
6 the first 6 months on initial RISC. Second loan was \$10,855.18 for 17 months. Third
7 loan is currently 8,685.00 to date continuing at \$ 579.00 per month. Rescission of the
8 contract voiding any future payments under the RISC/ loans, and/or payoff of the
9 balance of the current loan, punitive damages according to proof, reasonable attorneys
fees and costs and Defendant SAHARA gets return of the vehicle

10 Dated this 13th day of August, 2017

11
12 /s/ George O. West III
13 George O. West III
14 *Consumer Attorneys Against Auto Fraud*
Attorney for Plaintiff
15 **DERRICK POOLE**
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

4 On August 13, 2017, I served the forgoing document(s) described as 1) **PLAINTIFF'S**
5 **SIXTH SUPPLEMENT** 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:

6 **JEFF BENDAVID, ESQ**

7 Moran, Brandon, Bendavid, Moran
8 630 South Fourth Street
Las Vegas, NV 89101
j.bendavid@moranlawfirm.com

9 **NATHAN KANUTE, ESQ**

10 Snell & Wilmer
11 3883 Howard Hughes Pkwy
Suite 1100
12 Las Vegas, NV 89169
nkanute@swlaw.com

13 [] **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of
14 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
15 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,
and/or to the attorney listed as the addressee below.

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

19 [x] **(BY EMAIL SERVICE) (Wiznet/email)** Pursuant NRCP, Rule 5(b)(2)(D), and
20 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
21 NRCP, as set forth herein.

22 Executed on this 13th day of August, 2017

23
24 /s/ George O. West III
25 GEORGE O. WEST III
26
27
28

Exhibit “17”

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

1 **APPEARANCES:**

2
3 For the Plaintiffs:

4 **GEORGE O. WEST, III, ESQ.**
5 Law Offices of George O. West, III
6 10161 Park Run Drive
7 Suite 150
8 Las Vegas, NV 89145

9 For the Defendants:

10 **STEPHANIE J. SMITH, ESQ.**
11 Moran Brandon Bendavid Moran
12 630 South 4th Street
13 Las Vegas, NV 89101
14
15
16
17
18
19
20
21
22
23
24
25

1 Exhibits 2, 3, and 4, these are not F&I documents
2 that you deal with on the back end at any point
3 in time?

4 A. No.

5 Q. With respect to Exhibit 1, the Allstate
6 collision report, have you seen that document
7 before today?

8 A. No. Can I add something?

9 Q. Sure, absolutely.

10 A. So these documents in finance, I have
11 them in my possession, but it is not something I
12 would go over with the customer that is in the
13 sales process.

14 Q. When you just said "these documents,"
15 are you referring to Exhibits 2, 3, and 4?

16 A. 2, 3, and 4, yes.

17 Q. Are those documents that are part of
18 your responsibility to make sure are signed off
19 on by the person who is buying the certified
20 pre-owned?

21 A. Yes.

22 Q. Are those documents part of a checklist
23 that you have to go through to make sure that
24 they were given to the buyer of a certified
25 pre-owned vehicle?

REPORTER'S DECLARATION

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

I, CINDY L. HUEBNER, Certified Court Reporter No. 806, declare as follows:

That I reported the taking of the deposition of the witness, NOAH GRANT, commencing on September 19, 2017 at the hour of 1:32 p.m.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

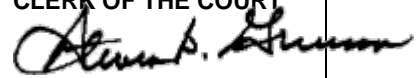
During the deposition, the deponent was advised of the opportunity to read and sign the deposition transcript under Rule 30, the original signature page is being forwarded to Stephanie Smith, Esq. to obtain the deponent's signature.

That I thereafter transcribed said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes taken down at said time.

I further declare that I am not a relative or employee of counsel of any party involved in said action, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

Dated at Las Vegas, Nevada this 25th day of
September, 2017.

Cindy L. Huebner, CCR 806



OPPS

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
gowesq@cox.net
www.nevadasautofraudattorney.com
www.americasautofraudattorney.com
(702) 664-1168
(702) 664-0459 [fax]

CRAIG B. FRIEDBERG [SBN 4601]
Law Offices of Craig B. Friedberg, Esq.
4760 S. Pecos Road, Suite 103
Las Vegas, NV 89121
(702) 435-7968
Fax: (702) 946-0887
Email: attcbf@cox.net
Website: www.consumerlaw.justia.net

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 OPPOSITION TO
DEFENDANT SAHARA'S MOTION
FOR SUMMARY JUDGMENT¹**

DATE : November 9, 2017

TIME : 9:00 a.m.

Filed *concurrently* with :

1. Plaintiff's Separate Statement of Undisputed
Material Facts in Opposition to SAHARA's
Motion.

2. Plaintiff's *Response* to SAHARA's Separate
Statement of Undisputed Material Facts

3. Plaintiff's Exhibits in Opposition to
SAHARA's Motion for Summary Judgment

¹ Pursuant to the Court's invitation at the hearing on October 18, 2017 to submit a stipulation and order to extend the page briefing, the parties will be submitting a proposed stipulation and order to the Court allowing Plaintiff to file a 50 page opposition and allow Defendants to file a 30 page reply brief given the extensive issues and claims involved in this matter.

TABLE OF CONTENTS

I INTRODUCTION

II THE STANDARD AS WELL AS THE INQUIRY ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IS STRAIGHT FORWARD AND COMPELS DENIAL OF DEFENDANT'S MOTION

III THE ENUMERATED STATUTORY DECEPTIVE TRADE PRACTICES THAT ARE AT ISSUE, THE NATURE OF STATUTORY CONSUMER FRAUD AND THE *SIGNIFICANT DIFFERENCE* BETWEEN "STATUTORY" CONSUMER FRAUD AND "COMMON LAW" FRAUD

IV THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT SAHARA FAILED TO DISCLOSE A MATERIAL FACT INVOLVING A TRANSACTION RELATING TO THE SALE OF GOODS

A. A MATERIAL FACT IS A FACT THAT A REASONABLE PERSON WOULD ATTACH IMPORTANCE TO WITH RESPECT TO THE TRANSACTION AT ISSUE

B. THE INFORMATION ITEMIZED, DISCLOSED AND MONETIZED IN THE ACE WOULD HAVE BEEN "MATERIAL" (IMPORTANT) TO ANY REASONABLE CONSUMER WITHIN THE COMMUNITY IN MAKING A DECISION TO PURCHASE A DODGE CPO VEHICLE.

C. BECAUSE THE FACTS AND/OR INFORMATION IN THE ACE WERE "MATERIAL" FACTS REGARDING THE VEHICLE, SAHARA HAD AN AFFIRMATIVE LEGAL OBLIGATION AND DUTY TO DISCLOSE THOSE MATERIAL FACTS AND INFORMATION TO THE PLAINTIFF ON THE DATE OF SALE

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

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

- V THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT SAHARA MADE FALSE REPRESENTATIONS IN A TRANSACTION AND VIOLATED A FEDERAL STATUTE RELATING TO THE SALE OF GOODS**
- A. SAHARA MADE AFFIRMATIVE *ORAL* MISREPRESENTATIONS TO THE PLAINTIFF REGARDING THE NATURE AND EXTENT OF THE PREVIOUS COLLISION DURING THE SALES PROCESS**
- B. SAHARA MADE AFFIRMATIVE *WRITTEN* MISREPRESENTATIONS TO THE PLAINTIFF VIA THE CPO INSPECTION REPORT THAT SAHARA PREPARED RELATING TO THE VEHICLE**
- C. SAHARA VIOLATED 16 C.F.R. § 455.1(A)(1), A FEDERAL REGULATION RELATING TO THE SALE OF GOODS**
- VI THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT SAHARA REPRESENTED GOODS FOR SALE THAT *WERE OF A PARTICULAR STANDARD, QUALITY OR GRADE* AND SAHARA *KNEW OR SHOULD HAVE KNOWN* THEY WERE OF ANOTHER STANDARD, QUALITY OR GRADE AND MADE A FALSE REPRESENTATION AS TO THE *CERTIFICATION* OF GOODS FOR SALE**
- VII THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH RESPECT TO PLAINTIFF'S EQUITABLE CLAIM FOR EQUITABLE ESTOPPEL**
- VIII THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH RESPECT TO PLAINTIFF'S EQUITABLE CLAIM FOR RESCISSION**
- IX THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH RESPECT TO PLAINTIFF'S EQUITABLE CLAIM FOR RESTITUTION**
- X PLAINTIFF HAS SUFFERED DAMAGES/MONETARY LOSS AND SAHARA HAS BEEN UNJUSTLY ENRICHED**
- XI THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH RESPECT TO IMPUTATION OF PUNITIVE DAMAGES TO SAHARA BY WAY OF JOSHUA GRANT ACTING IN THE CAPACITY OF A MANAGING AGENT OF SAHARA WHO IS *PERSONALLY GUILTY* OF FRAUD AND/OR IMPLIED MALICE RELATING TO THE VEHICLE**
- A. JOSHUA GRANT WAS ACTING AS SAHARA'S MANAGING AGENT WITH RESPECT TO DECIDING, APPROVING AND DESIGNATING CPO VEHICLES FOR RESALE TO THE COMMUNITY, INCLUDING THE PLAINTIFF'S VEHICLE**
- B. JOSHUA GRANT WAS ACTED WITH THE REQUISITE STATE OF MIND TO BE PERSONALLY GUILTY OF FRAUD OR IMPLIED MALACE**

XII PLAINTIFF HAS PLEAD THE REQUISITE ELEMENTS OF A CLAIM AGAINST COREPOINT, SAHARA'S VEHICLE LICENSING SURETY BOND

- A. COREPOINT'S INVOLVEMENT IN THIS CASE AS A DIRECT PARTY DEFENDANT**
- 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**
- C. THE LEGISLATIVE DIGEST RELATING TO THE 2013 LEGISLATIVE AMENDMENTS TO NRS 482.345 CLEARLY RECONFIRMED A CLAIMANT'S RIGHT UNDER ALREADY EXISTING LAW TO BRING IN THE BOND COMPANY AS A DIRECT PARTY DEFENDANT TO SEEK COMPENSATION FORM THE BOND**
- D. NRS 482.345(7)(a)(1) AUTHORIZES A DIRECT SUIT AGAINST THE BOND COMPANY AS LONG AS THE PLAINTIFF HAS A VIABLE CLAIM AGAINST THE DEALER TO WHOM THE BOND COMPANY ISSUED THE BOND**
- E. THE LANGUAGE IN NRS 482.345(7)(a)(2) MAKES IT CLEAR AND SELF EVIDENCE THAT THE THE STATUTE EXPRESSLY CONTEMPLATES THE AUTHORIZED "FILING OF AN ACTION" AGAINST THE BOND COMPANY**
- F. A CLAIMANT IS NOT REQUIRED TO FIRST "OBTAIN A JUDGMENT AGAINST THE DEALER BEFORE BEING ABLE TO SUE THE BOND COMPANY UNDER NRS 482.345(7)(a)(1)**

XIII PLAINTIFF HAS PLEAD THE REQUISITE ELEMENTS FOR DECLARATORY RELIEF AND BECAUSE THERE ARE TRIABLE ISSUES OF MATERIAL FACT INVOLVING PLAINTIFF'S EQUITABLE CLAIMS FOR RESCISSION, RESTITUTION AND EQUITABLE ESTOPPEL, THOSE TRIAL ISSUES CARRY OVER TO PLAINTIFF'S CLAIM FOR DECLARATORY RELIEF

XIV CONCLUSION

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

I

INTRODUCTION

This case can be concisely summed up in a short sentence. If you know, you gotta tell, and a half truth is not the truth. This motion is not complicated. Defendant NEVADA AUTO DEALERSHIP INVESTMENTS LLC (“SAHARA”) is a factory authorized and franchised Chrysler, Jeep Dodge dealership with a state of the art service department. This case involves the sale of a used 2013 Dodge “***Certified Pre Owned***” (“CPO) Ram 1500 pick up truck (“vehicle”) to the Plaintiff **on May 26, 2014**. In a nutshell, and as alleged in the First Amended Complaint (“FAC”) at *Exhibit 1 ¶¶ 15-31*, this case is primarily about adverse material information involving the vehicle that was ***actually known*** to SAHARA and to its Director of Used Car Sales, (Joshua Grant), and not disclosed to the Plaintiff on the day of sale. Additionally SAHARA’s sales representative also made misrepresentations to the Plaintiff on the date of sale.

Most importantly, nowhere in SAHARA’s moving papers do they present one kernel of evidence, nor do they even make any contention whatsoever that SAHARA actually disclosed this adverse material information to the Plaintiff with respect to the vehicle. This is because SAHARA ***has admitted***, via requests for admissions, that SAHARA ***actually knew*** about the material information prior to time of sale, and that SAHARA never made any disclosure regarding that material information to the Plaintiff at time of sale. See Plaintiff’s Concise Separate Statement (“SS”) *fact # 59-63*. See also *Exhibit 6 Def’s RFA Resp. to Pltnf’s RFA # 36-38*.

Contrary to SAHARA’s contentions and separate statement, the material or “outcome determinative” facts at issue in this motion have *nothing to do* with any events or occurrences that may have transpired *after* May 26, 2014. ***Rather this motion is solely about what happened on May 26, 2014***, i.e. what was known to SAHARA,

1 was that information “material”, and what was communicated to the Plaintiff, or more
2 appropriately, not communicated to the Plaintiff on May 26, 2014. Boiled down to its
3 essence, there are seven (7) issues or questions that the Court must analyze to determine
4 if genuine issues of material fact exist to require this case to proceed to a jury. They are:

- 5 (1) On May 26, 2014, (the date of the sale), was SAHARA and/or Joshua Grant,
6 SAHARA’s Director of Used Cars, aware and/or in possession of facts,
7 information or documents that might affect the vehicle’s safety, value,
8 marketability and/or desirability on the date of sale? **(Yes)**
- 9 (2) On May 26, 2014 would the information that was known to SAHARA and to
10 Joshua Grant have been “material” (important) to a reasonable buyer within the
11 community to know about in making a decision on whether to purchase a Dodge
12 CPO vehicle.? **(Yes)**
- 13 (3) On May 26, 2014 was this material (important) information disclosed to the
14 Plaintiff at the time of sale? **(No)**
- 15 (4) On May 26, 2014 did SAHARA make false representations to the Plaintiff about
16 the vehicle? **(Yes)**
- 17 (5) Did SAHARA **know or should they have known** that the vehicle was not
18 properly “certified” as a Dodge CPO? **(Yes)**
- 19 (6) Had SAHARA disclosed the material information to the Plaintiff at time of sale,
20 would he have entered the contract with SAHARA to purchase the vehicle? **(No)**
- 21 (7) Has Plaintiff suffered damages or other pecuniary loss and/or is he also entitled
22 to equitable relief under NRS 41.600(b)(2)? **(Yes)**

23 The answers to the above issues compel denial of Defendant’s motion and are
24 abundantly established and supported via Plaintiff’s SS, which are referred to
25 throughout this opposition. SAHARA asserts two primary arguments in support of their
26 motion that they did not and/or could not have engaged in any statutory deceptive trade
27 practices involving the vehicle. First, SAHARA disclosed in writing to the Plaintiff, via a
28 Carfax, that the vehicle was in a previous accident. And secondly, that the vehicle
“passed” the CPO inspection undertaken undertaken by SAHARA’s certified and trained
technician. While these two facts taken in isolation seem initially appealing, once the

1 onion is peeled back a bit, SAHARA's arguments become entirely unavailing, requiring
2 denial of SAHARA's motion and submission of this case to a jury.

3 As plead in the FAC, Plaintiff is **not** contending that SAHARA failed to disclose
4 that the vehicle was in a previous "accident." Rather, Plaintiff is contending that merely
5 disclosing that the vehicle was in a previous "collision/accident" was **not** sufficient
6 disclosure given the additional adverse material information SAHARA and Joshua
7 Grant actually knew about did not disclose to the Plaintiff concerning his CPO vehicle
8 purchase. This is because SAHARA had **superior, particularized and actual**
9 **knowledge** via an Allstate Collision Estimate of Record ("ACE"). The ACE clearly
10 reflected the monetary damage as well as the nature and extent of the damage that was
11 caused to the vehicle by the previous collision, *see Exhibit # 2; ACE and SS fact # 59-63*.
12 This information would have been material (important) for any reasonable consumer in
13 the community to know about in making an informed decision to purchase a Dodge CPO
14 vehicle. *SS fact # 22, 25, 26 and 32*

15
16
17 Furthermore, contrary to SAHARA's contention that Plaintiff did not take any
18 action or otherwise inquire about the accident when it was initially disclosed to him,
19 Plaintiff did in fact **specifically inquire** into the nature and extent of the accident
20 with SAHARA's sales person after SAHARA's sales person mentioned the previous
21 accident. *Decl. of Plntf. ¶ 2, and SS fact # 61*. Moreover, upon Plaintiff's specific
22 inquiry about the previous accident, Plaintiff was then mislead by SAHARA's sales
23 person, (Travis Spruell), who said it was only a "minor" accident, that the vehicle went
24 through and passed their 125 point comprehensive inspection, and if there was any
25 significant damage, they would not be selling it to him. *Decl. of Plntf. ¶ 2 and SS fact #*
26 *61*. SAHARA essentially allayed Plaintiff's concerns and inquires **by misleading**
27 **him**. Indeed, it was SAHARA that had far superior knowledge over that of the Plaintiff
28

1 with respect to the exact nature and extent of damage that was caused to the vehicle as a
2 result of the previous collision. *See Exhibit 2, ACE and SS fact # 29.*

3 Moreover, it was Joshua Grant, Director SAHARA's Used Car Department who
4 had ***personally acquired and had possession of*** the ACE on May 5, 2014 which
5 was only three (3) weeks prior to SAHARA reselling the vehicle to the community as a
6 Dodge CPO. *SS fact # 3.* Had the information contained in the ACE been disclosed to
7 the Plaintiff it would have revealed the following: that the CPO vehicle had sustained
8 **\$4,088.77** in property damage *and* that the CPO vehicle, as a result of the previous
9 collision, had the following components, parts and items replaced or repaired on it : • a
10 replaced front bumper • a repaired left front frame end bracket • a repainted left front
11 fender • a replaced right bumper bracket • a replaced radiator support • a replaced left
12 outer and inner tie rod • a repaired front left wheel¹ and • a replaced aftermarket left
13 stabilizer link.² Most significantly, the following facts are undisputed based on
14 SAHARA's responses to Plaintiff's RFAs.
15
16

- 17 • That [SAHARA] had the [ACE] when it sold the subject vehicle to
18 the Plaintiff, and that the [ACE] reflects repairs to the vehicle from
19 a March 26, 2014 collision/accident. *See Exhibit 7, Def's Resp. to*
Plntf's RFA # 17 and 23-30 and SS fact # 2 & 3.
- 20 • That the ACE reflects the repairs of the list of repaired and replaced
21 items set forth immediately supra. *See Exhibit 7, Def's Resp to*
Plntf's RFA # 17 and 23-30 and SS # 9.
- 22 • That SAHARA never communicated or disclosed any of the
23 contents of the ACE to the Plaintiff at time of sale. *See Exhibit 6,*
Def's Resp. to Plntf's RFA # 36-38 and SS fact # 59, 60 & 62.

24
25 ¹ As set forth in more detail in Plaintiff *SS fact # 92-100* the repair to the wheel was particularly
26 problematic as it was not repaired according the manufacturer's specifications, and made the vehicle
27 extremely unsafe.

28 ² This is only a partial list. The full list of all items is disclosed and set forth on the Allstate
Collision Estimate of Record ("ACE") at *Exhibit 2*

1 Suffice it to say, because SAHARA cannot and does not dispute that they did **not**
2 communicate the information contained within the ACE to the Plaintiff on the date of
3 sale, SAHARA argues that they did not have a legal obligation to disclose the
4 information contained in the ACE, and even if they did, the nature and extent of the
5 damage sustained to the vehicle as a result of the previous collision would not have been
6 material (important) to any consumer in making a decision to purchase a CPO vehicle.
7 *Mot. 9: 8-11.* However, as this opposition clearly establishes, Nevada law would have
8 required affirmative disclosure of the information contained in the ACE, and Plaintiff's
9 SS clearly establishes genuine issues of material fact as to whether the information
10 contained on the ACE would have been material (important) to any reasonable
11 consumer within the community in making a decision in purchasing a Dodge CPO
12 vehicle, (including the Plaintiff).
13

14 II

15 **THE STANDARD AS WELL AS THE INQUIRY ON DEFENDANTS' MOTION** 16 **FOR SUMMARY JUDGMENT IS STRAIGHT FORWARD AND COMPELS** 17 **DENIAL OF DEFENDANT'S MOTION** 18

19 Pragmatically, the Court's ultimate inquiry on summary judgment is straight
20 forward. The Court is to determine whether specific undisputed material facts, coupled
21 with undisputed background or contextual facts, are such that a fact finder could return
22 a verdict or decision in favor of the non-moving party. A material fact for purposes of
23 summary judgment is an "outcome determinative" fact. *See Wood v. Safeway, Inc.*,
24 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). ***A genuine issue of material fact is***
25 ***one where the evidence is such that a reasonable fact finder could return***
26 ***a verdict for the non-moving party.*** *See Wood, id.* As the Court in *Liberty*
27
28

1 Lobby 477 U.S. 242 (1986), *Celotex* 477 U.S. 317, (1986), (which was expressly adopted
2 in *Wood*) stated:

3
4 In essence ... the inquiry [is] ... whether the evidence presents a *sufficient*
5 *disagreement* to require submission to a jury, or whether it is so one
6 sided that one party must prevail as a matter of law.

7 Consequently, the dispositive “question” with respect to the instant motion is --
8 based upon the legal arguments set forth in this opposition *coupled with* Plaintiff’s SS,
9 could a reasonable fact finder find that Defendant SAHARA engaged in the enumerated
10 statutory deceptive trade practices alleged in paragraph 31 of Plaintiff’s FAC? The
11 answer to the above question is a resounding “yes.” Consequently, Defendant
12 SAHARA’s motion should be denied.

13 III

14 THE ENUMERATED STATUTORY DECEPTIVE TRADE 15 PRACTICES THAT ARE AT ISSUE, THE NATURE OF STATUTORY 16 CONSUMER FRAUD AND THE *SIGNIFICANT DIFFERENCE BETWEEN* 17 “STATUTORY” CONSUMER FRAUD AND “COMMON LAW” FRAUD

18 Nevada’s Consumer Fraud Statute, NRS 41.600, expressly incorporates the
19 *Nevada Deceptive Trade Practices Act* (“NDTPA”) into its provisions via section (2)(e),
20 *see fn. 4 infra*. Consequently, any violation of the enumerated statutory deceptive trade
21 practices found in Chapter 598 of the NRS are “deemed” to be statutory consumer fraud
22 under NRS 41.600. *See fn. 4 infra*. As set forth the FAC at *Exhibit 1*, ¶ 31, Plaintiff
23 alleges that SAHARA engaged in the following deceptive trade practices :

- 24 A. ***Failing to disclose a material fact*** in connection with the sale
25 of goods. [NRS 598.0923(2) and NRS 41.600(2)(e)]
26 B. Represented that goods for sale are of a ***particular standard,***
27 ***quality or grade if he knows or should know*** that they are of
28 another standard, quality, grade, style or model. [NRS 598.0915(7)
and NRS 41.600(2)(e)]

- 1 C. Makes false representation as to the source, sponsorship, approval
2 **or certification** of goods for sale. [NRS 598.0915(2) and NRS
3 41.600(e)]
- 3 D. Making any **other false representations** in a transaction. [NRS
4 598.0915(15) and NRS 41.600(2)(e)]
- 5 E. Violating a federal or state statute or regulation **relating to the**
6 **sale of goods**. [NRS 598.0923(3) and NRS 41.600(2)(e)]³

7 As a threshold matter, Plaintiff has **not** plead any claim for relief for *common*
8 *law* fraud, rather plaintiff has plead a claim for *statutory consumer fraud* a/k/a
9 deceptive trade practices, pursuant to NRS 41.600(2)(e). **Indeed, Plaintiff's claim**
10 **is purely statutory in nature**. Defendant SAHARA has erroneously stated what
11 they believe the “elements” are to a *statutory* claim for consumer fraud claim pursuant
12 to NRS 41.600. SAHARA cites *Blanchard v Blanchard* 956 P. 2d. 1382 (1992) and
13 *Barmettler v Reno Air* 956 P. 2d. 1382, (1998) for this proposition. *Blanchard* and
14 *Reno Air* set forth the elements of *common law fraud* and have **nothing to do** with
15 statutory consumer fraud under NRS 41.600. The take away from this is that Defendants
16 are apparently under the erroneous belief that **statutory** “consumer fraud,” a/k/a
17 deceptive trade practices under NRS 41.600 and common law fraud are “one in the
18 same.” *See Mot. 10: 27-28, 11. 1-5. They are not. See Betsinger infra.*

20 Unlike common law fraud, a claim for consumer fraud/deceptive trade practices
21 is a **pure creature of statute**. *See NRS 41.600 and Chapter 598 (NDTPA)*. The
22 NDTPA was promulgated by the Legislature to overcome the traditional hurdles
23 associated with common law fraud involved in consumer transaction. The NDTPA is
24 based upon a “uniform” act and is expressly predicated on specific enumerated

26 ³ See 16 C.F.R. § 455.1(a)(1), a federal regulation relating to the sale of goods entitled “general
27 duties of a used vehicle dealer” states : “It is a deceptive act or practice for any used vehicle dealer when
28 that dealer sells or offers for sale a used vehicle in or affecting commerce as *commerce* is defined in the
Federal Trade Commission Act: to misrepresent the mechanical condition of a used vehicle.” *See Section*
V((C) infra.

1 violations. *See NRS 598.0915 to 598.0925 inclusive and NRS 41.600(2)(a) through*
2 *(e).*⁴ Most notably, in Nevada, statutory consumer fraud under NRS 41.600(2)(e)
3 expressly incorporates NRS 598.0923, which is part the NDTPA. NRS 598.0923(3)
4 greatly expands the applicability of the NDTPA because NRS 598.0923(3) essentially
5 :barrows” from other “qualifying” federal or state statutes or regulations that “*relate to*
6 *the sale of goods,*” such as 16 C.F.R. § 455.1(a)(1), which if violated by the Defendant
7 also constitute statutory consumer fraud ***under state law*** pursuant to NRS
8 41.600(2)(e). *See fn. 4, supra.*

10 Claims based on ***statutory*** consumer fraud under NRS 41.600 and the NDTPA
11 are entirely ***separate and distinct*** from a claim grounded in common law, as they are
12 ***not*** cut from the same cloth. *See Picus, Betsinger, and Dunlap infra.* Claims based
13 upon statutory consumer fraud a/k/a deceptive trade practices are to be ***liberally***
14 ***construed*** to effectuate their remedial objective, which is to give additional statutory
15 rights and protections to consumers that involve consumer sales transactions, so as “***to***
16 ***make it easier to establish then common law fraud.***” *See Betsinger and*
17 *Dunlap infra* -- [both holding the legislative purpose behind a claim for statutory
18 consumer fraud is to provide consumers with a cause of action that is easier to establish
19 than common law fraud].

21 Statutory consumer fraud under the NDTPA addresses and involves broader
22 concepts with respect to dealing with “deception” in consumer sales transactions. It
23 entails specific statutory enumerated conduct or omissions that constitute *statutory*
24 consumer fraud, and although many enumerated deceptive trade practices may “sound
25

26 ⁴ NRS 41.600(1) and (2) state in pertinent part :

27 1. An action may be brought by any person who is a victim of consumer fraud.

28 2. As used in this section, “consumer fraud” means:

(e) ***A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive.***

1 in fraud,” they are NOT claims for “common law” fraud. *See NDTPA at NRS 598.0915*
2 *through 598.0923 and Betsinger, infra at 435.* In *Dunlap v. Jimmy GMC of Tucson,*
3 *Inc.* 136 Ariz. 338, 342; 666 P.2d 83, 87, 89 (Ariz. App.1983), which our Nevada
4 Supreme Court in *Betsinger* adopted, stated and held :

5 Consumer fraud is a cause of action which is **separate and distinct**
6 **from common law fraud.**

* * *

7 The elements of a private cause of action under the [Arizona Consumer
8 Fraud Act] are 1) a false promise or misrepresentation 2) made in
9 connection with the sale or advertisement of merchandise and 3) the
hearer's consequent and proximate injury.

* * *

10 The purpose of legislation such as Arizona's Consumer Fraud Act is to
11 provide a remedy for injured consumers who need such protection to
12 counteract the disproportionate bargaining power which is typically
13 present in consumer transactions. ***The legislative intent behind the***
Consumer Fraud Act is to provide consumers with a claim for
relief that is easier to establish than is common law fraud.

14 In *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 658 (D. Nev. 2009) the Court
15 held that a private claim under the NDTPA seeking damages would require, at a
16 minimum, a victim of consumer fraud to prove that: (1) an act of consumer fraud by the
17 defendant (2) caused (3) damage to the plaintiff.

18 In its landmark decision, our Supreme Court in *Betsinger v D.R. Horton* 232 P.
19 3d. 433, 435 * 436, 126 Nev. Adv. Op. No. 17 (2010) rendered its first published opinion
20 setting forth the purpose and legislative objective behind the NDTPA, as well as
21 delineating the very significant distinctions between a claim for “statutory consumer
22 fraud,” versus a claim based on “common law” fraud. In so doing the Supreme Court,
23 adopting *Dunlap*, also adopted the majority position of a ***liberal interpretation*** with
24 respect to claims involving statutory consumer fraud a/k/a deceptive trade practices
25 under NRS 41.600. The *Betsinger* Court succinctly stated and held :
26
27
28

1 ...[T]he purpose of the consumer protection statute [is] to
2 provide consumers with a cause of action that was easier to
3 establish than common law fraud ... We AGREE with the
4 Arizona Court of Appeals' reasoning in Dunlap. STATUTORY
5 OFFENSES THAT SOUND IN FRAUD ARE SEPARATE AND DISTINCT
6 FROM COMMON LAW FRAUD. Therefore, we conclude that deceptive
7 trade practices, as defined under NRS Chapter 598, must only be proven
8 by a preponderance of the evidence. Id at 435. Citing *Dunlap v. Jimmy*
9 *GMC of Tucson, Inc.*, 136 Ariz. 338, 666 P.2d 83, 88-89_ (1983).
10 [emphasis added]

11 The elements of common law fraud set forth in *Blanchard* or *Reno Air* are **not**
12 the elements of a statutory claim for “consumer fraud.” Furthermore, in stark contrast,
13 statutory consumer fraud only requires proof by a preponderance of evidence, see
14 *Betsinger*, whereas common law fraud requires proof based upon “clear and convincing”
15 evidence. *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.* 120 Nev. 277, 89 P.3d
16 1009 (2004).

17 IV

18 THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT 19 SAHARA FAILED TO DISCLOSE A MATERIAL FACT 20 IN CONNECTION WITH THE SALE OF GOODS

21 A. A MATERIAL FACT IS A FACT THAT A REASONABLE PERSON 22 WOULD ATTACH IMPORTANCE TO WITH RESPECT TO THE 23 TRANSACTION AT ISSUE

24 A fact is material if it concerns a subject reasonably relevant to the transaction at
25 issue and if a reasonable person would attach importance to that fact. See *Powers v.*
26 *United Services Auto. Ass'n*, 114 Nev. 690, 962 P.2d 596 (1998) (“*Powers I*”) and
27 *Powers v United Services Ass’n* 115 Nev. 38, 979 P.2d 1286 (1999) (“*Powers II*”). While
28 *Powers* dealt with a bad faith insurance case involving what would have been material
or important to a reasonable claims adjuster in investigating a claim which was denied
based upon alleged insurance fraud committed by the insured], the “objective”
materiality standard set forth in *Powers* is *equally applicable* to the instant case, and is
also in line with numerous other jurisdictions with respect to what constitutes

1 “material” fact in a sale transaction, whether it be in the form of an omission or an
2 affirmative misrepresentation.⁵ Obviously, what constitutes a “material” fact depends
3 on the nature and type of the transaction at issue, but in determining what a “material”
4 fact is, is based upon an **objective standard** which would turn is based upon what
5 would be material to the reasonable consumer within the community. **Furthermore,**
6 **as also held in Powers, id, materiality is generally a question of fact for**

7
8 ⁵ See *Totz v. Cont'l Du Page Acura*, 236 Ill. App. 3d 891, 899, 602 N.E.2d 1374, 1379 (1992)
9 [**holding in statutory consumer fraud context that dealer's failure to disclose previously**
10 **repaired damage and failure to disclose vehicle was in a previous severe wreck, which the**
11 **dealer knew about, was a “material” fact in a used vehicle sale transaction**], *Brennan v.*
12 *Kunzle*, 154 P.3d 1094, rev'd on other grnds, (Kan. App., 2007) [**holding an undisclosed matter is**
13 **“material,” as element of fraud by silence, if it is one to which a reasonable man would**
14 **attach importance in determining his choice of action in the transaction in question**],
15 *Smith v. KNC Optical, Inc.*, 2009 WL 2581866 (Tex. App. Dallas, 2009) [**reaffirming previous Texas**
16 **Appellate opinions holding that a “material” fact for purposes of establishing material**
17 **misrepresentation as element of fraud claim, means a reasonable person would attach**
18 **importance to and would be induced to act on the information in determining his choice**
19 **of actions in the transaction in question**], *Weinstat v. Dentsply Intern., Inc.*, 103 Cal.Rptr.3d 614
20 (Cal. App. 2010) [**holding the issue of materiality, in a Deceptive Trade Practices cause of**
21 **action based on fraudulent or deceptive practices, is whether a reasonable person would**
22 **attach importance to the representation or nondisclosure in deciding how to proceed in**
23 **the particular transaction**], *Brown v. Bennett*, 136 S.W.3d 552 (Mo. App. W. Dist., 2004) [**holding**
24 **acts to which a reasonable person might be expected to attach importance in making**
25 **one's choice of action are material, for purposes of a fraud claim**]; *Inkel v. Pride Chevrolet-*
26 *Pontiac, Inc.*, 945 A.2d 855 (Vt. 2008) [**holding under Consumer Fraud Act, the question is**
27 **what a reasonable person would regard a fact as important in making a decision to**
28 **purchase**], *Briggs v. American Nat. Property and Cas. Co.*, 209 P.3d 1181 (Colo.App., 2009) [**holding**
undisclosed facts are “material,” for purposes of a fraudulent concealment, negligent
misrepresentation by omission claim or consumer protection act claim, if the consumer's
decision might have been different had the truth been disclosed], *Carcano v. JBSS, LLC*, 684
S.E.2d 41 (N.C. App., 2009). [**holding a fact is a “material fact” if had it been known to the**
party, would have influenced that party's decision in making the contract at all], *Casavant*
v. Norwegian Cruise Line, Ltd., 919 N.E.2d 165 (Mass. App.) [**holding that respect to**
nondisclosure under deceptive trade practices act determining whether the nondisclosure
was a material fact depends on whether the plaintiff likely would have acted differently
but for the nondisclosure], *Dubey v. Public Storage, Inc.*, 918 N.E.2d 265 (Ill. App. 2009) [**holding**
“material” fact for purposes of a claim for consumer fraud act and common law fraud is
where a buyer would have acted differently knowing the information, or if it concerned
the type of information upon which a buyer would be expected to rely in making a
decision regarding the purchase of the product], *Yazd v. Woodside Homes Corp.*, 143 P.3d 283
(Utah 2006) [**holding to be “material,” the information with respect to fraudulent**
concealment action must be important, which, in turn, can be gauged by the degree to
which the information could be expected to influence the judgment of a person buying
property or assenting to a particular purchase price], *Colaizzi v. Beck*, 895 A.2d 36 (Pa. Super.,
2006) rev'd on other grnds, [**holding a misrepresentation is material, for purposes of**
establishing common law fraud, if it is of such character that if it had not been
misrepresented, the transaction would not have been consummated].

1 *the jury to determine, id at 697 and 601.*

2 **B. THE INFORMATION ITEMIZED, DISCLOSED AND MONETIZED IN**
3 **THE ACE WOULD HAVE BEEN “MATERIAL” (IMPORTANT) TO ANY**
4 **REASONABLE CONSUMER WITHIN THE COMMUNITY IN MAKING**
5 **A DECISION TO PURCHASE A DODGE CPO VEHICLE, INCLUDING**
6 **THE PLAINTIFF**

7 The ACE is attached as Exhibit 2.⁶ As a threshold matter, SAHARA concedes
8 that the things that ***are important*** to a used car buyer when making a decision to buy
9 a used vehicle, include: **(1)** safety, **(2)** value, **(3)** mechanical condition, **(4)** vehicle
10 condition and **(5)** price. *SS fact # 22.* SAHARA further concedes that it *important for*
11 *SAHARA to make full disclosure* to a used car buyer involving things that might affect
12 the vehicle’s **(1)** value, **(2)** safety, **(3)** desirability or **(4)** marketability. *SS fact # 32.*
13 SAHARA further concedes that the things consumers within the community associate
14 with a CPO and what a CPO vehicle projects to *to the consumer* are: **(1)** value, **(2)**
15 quality, **(3)** safety, **(4)** competence, **(5)** assurance, **(6)** piece of mind and **(7)** trust, and
16 that these are the very things that SAHARA wants to ***instill and engender*** into the
17 mind of a consumer when purchasing a CPO vehicle. *SS fact # 23-25.* Furthermore,
18 SAHARA concedes that the consumer within the community ***has the expectation***
19 when buying a Dodge CPO vehicle that it has: (1) value, (2) it has quality, (3) it is safe,
20 (4) they have confidence and assurance in buying it, (5) they have peace of mind, and (6)
21 ***they trust the dealership selling it to them.*** *SS fact # 26*

22 Furthermore, Travis Spruell, SAHARA’s sales person who sold the vehicle to the
23 Plaintiff, testified that while he was not aware of the existence of the ACE, based upon
24 his experience in selling hundreds of CPO vehicles to the community, in talking with
25

26 ⁶ It must also be remembered that SAHARA and Joshua Grant, SAHARA’s Director of Used Car
27 Sales ***actually knew*** about the ACE and had it in its possession three (3) weeks prior to making the
28 decision to resell the vehicle to the community at a CPO Dodge. *SS fact # 3.* SAHARA’s ***knowledge*** of
the ACE is relevant to: **(1)** SAHARA’s legal duty to disclose these material facts, **(2)** for punitive damages
and **(3)** with respect to whether the vehicle was properly “certified” as a CPO because it did not meet
manufacturer’s repair specifications. *See infra.* 12

1 consumers and getting to know what their expectations are involving CPOs, he believes
2 that a consumer within the community who is going to buy a CPO from SAHARA
3 **would want to know** that a CPO vehicle had \$4,088.70 in previous damage to it, in
4 addition to the nature and extent of the previous accident, **IF the dealership**
5 **actually knew about that information.** SS fact # 54.

6
7 Finally, Noah Grant, SAHARA's F & I manager who was responsible for
8 preparing the closing documents on the Plaintiff's vehicle, based on his experience in
9 selling between 500 to 1000 Dodge vehicles to the community and his work experience
10 at SAHARA, also agrees that if a dealer had knowledge about the ***nature and extent***
11 of the accident, (meaning they knew what parts were replaced and repaired, the amount
12 of previous accident damage), or if he knew the vehicle has sustained \$ 4,088.70 in
13 damage due to the previous collision, ***those facts would be important to disclose***
14 ***to a consumer who is buying a CPO Dodge, and he would have disclosed***
15 ***those facts*** to Mr. Poole. SS fact # 43 & 44.

16
17 Based upon the materiality standard being an "objective" standard, based upon
18 that standard being established and governed by a "reasonable consumer within the
19 community," and based upon the sworn testimony of SAHARA's 30(b)(6) representative
20 and SAHARA's Director of Used Car Sales, (Joshua Grant), SAHARA's sales person
21 (Travis Spruell), and SAHARA's F&I manager (Noah Grant), with respect to the
22 ***"objective" expectations*** of consumer within the community, the facts and
23 information contained within ACE would have been material to any reasonable
24 consumer who was purchasing a Dodge CPO vehicle. SS fact #64-66.

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 08:53 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANT'S APPENDIX VOLUME 1 1

Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
George O. West III Esq, State Bar No. 7951
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Telephone : (702) 318-6570
Email: gowesq@cox.net

CRAIG B. FRIEDBERG [SBN 4606]
Law Offices of Craig B. Friedberg, Esq.
Craig B. Friedberg, Esq, State Bar. No. 4606
4760 S. Pecos Road, Suite 103
Las Vegas, NV 89121
Telephone: (702) 435-7968
Email: attcbf@cox.net

Attorneys for Appellant Derrick Poole

Appendix Alphabetical Index

Vol.	Date	Description	Page Numbers
5	12/23/17	Case Appeal Statement	1012-1050
1	5/22/16	Complaint for Damages and Equitable and Declaratory Relief and Demand for Jury Trial	001-015
4	11/12/17	Decision and Order Granting Defendants' Motion For Summary Judgment	845-848
1	8/16/17	Defendants' Nevada Auto Dealership Investments LLC D/B/A Sahara Chrysler Jeep, Dodge and Corepoint Insurance Co's Answer to First Amended Complaint	034-047
1	10/2/17	Defendants' Nevada Auto Dealership Investments LLC's and Corepoint Insurance Company's Motion For Summary Judgment	048-225
3	11/3/17	Defendants' Motion to Strike Fugitive Documents Filed by Plaintiff on Order Shortening Time	644-750
4	11/3/17	Defendants' Motion to Strike Declaration of Rocco Avellini Attached to Plaintiff's Opposition on Order Shortening Time	751-783
5	12/19/17	Defendant's Nevada Auto Dealership Investment LLC's Motion for Attorney's Fees and Costs	869-1008
6	1/25/18	Defendant Nevada Auto Dealership Investments LLC's Reply in Support of Motion for Attorney's Fees and Costs	1322-1393
1	5/15/17	First Amended Complaint for Damages and Equitable and Declaratory Relief and Demand for Jury Trial	016-033
7	3/28/18	Judgment	1404-1405
4	12/8/17	Motion to Retax and Settle Costs	855-865
5	12/23/17	Notice of Appeal	1009-1011
4	12/1/17	Notice of Entry of Decision and Order Granting Defendants' Motion for Summary Judgment	849-854
7	3/28/18	Notice of Entry of Judgment	1406-1409
6-7	3/20/18	Notice of Entry of Order (On Defendants' Motion For Attorney's Fees and Costs and Plaintiff's Motion to Retax and Settle Costs	1398-1403
3	10/22/17	Notice of Errata on Plaintiff's Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	639-643

4	12/9/17	Order Denying Defendant Nevada Auto Dealership Investments LLC d/b/a Sahara Chrysler Jeep Dodge Ram's Motion to Strike Fugitive Documents and Motion to Strike the Declaration of Rocco Avillini Attached to Plaintiff's Opposition to Defendants' Motion for Summary Judgment	866-868
6	3/9/18	Order Granting, in Part, Defendants' Motion for Fees and Costs and Order Granting, in Part, Plaintiff's Motion to Retax Costs	1394-1397
2-3	10/21/17	Plaintiff's Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment	339-638
1-2	10/20/17	Plaintiff's Opposition to Defendant Sahara Motion For Summary Judgment	226-303
4	11/6/17	Plaintiff's Opposition to Defendants' Motion to Strike Fugitive Documents on OST	784-789
4	11/6/17	Plaintiff's Opposition to Defendants' Motion To Strike Declaration of Rocco Avillini in Support Of Plaintiff's Opposition to Defendants' Motion For Summary Judgment	790-844
5-6	1/15/18	Plaintiff's Opposition to Defendants' Motion for Attorney's Fees and Costs	1120-1321
2	10/20/17	Plaintiff's Response to Defendants Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	304-310
2	10/21/17	Plaintiff's Separate Statement of Undisputed Material Facts in Support of Plaintiff's Opposition To Defendants' Motion for Summary Judgment	311-338
5	12/28/17	Transcript of Proceedings (Defendants' Motion for MSJ and Motions to Strike)	1051-1119

Appendix Chronological Index

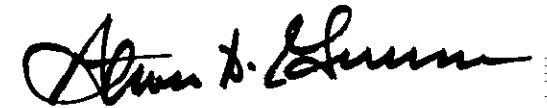
Vol.	Date	Description	Page Numbers
1	5/22/16	Complaint for Damages and Equitable and Declaratory Relief and Demand for Jury Trial	001-015
1	5/15/17	First Amended Complaint for Damages and Equitable and Declaratory a Demand for Jury Trial	016-033
1	8/16/17	Defendant Nevada Auto Dealership Investments LLC D/B/A Sahara Chrysler Jeep, Dodge and Corepoint Insurance Co's Answer to First Amended Complaint	034-047
1	10/2/17	Defendants Nevada Auto Dealership Investments LLC's and Corepoint Insurance Company's Motion For Summary Judgment	048-225
1-2	10/20/17	Plaintiff's Opposition to Defendant Sahara Motion For Summary Judgment	226-303
2	10/20/17	Plaintiff's Response to Defendants Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	304-310
2	10/21/17	Plaintiff's Separate Statement of Undisputed Material Facts in Support of Plaintiff's Opposition To Defendants' Motion for Summary Judgment	311-338
2-3	10/21/17	Plaintiff's Exhibits in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment	339-638
3	10/22/17	Notice of Errata on Plaintiff's Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	639-643
3	11/3/17	Defendants' Motion to Strike Fugitive Documents Filed by Plaintiff on Order Shortening Time	644-750
4	11/3/17	Defendants' Motion to Strike Declaration of Rocco Avellini Attached to Plaintiff's Opposition on Order Shortening Time	751-783
4	11/6/17	Plaintiff's Opposition to Defendants' Motion to Strike Fugitive Documents on OST	784-789
4	11/6/17	Plaintiff's Opposition to Defendants' Motion To Strike Declaration of Rocco Avellini in Support Of Plaintiff's Opposition to Defendants' Motion For Summary Judgment	790-844

4	11/12/17	Decision and Order Granting Defendants' Motion For Summary Judgment	845-848
4	12/1/17	Notice of Entry of Decision and Order Granting Defendants' Motion for Summary Judgment	849-854
4	12/8/17	Motion to Retax and Settle Costs	855-865
4	12/9/17	Order Denying Defendant Nevada Auto Dealership Investments LLC d/b/a Sahara Chrysler Jeep Dodge Ram's Motion to Strike Fugitive Documents and Motion to Strike the Declaration of Rocco Avillini Attached to Plaintiff's Opposition to Defendants' Motion for Summary Judgment	866-868
4-5	12/19/17	Defendant Nevada Auto Dealership Investment LLC's Motion for Attorney's Fees and Costs	869-1008
5	12/23/17	Notice of Appeal	1009-1011
5	12/23/17	Case Appeal Statement	1012-1050
5	12/28/17	Transcript of Proceedings (Defendants' Motion for MSJ and Motions to Strike)	1051-1119
5-6	1/15/18	Plaintiff's Opposition to Defendants' Motion for Attorney's Fees and Costs	1120-1321
6	1/25/18	Defendant Nevada Auto Dealership Investments LLC's Reply in Support of Motion for Attorney's Fees and Costs	1322-1393
6	3/9/18	Order Granting, in Part, Defendants' Motion for Fees and Costs and Order Granting, in Part, Plaintiff's Motion to Retax Costs	1394-1397
6-7	3/20/18	Notice of Entry of Order (On Defendants' Motion For Attorney's Fees and Costs and Plaintiff's Motion to Retax and Settle Costs	1398-1403
7	3/28/18	Judgment	1404-1405
7	3/28/18	Notice of Entry of Judgment	1406-1409

¹ Pursuant to NRAP 30(a) counsel for both the Appellant and Respondent met and conferred well in advance and agreed on the content of the joint appendix in this appeal. Appellant's counsel prepared that joint appendix well in advance of the opening brief. However, Appellant is filing an Appellant's Appendix because of an oversight in his part ***of which he takes full responsibility for.*** Appellant's counsel, George O. West III, did not realize that he not include Defendant's Reply Brief in support of their motion for summary judgment, which is the main focus of this appeal. It was a document that was agreed to and included on both Appellant and Respondent's list of documents to be included in the joint appendix.

However, this error was not realized until Appellant's counsel was in final revisions of the opening brief just three days from the extended deadline to file the opening brief. The citations to the record were based upon an appendix without Defendant's reply brief on MSJ. While Appellant did not cite to Defendants' reply brief, it would be a required document under the NRAP that would potentially be essential to a decision with respect to the issues on appeal given the propriety of the grant of Defendants' summary judgment is at the core of this appeal.

Consequently, because of this late discovery, Appellant's counsel did not have sufficient time to redo all of the citations to the record in his opening brief because inserting Defendant's reply brief would have changed much of the citations to the record found in the opening brief. Appellant's counsel has informed Respondent's counsel of this oversight, has taken full responsibility for the inability to file a joint appendix, and has requested Respondent's counsel to file a Respondent's Appendix to include his client's Reply brief in MSJ to ensure a complete record, and should he need to cite to the reply brief, he can do so through a Respondent's Appendix.



CLERK OF THE COURT

COMJD

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Email : gowesq@cox.net
Websites : www.caaaf.net
www.americasautofraudattorney.com
(702) 318-6570
(702) 664-0459 [fax]

Attorney for Plaintiffs
DERRICK POOLE

DISTRICT COURT

CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

v

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

Defendants,

CASE NO: A- 16 - 737120 - C
DEPT: XXVI I

**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

Arbitration Exemption Claimed
Equitable/Declaratory Relief

COMMON ALLEGATIONS

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

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

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

1 4. At all relevant times herein mentioned, Defendant WELLS FARGO
2 DEALER SERVICES INC ("WFB") is believed to be a corporation organized and existing
3 under the laws of California, and is authorized to do business in the State of Nevada,
4 County of Clark, City of Las Vegas. Said Defendant is also the current "holder" and/or
5 assignee of the Plaintiffs' Retail Installment Sale Contract ("RISC") a/k/a a "consumer
6 credit contract," as hereinafter described.
7

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

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

20 7. On May 26, 2014, Plaintiff took delivery of and entered into a RISC a/k/a
21 "consumer credit contract," with Defendant SAHARA for the financed purchase of a
22 used 2013 *certified pre-owned* ("CPO") Ram 1500 Truck with 6,716 miles on it at time of
23 sale ("vehicle"). The RISC called for Plaintiff to make 72 monthly payments in the
24 amount of \$ 654.53. To date as of the filing of this Complaint, Plaintiff has made all of
25 his monthly payments to WFB. Plaintiff put down \$ 4,000.00 in trade for the vehicle,
26 which was the agreed upon price of his trade in. After adding all other ancillary charges,
27 including doc fees, gap insurance, tax, title, emissions and finance charges, and
28 deducting the amount of the Plaintiff's trade in, the total aggregate amount of payments

1 under the RISC was \$ 47,126.16. It is this amount Plaintiff is obligated to pay to
2 Defendant WFB over the loan term under the RISC, per the hereinafter referenced
3 assignment of the Plaintiffs' RISC from SAHARA to WFB. To date, Plaintiff has made
4 23 monthly payments to Defendant WFB.

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

11
12 NOTICE : ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS
13 **SUBJECT TO ALL CLAIMS AND DEFENSES** WHICH THE DEBTOR
14 COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES
15 OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF.
RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED
AMOUNTS PAID BY THE DEBTOR HEREUNDER.¹

16 ¹ It is noteworthy to point out that this language is mandated by 16 C.F.R. §§ 433.1 and 433.2,
17 (commonly known as the FTC Holder Rule), to be in all consumer credit contracts' and therefore makes
18 such terms and conditions a matter of state contract law. However it should be noted that Plaintiff has
19 not plead a claim for relief based on the provisions of what is commonly known as the "FTC Holder Rule.
20 These C.F.R. sections do not establish or confer a federal private claim for relief under their provisions.
21 *See infra. It has been widely held that the mere mention, reference or even reliance on the*
22 *provisions of the "FTC Holder Rule" in a Complaint does not confer federal question*
23 *jurisdiction.* This is not only because such provisions do not create any type of private federal right of
24 action, but the Plaintiff's underlying claims *are solely based on state law.* Plaintiff is merely using
25 the FTC Holder Rule provisions solely for purposes of preserving and asserting *state law claims* and
26 remedies against the subsequent assignee and/or "holder" of the RISC a/k/a a "consumer credit contract."
27 *See Walker Motors Sales, Inc.* 162 F. Supp. 2d 786 (S.D. Ohio, 2000) [holding there is no private right
28 of action under the "FTC Holder Rule" in an of itself without a state law derivative claim]; *Glover 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 2330337 (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
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].

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.

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.

13. At all relevant times, Defendant SAHARA represented to the Plaintiff, both orally and in writing, and held out, and displayed for sale and represented that the vehicle to the Plaintiff as a CPO Dodge Ram 1500. Pursuant to the Chrysler Dodge CPO Inspection Standards between the manufacturer and a franchised dealership who

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 NDTFA 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 participates in the Chrysler/Dodge CPO program, for a vehicle to qualify for the CPO
2 program, the franchised dealer (SAHARA), must undertake and successfully complete a
3 rigorous multistep certification process before it can advertise, represent, display or sell a
4 vehicle to the community as a Chrysler/Dodge CPO vehicle.

5
6 14. One of these important steps, prior to advertising, displaying or selling a
7 Chrysler/Dodge CPO vehicle to the community is the strictly mandated requirement to
8 have a Chrysler/Dodge certified technician conduct a comprehensive 125 point
9 inspection on the vehicle, *which also specifically includes and encompasses an*
10 *inspection of the vehicle for any frame/unibody damage or other indicia or*
11 *indications of a vehicle having been involved in prior collision or collisions.*

12 Dealers are also required to run a Carfax on the vehicle. If these two critical steps are not
13 undertaken by the dealership, a vehicle, including the Plaintiff's vehicle, cannot be
14 advertised, displayed or listed for sale or actually sold as a Chrysler/Dodge "CPO"
15 vehicle. Notwithstanding the content of any CarFax report, or the lack of any indication
16 of any accident or frame damage to the vehicle that may be indicated on the CarFax,
17 SAHARA had at all times an separate and independent duty to thoroughly inspect the
18 vehicle to ensure it did not have any frame damage or other indicia that the vehicle had
19 been in a previous collision or collisions.
20

21 15. *Furthermore, under Chrysler/Dodge's own standards involving*
22 *CPO vehicles, any vehicle that has sustained any frame damage are*
23 *automatically ineligible to be sold as a Chrysler/Dodge CPO vehicle. Given*
24 *the extent the of frame damage on the vehicle that would been abundantly*
25 *evident at time of inspection, this vehicle was not able to be displayed or*
26 *sold as a Chrysler/Dodge CPO vehicle, which is being certified as a CPO to*
27
28

1 give the consumer the piece of mind that the vehicle does not have any
2 frame damage and to further induce consumers within the community to
3 purchase a CPO vehicle at a higher price as compared to a comparable non
4 CPO vehicle. Nevertheless, given the extremely negative stigma consumers
5 attached to frame/unibody damaged vehicles, this important fact, which if
6 known to SAHARA, or if it should have been known to SAHARA, was
7 statutorily required to still be clearly disclosed to any consumer at time of
8 sale, including the Plaintiff, as hereinafter alleged.

10 16. Indeed, one of the primary reasons for selling a Chrysler Dodge CPO
11 vehicle is to reduce the consumer's perception of the risk involved with purchasing a
12 used with respect to the vehicle having frame/unibody damage from a previous collision,
13 previous accidents, and associated safety issues and diminished value to the vehicle. The
14 consumer's reasonable expectation when purchasing a certified pre owned vehicle is that
15 it does not have any frame damage of other conditions that will diminish its safety or
16 value. This expectation on the part of the consumer is specifically created in the
17 advertising materials, brochures and other information that is disseminated to the
18 community with respect to buying piece of mind when purchasing a Chrysler/Dodge CPO
19 vehicle, which includes Chrysler/Dodge CPO vehicles do not have any frame damage.
20

21 17. More specifically, it is advertised with respect Chrysler/Dodge CPO vehicles
22 that :
23

- 24 A. When you have a Chrysler Group Certified Pre-Owned vehicle
25 ("CPOV") you have far more then just a "used" vehicle. You have
26 confidence. You have pride. You have a great vehicle that you can
27 trust. You're certified.
28 B. Every Chrysler, Jeep, Dodge and Ram CPOV can be counted on to
go the distance. Our CPO vehicles must pass a strident
certification process *that guarantees* only the finest late model
vehicles get certified. Every vehicle that passes is then subjected to

1 a comprehensive 125 point inspection and a through reconditioning
2 process using Authentic Mopar Parts.

3 C. What would you expect to pay to have a qualified technician give
4 this vehicle such a thorough inspection ?

5 D. Only the finest late model vehicles we have are going to be certified
6 to begin with, so the [CPO] vehicles you are checking out on the lot
7 are the best.

8 18. Moreover, a CPO vehicle, as compared to a comparable non CPO vehicle,
9 will usually command and justify an increased selling price at least several hundreds of
10 dollars higher than a comparable non CPO vehicle, sometimes more than \$ 1,500.00,
11 and consumer's are willing to pay that increased price for the piece of mind that is
12 advertised to them about purchasing a Chrysler/Dodge CPO vehicle. Indeed, the
13 aforementioned written and/or on line materials and advertisements which are
14 disseminated to the community are there to provide a further inducement and incentive
15 to the consumer to spend the extra money to purchase "piece of mind" and confidence
16 with respect to a Chrysler/Dodge CPO certified vehicle.

17 19. At no time was Plaintiff aware that the vehicle had extensive frame damage
18 at time of sale, but it was in May of 2015, Plaintiff first became aware that the vehicle
19 had sustained significant frame damage. In truth and in fact, at the time of sale, the
20 vehicle had significant frame damage. Consequently, SAHARA either did not undertake
21 the required CPO vehicle inspection prior to listing, displaying, advertising and selling
22 the vehicle to the Plaintiff, or alternatively did undertake the required CPO inspection
23 and knew, or should have known, based upon that inspection, that the vehicle had
24 significant frame damage, and failed to disclose these significant defects to the Plaintiff
25 at time of sale.
26
27
28

1 20. This information would have been a material (important) fact any
2 reasonable consumer, including the Plaintiff, would want to know about and would also
3 deem important in making a decision to purchase a used vehicle, especially with respect
4 to a CPO vehicle, given the purchase of a CPO vehicle is to take much of the risk out of
5 purchasing a used vehicle vis-à-vis the vehicle being in a previous serious collision
6 and/or having frame and/or unibody damage and excessive body damage. Had Plaintiff
7 been informed of said damage to the vehicle, he would not have purchased the vehicle
8 and would not have entered into the RISC for the vehicle.
9

10 21. At all relevant times, SAHARA, as a vehicle dealer within this community,
11 would know that any reasonable consumer, including the Plaintiff, associates a very
12 negative stigma to frame and/or unibody damage caused by a previous collision or
13 collisions to a vehicle, both as to its safety and as to its value. Such a negative stigma is
14 further heightened with respect to a CPO vehicle given it is the consumer's expectation
15 when purchasing a Chrysler/Dodge certified vehicle that they are avoiding purchasing a
16 vehicle that has any such damage. Furthermore, Defendant SAHARA is fully aware of
17 this expectation on the part of the consumer when they choose to decide to purchase a
18 Chrysler/Dodge CPO vehicle. Said frame damage to the vehicle affected the vehicle's
19 safety and dramatically diminished its value.
20

21 22. Pursuant to NRS §§ 41.600(e), 598.0915, and 598.0923 Defendant
22 SAHARA engaged in statutory consumer fraud/deceptive trade practices by knowingly
23 engaging in certain prohibited conduct and/or omissions including but not limited to :
24
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
6 C. Failing to disclose a material fact in connection with the sale of
7 goods. [NRS 598.0923(2) and NRS 41.600(2)(e)]
8
9 D. Violating a federal or state statute or regulation relating to the sale of
10 goods. [NRS 598.0923(3) and NRS 41.600(2)(e)]²
11
12 E. Making any other false representation in a transaction. [NRS
13 598.0915(15) and NRS 41.600(2)(e)]

14 23. As a direct and proximate cause the deceptive conduct and/or omissions,
15 as herein alleged, Plaintiffs have been damaged.

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

22 II

23 SECOND CLAIM FOR RELIEF FOR RESCISSION OF CONTRACT

24 AS AGAINST DEFENDANTS SAHARA AND WFB ONLY

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

26 25. Plaintiffs herein incorporate by reference and hereby reallege paragraphs 1
27 through 23.

28
² See 16 C.F.R. § 455.1(a)(1), a federal regulation relating to the sale of goods which states : "It is a
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."

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

**Special
Needs
Fund**

THIRD CLAIM FOR RELIEF FOR EQUITABLE ESTOPPEL
AS AGAINST DEFENDANTS SAHARA AND WEB ONLY

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

27. Plaintiff hereby incorporates by reference and herein realleges paragraphs 1 through 23 and 26.

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

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

30. At all relevant times herein mentioned, the Plaintiff was unaware of the vehicle's deficiencies as herein described. Furthermore, Plaintiff detrimentally relied and/or acted upon on Defendant's omissions with respect to the vehicle being a CPO vehicle.

31. 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 assignee and "holder" of the RISC), are estopped from claiming the RISC is valid and/or otherwise enforceable.

IV.

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

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

32. Plaintiff hereby incorporates by reference and herein realleges paragraphs 1 through 23, and 26 through 31.

33. 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 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

34. Plaintiff hereby incorporates by reference and herein realleges paragraphs 1 through 23, and 26 through 33.

35. An actual controversy has arisen and now exists between Plaintiff and the Defendant with regard to the validity, enforceability and/or violability of the aforementioned RISC, 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.

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

37. 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)]

38. Plaintiff hereby incorporates by reference and herein realleges paragraphs 1 through 37.

39. 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.

1 40. Plaintiff, as alleged herein, has been damaged by the deceptive trade
2 practices of Defendant SAHARA as set forth herein, who is a "dealer" as referenced and
3 defined by NRS 482.345, of which said damages or losses and equitable relief, as alleged
4 herein, were all caused and/or necessitated by SAHARA's owners, principals, employees
5 and/or managers who were all working within the scope of their employment.
6

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

8 **On First Claim for Relief:**

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

16 **On Second Claim for Relief:**

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

22 **On Third Claim for Relief:**

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

On Forth Claim for Relief :

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 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

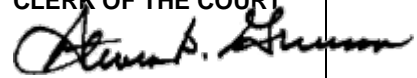
1. For actual damages, and
2. For prejudgment interest, and
3. For all incidental/consequential losses and/or damages, and
4. For reasonable attorneys fees, and
5. For costs of suit incurred herein, and
6. For such other and further relief as the Court deems just and proper

PLAINTIFF HEREBY DEMANDS JURY³

Dated this 22nd day of May, 2016

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

³ Based on Plaintiff counsel's experience in this types of matters, it is somewhat common practice for many local dealerships in the Las Vegas area to have the buyer sign an arbitration agreement, not explain it to them out of the numerous documents the consumer is signing in succession on the date of sale. It is also not uncommon for a dealership to have a buyer sign an arbitration agreement, and not give him or her a copy of the same with their paperwork. Consequently, if Defendant SAHARA produces a copy of valid arbitration agreement bearing the Plaintiff's signature, Plaintiff will enter into a stipulation and order to be filed with the Court to have this matter heard via binding arbitration pursuant to said arbitration agreement, provided that said stipulation and order also makes clear that SAHARA is required to follow all of its payment obligations under the arbitration service's rules for consumer arbitrations when billed for the same, and that failure to comply with any those payment obligations can constitute a waiver of SAHARA's right to contractual mandatory arbitration which would require Plaintiff to arbitrate any of the claims stated herein.



ACOM

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Email : gowesq@cox.net
Websites : www.caaaf.net
www.americasautofraudattorney.com
(702) 318-6570
(702) 664-0459 [fax]

Attorney for Plaintiffs
DERRICK POOLE

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

v

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

Defendants,

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

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

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

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

COMMON ALLEGATIONS

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

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

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

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

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

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

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

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

9 8. Shortly after the RISC was entered into with the Plaintiff, Defendant
10 SAHARA assigned Plaintiffs' RISC to Defendant WFB, wherein WFB then became the
11 assignee and "holder" of said RISC (a/k/a consumer credit contract), as well as the
12 secured party under Article 9 of the UCC, to whom Plaintiff are is under an obligation to
13 pay the balance on the contract. Said RISC had the following express contractual term
14 as part of said RISC's terms and conditions :
15

16 NOTICE : ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS
17 ***SUBJECT TO ALL CLAIMS AND DEFENSES*** WHICH THE DEBTOR
18 COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES
OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF.
RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED
AMOUNTS PAID BY THE DEBTOR HEREUNDER.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 been abundantly evident and discovered at time of
13 SAHARA's comprehensive CPO inspection process. As a CPO vehicle, such marketing
14 and selling of a CPO is to give the consumer the piece of mind that the vehicle does not
15 have any previous significant collision and/or frame damage, and to further induce
16 consumers within the community to purchase a CPO vehicle at a higher price as
17 compared to a comparable non CPO vehicle.
18

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

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

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

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

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

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

On First Claim for Relief:

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

On Second Claim for Relief:

1. For a judicial declaration estopping Defendant from enforcing the contract, 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 Third Claim for Relief:

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

On Forth Claim for Relief :

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.

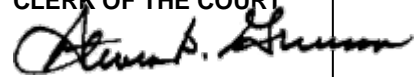
On Sixth Claim For Relief

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



JEFFERY A. BENDAVID, ESQ.

Nevada Bar No. 6220

STEPHANIE J. SMITH, ESQ.

Nevada Bar No. 11280

MORAN BRANDON BENDAVID MORAN

630 South 4th Street

Las Vegas, Nevada 89101

(702) 384-8424

j.bendavid@moranlawfirm.com

Attorney for Defendants, Nevada Auto

Dealership Investments LLC d/b/a Sahara

Chrysler and Corepointe Insurance Co.

DISTRICT COURT

CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

v.

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,

Defendant.

Case No.: A-16-737120-C

Dept. No.: XXVII

**DEFENDANT NEVADA AUTO
DEALERSHIP INVESTMENTS LLC
D/B/A SAHARA CHRYSLER, JEEP,
DODGE AND COREPOINTE
INSURANCE CO.'S ANSWER TO
FIRST AMENDED COMPLAINT**

Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS LLC d/b/a
SAHARA CHRYSLER, JEEP, DODGE AND COREPOINTE INSURANCE CO., by and
through their counsel of record, JEFFERY A. BENDAVID, ESQ. and STEPHANIE J.
SMITH, ESQ. of Moran Brandon Bendavid Moran, hereby submit their ANSWER TO
FIRST AMENDED COMPLAINT.



**MORAN BRANDON
BENDAVID MORAN**
ATTORNEYS AT LAW

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

COMMON ALLEGATIONS

1
2 1. As to Paragraph 1 of Plaintiff's First Amended Complaint on file herein,
3 Defendants are without knowledge or information sufficient to form a belief as to the truth
4 of the allegations contained therein and therefore deny the same.
5

6 2. As to Paragraph 2 of Plaintiff's First Amended Complaint on file herein,
7 Defendants are without knowledge or information sufficient to form a belief as to the truth
8 of the allegations contained therein and therefore deny the same.

9 3. As to Paragraph 3 of Plaintiff's First Amended Complaint on file herein,
10 Defendants hereby deny the allegations contained therein.
11

12 4. As to Paragraph 4 of Plaintiff's First Amended Complaint on file herein,
13 Defendants are without knowledge or information sufficient to form a belief as to the truth
14 of the allegations contained therein and therefore deny the same.

15 5. As to Paragraph 5 of Plaintiff's First Amended Complaint on file herein,
16 Defendants are without knowledge or information sufficient to form a belief as to the truth
17 of the allegations contained therein and therefore deny the same.
18

19 6. As to Paragraph 6 of Plaintiff's First Amended Complaint on file herein, the
20 definition of NRS 482.020 and 16 C.F.R. 433.1(b) speak for themselves. As to the
21 remaining allegations Defendants are without knowledge or information sufficient to form a
22 belief as to the truth of the allegations contained therein and therefore deny the same.

23 7. As to Paragraph 7 of Plaintiff's First Amended Complaint on file herein, the
24 RISC speaks for itself. As to the remaining allegations Defendants are without knowledge
25 or information sufficient to form a belief as to the truth of the allegations contained therein
26 and therefore deny the same.
27
28



**MORAN BRANDON
BENDAVID MORAN**
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8588

8. As to Paragraph 8 of Plaintiff's First Amended Complaint on file herein, the RISC speaks for itself. As to the remaining allegations Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

9. As to Paragraph 9 of Plaintiff's First Amended Complaint on file herein, the RISC speaks for itself. As to the remaining allegations Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

10. As to Paragraph 10 of Plaintiff's First Amended Complaint on file herein, Defendants hereby deny the allegations contained therein.

11. As to Paragraph 11 of Plaintiff's First Amended Complaint on file herein, Defendants hereby deny the allegations contained therein.

II

FIRST CLAIM FOR RELIEF FOR DECEPTIVE TRADE PRACTICES AS

AGAINST DEFENDANTS SAHARA AND WFB ONLY

[NRS 41.600(e); Statutory Consumer Fraud]

12. As to Paragraph 12 of Plaintiff's First Amended Complaint on file herein, Defendants hereby repeat and re-allege their prior responses to Plaintiff's First Amended Complaint in Paragraphs 1 through 11.

13. As to Paragraph 13 of Plaintiff's First Amended Complaint on file herein, Defendant admits that: "Defendant Sahara represented to the Plaintiff, both orally and in writing, and held out, and displayed for sale and represented that the vehicle to the Plaintiff



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

**630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 394-8424
FAX: (702) 394-6569**

1 as a CPO Dodge Ram 1500.” As to the remaining allegations, the CPO Inspection
2 Standards speak for themselves.

3 14. As to Paragraph 14 of Plaintiff’s First Amended Complaint on file herein, the
4 CPO Inspection Standards speak for themselves. As to the remaining allegations,
5 Defendants hereby deny the allegations contained therein.
6

7 15. As to Paragraph 15 of Plaintiff’s First Amended Complaint on file herein,
8 Defendants are without knowledge or information sufficient to form a belief as to the truth
9 of the allegations contained therein and therefore deny the same.

10 16. As to Paragraph 16 of Plaintiff’s First Amended Complaint on file herein,
11 Defendants hereby deny the allegations contained therein.
12

13 17. As to Paragraph 17 of Plaintiff’s First Amended Complaint on file herein,
14 Defendants hereby deny the allegations contained therein.

15 18. As to Paragraph 18 of Plaintiff’s First Amended Complaint on file herein,
16 Defendants are without knowledge or information sufficient to form a belief as to the truth
17 of the allegations contained therein and therefore deny the same.
18

19 19 (A). As to Paragraph 19A of Plaintiff’s First Amended Complaint on file herein,
20 Defendants are without knowledge or information sufficient to form a belief as to the truth of
21 the allegations contained therein and therefore deny the same.

22 19 (B). As to Paragraph 19B of Plaintiff’s First Amended Complaint on file herein,
23 Defendants are without knowledge or information sufficient to form a belief as to the truth of
24 the allegations contained therein and therefore deny the same.
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) 384-8588

1 19 (C). As to Paragraph 19C of Plaintiff's First Amended Complaint on file herein,
2 Defendants are without knowledge or information sufficient to form a belief as to the truth of
3 the allegations contained therein and therefore deny the same.

4 19 (D). As to Paragraph 19D of Plaintiff's First Amended Complaint on file herein,
5 Defendants are without knowledge or information sufficient to form a belief as to the truth of
6 the allegations contained therein and therefore deny the same.

7 20. As to Paragraph 20 of Plaintiff's First Amended Complaint on file herein,
8 Defendants are without knowledge or information sufficient to form a belief as to the truth
9 of the allegations contained therein and therefore deny the same.

10 21. As to Paragraph 21 of Plaintiff's First Amended Complaint on file herein,
11 Defendants are without knowledge or information sufficient to form a belief as to the truth
12 of the allegations contained therein and therefore deny the same.

13 22. As to Paragraph 22 of Plaintiff's First Amended Complaint on file herein,
14 Defendants are without knowledge or information sufficient to form a belief as to the truth
15 of the allegations contained therein and therefore deny the same.

16 23. As to Paragraph 23 of Plaintiff's First Amended Complaint on file herein,
17 Defendants are without knowledge or information sufficient to form a belief as to the truth
18 of the allegations contained therein and therefore deny the same.

19 24. As to Paragraph 24 of Plaintiff's First Amended Complaint on file herein,
20 Defendants are without knowledge or information sufficient to form a belief as to the truth
21 of the allegations contained therein and therefore deny the same.

22 25. As to Paragraph 25 of Plaintiff's First Amended Complaint on file herein,
23 Defendants hereby deny the allegations contained therein.
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) 384-8588

1 26. As to Paragraph 26 of Plaintiff's First Amended Complaint on file herein,
2 Defendants are without knowledge or information sufficient to form a belief as to the truth
3 of the allegations contained therein and therefore deny the same.

4 27. As to Paragraph 27 of Plaintiff's First Amended Complaint on file herein,
5 Defendants are without knowledge or information sufficient to form a belief as to the truth
6 of the allegations contained therein and therefore deny the same.

7 28. As to Paragraph 28 of Plaintiff's First Amended Complaint on file herein,
8 Defendants are without knowledge or information sufficient to form a belief as to the truth
9 of the allegations contained therein and therefore deny the same.

10 29. As to Paragraph 29 of Plaintiff's First Amended Complaint on file herein,
11 Defendants hereby deny the allegations contained therein.

12 30. As to Paragraph 30 of Plaintiff's First Amended Complaint on file herein,
13 Defendants hereby deny the allegations contained therein.

14 31 (A). As to Paragraph 31A of Plaintiff's First Amended Complaint on file herein,
15 Defendants hereby deny the allegations contained therein.

16 31 (B). As to Paragraph 31B of Plaintiff's First Amended Complaint on file herein,
17 Defendants hereby deny the allegations contained therein.

18 31 (C). As to Paragraph 31C of Plaintiff's First Amended Complaint on file herein,
19 Defendants hereby deny the allegations contained therein.

20 31 (D). As to Paragraph 31D of Plaintiff's First Amended Complaint on file herein,
21 Defendants hereby deny the allegations contained therein.

22 31 (E). As to Paragraph 31E of Plaintiff's First Amended Complaint on file herein,
23 Defendants hereby deny the allegations contained therein.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8588

46. As to Paragraph 46 of Plaintiff's First Amended Complaint on file herein, Defendants hereby deny the allegations contained therein.

VI

SIXTH CLAIM FOR RELIEF FOR RECOVERY UNDER AUTO DEALERSHIP

SURETY BOND AS AGAINST DEFENDANT COREPOINTE ONLY

[NRS 482.345(7)]

47. As to Paragraph 47 of Plaintiff's First Amended Complaint on file herein, Defendants hereby repeat and re-allege their prior responses to Plaintiff's First Amended Complaint in Paragraphs 1 through 46.

48. As to Paragraph 48 of Plaintiff's First Amended Complaint on file herein, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

49. As to Paragraph 49 of Plaintiff's First Amended Complaint on file herein, Defendants hereby deny the allegations contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's First Amended Complaint on file herein fails to state a claim against Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is estopped from pursuing any claim against Defendant.

THIRD AFFIRMATIVE DEFENSE

Any claim of Plaintiff is barred by the doctrine of laches.



**MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW**

**630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 394-8424
FAX: (702) 394-6569**

1 **FOURTH AFFIRMATIVE DEFENSE**

2 The claims alleged by Plaintiff are barred by the applicable Federal and Nevada
3 statutes of limitation.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 Defendant is informed, believe, and thereon allege that if any contract, guarantee,
6 obligation, or amendment, as alleged in Plaintiff's First Amended Complaint on file herein,
7 has been entered into, any duty of performance of Defendant is excused by reason of
8 frustration of purpose.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 Defendant is informed, believes, and thereon alleges that if any contract, guarantee,
11 obligation, or amendment, as alleged in Plaintiff's First Amended Complaint on file herein,
12 has been entered into, any duty of performance of Defendant is excused by the doctrine of
13 impossibility.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 The claims and all allegations referenced in Plaintiff's First Complaint are subject to
16 binding arbitration agreement which divests the court of jurisdiction.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 Plaintiff, with full knowledge of all of the facts connected with or relating to the
19 transaction alleged in the First Amended Complaint, ratified and confirmed in all respects
20 the acts of these answering Defendants by accepting the benefits to Plaintiff accruing
21 therefrom.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 **NINTH AFFIRMATIVE DEFENSE**

2 These answering Defendants allege that the damages, if any, incurred by Plaintiff
3 were exclusively the product of a mutual mistake of fact on the parties hereto.

4 **TENTH AFFIRMATIVE DEFENSE**

5 Plaintiff, by his acts and conduct, has waived and abandoned any and all claims as
6 alleged herein against these answering Defendants.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 At all times relevant herein, Plaintiff was not a “consumer”, as defined by the
9 applicable regulations.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 Defendant is informed, believes, and thereon alleges that Plaintiff has failed to join a
12 party necessary for just adjudication of the claims at issue in this action.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 Defendant is informed, believes, and thereon alleges that if any contract, guarantee,
15 obligation, or amendment, as alleged in Plaintiff’s First Amended Complaint, has been
16 entered into, any duty of performance of Defendant is excused by reason of mutual mistake.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 Defendant is informed, believes, and thereon alleges that if any contract, guarantee,
19 obligation, or amendment, as alleged in Plaintiff’s First Amended Complaint, has been
20 entered into, any duty of performance of Defendant is excused by reason of unilateral
21 mistake.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8588

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff failed to mitigate the damages incurred, if any, and therefore, any recovery
3 awarded to Plaintiff should be reduced by that amount not mitigated.

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5
6 Plaintiff is barred by the doctrine of unclean hands and by its own failure to deal in
7 good faith and deal fairly with Defendant.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 By virtue of the acts, deed, conduct, and/or the failure or omission to act under
10 circumstances, Plaintiff has waived its right, if any existed, to assert the claims against
11 Defendant.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13
14 The damages allegedly incurred by Plaintiff, if any in fact were suffered, were the
15 direct result in whole, or in part, of Plaintiff's intentional willful, and/or negligent acts or
16 deeds.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18
19 The claims and damages alleged by Plaintiff in Plaintiff's First Amended Complaint,
20 if any in fact exist, are the direct and proximate result of the acts, deeds, omissions or failure
21 to act, or the conduct of third parties whose name are presently unknown, over whom
22 Defendant had no control, nor the right, duty or obligation to control.

23 **TWENTIETH AFFIRMATIVE DEFENSE**

24
25 Plaintiff ratified or approved of acts, which are the subject matter of Plaintiff's First
26 Amended Complaint, and consequently is barred from recovering against Defendant.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8588

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 (1) The complained-of acts of this answering Defendant are justified and
3 privileged under the circumstances.

4 (2) The injuries to Plaintiff, if any, as alleged in the First Amended Complaint,
5 were provoked and brought by Plaintiff, and any action taken by Defendant in response to
6 Plaintiff's conduct were justified and privileged under the circumstances.
7

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 Plaintiff's claim for relief for deceptive trade practices under NRS 41.600 is void for
10 a failure of specificity.
11

12 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

13 Plaintiff, with full knowledge of all the facts connected with or relating to the
14 transaction alleged in the First Amended Complaint ratified and confirmed in all respects
15 the acts of these answering Defendants by accepting the benefits to Plaintiff accruing from
16 such acts.
17

18 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

19 Plaintiff has failed to state a claim upon which relief can be granted for punitive
20 damages, and as such damages are not cognizable at law in the circumstances alleged in
21 Plaintiff's First Amended Complaint.
22

23 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24 Some of the foregoing Affirmative Defenses have been plead for purposes of non-
25 waiver. Defendant has not concluded discovery in this matter and specifically reserves the
26 right to amend this Answer to include additional Affirmative Defenses if discovery of facts
27 so warrant.
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8588

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 It has been necessary for Defendant to employ the services of an attorney to defend
3 this action and a reasonable sum should be allowed to Defendant for attorney's fees together
4 with costs.

5 WHEREFORE, DEFENDANTS pray for the following:

- 6
- 7 1. That Plaintiff takes nothing by way of his First Amended Complaint, on file
8 herein;
- 9 2. For reasonable attorney's fees and costs of suit incurred herein; and
- 10 3. For such other and further relief as this Court may deem just and
11 proper in the premises.
12

13 DATED this 16th day of August 2017.
14

15 **MORAN BRANDON BENDAVID MORAN**

16
17 /s/: Jeffery A. Bendavid, Esq.

18 **JEFFERY A. BENDAVID, ESQ.**

19 Nevada Bar No. 6220

20 **STEPHANIE J. SMITH, ESQ.**

Nevada Bar No. 11280

630 South 4th Street

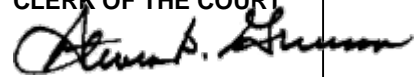
Las Vegas, NV 89101

21 *Attorney for Defendants, Nevada Auto*
22 *Dealership Investments LLC d/b/a Sahara*
23 *Chrysler and Corepointe Insurance Co.*
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) 384-8588



1 **MSJ**
2 **JEFFERY A. BENDAVID, ESQ.**
3 Nevada Bar No. 6220
4 **STEPHANIE J. SMITH, ESQ.**
5 Nevada Bar No. 11280
6 **MORAN BRANDON BENDAVID MORAN**
7 630 South 4th Street
8 Las Vegas, Nevada 89101
9 Tel: (702) 384-8424
10 Fax: (702) 384-6568
11 j.bendavid@moranlawfirm.com
12 s.smith@moranlawfirm.com
13 *Attorney for Defendants, Nevada Auto*
14 *Dealership Investments LLC d/b/a Sahara*
15 *Chrysler and Corepointe Insurance Co.*

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

13 DERRICK POOLE,

14 Plaintiff,

15 v.

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

24 Defendants.

Case No.: A-16-737120-C

Dept. No.: XXVII

**DEFENDANTS NEVADA AUTO
DEALERSHIP INVESTMENTS
LLC'S AND COREPOINTE
INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT**

Date: 11/02/17

Time: 10:30 AM

23 COME NOW, Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS LLC
24 DBA SAHARA CHRYSLER JEEP DODGE, ("Defendant" or "Nevada Auto") and
25 COREPOINTE INSURANCE, ("Corepointe") by and through their counsel of record
26 JEFFERY A. BENDAVID, ESQ. and STEPHANIE J. SMITH, ESQ. of MORAN
27 BRANDON BENDAVID MORAN, and hereby submit their Motion for Summary
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 Judgment against Plaintiff, DERRICK POOLE, an individual.

2 This Motion is made and based upon the Memorandum of Points and Authorities
3 submitted herewith, together with the papers and pleadings on file herein, exhibits attached
4 hereto, and oral arguments at the time of Hearing.
5

6 DATED this 2nd day of October, 2017

7 **MORAN BRANDON BENDAVID MORAN**

8
9 /s/Jeffery A. Bendavid

10 **JEFFERY A. BENDAVID, ESQ.**

11 Nevada Bar No. 6220

12 **STEPHANIE J. SMITH, ESQ.**

13 Nevada Bar No. 11280

14 630 South 4th Street

15 Las Vegas, Nevada 89101

16 (702) 384-8424

17 Fax: (702) 384-6568

18 j.bendavid@moranlawfirm.com

19 s.smith@moranlawfirm.com

20 *Attorney for Defendants, Nevada Auto*

21 *Dealership Investments LLC d/b/a Sahara*

22 *Chrysler and Corepointe Insurance Co.*
23
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) 384-6568

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

TO: GEORGE O. WEST, ESQ. of the Law Firm, Law Offices of George O. West III, counsel of record for the Plaintiff; NATHAN KANUTE, ESQ. of the Law Firm of Snell & Wilmer, counsel of record for Wells Fargo Dealer Services, Inc.

PLEASE TAKE NOTICE that Defendant by and through its undersigned attorney, JEFFERY A. BENDAVID, ESQ., and STEPHANIE J. SMITH, ESQ. of MORAN BRANDON BENDAVID MORAN, hereby submits that it will bring the foregoing Motion for Summary Judgment against Plaintiff, on for hearing on the 02 day of November, 2017, at the hour of 10:30 a.m./~~p.m.~~ in the above-entitled Court, or as soon thereafter as counsel may be heard.

DATED this 2nd day of October, 2017.

MORAN BRANDON BENDAVID MORAN

/s/Jeffery A. Bendavid

JEFFERY A. BENDAVID, ESQ.

Nevada Bar No. 6220

STEPHANIE J. SMITH, ESQ.

Nevada Bar No. 11280

630 South 4th Street

Las Vegas, Nevada 89101

Tel: (702) 384-8424

Fax: (702) 384-6568

j.bendavid@moranlawfirm.com

s.smith@moranlawfirm.com

Attorney for Defendants, Nevada Auto

Dealership Investments LLC d/b/a Sahara

Chrysler and Corepointe Insurance Co.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION.**

4 This action stems from a vehicle purchaser who, after happily driving his vehicle for
5 two years, failed to obtain a third refinance of the vehicle based on faulty information, and
6 then proceeded down this path. Plaintiff's stance on this matter and the facts on which he
7 allegedly bases his claims have significantly changed. Plaintiff Derrick Poole ("Plaintiff"
8 and/or "Poole") purchased a 2013 Dodge Ram truck (the "Vehicle), on May 25, 2014 from
9 Nevada Auto Dealership Investments d/b/a Sahara Chrysler Jeep Dodge Ram ("Defendant"
10 and/or "Sahara" and/or the "Dealership"). Mr. Poole selected a Certified Pre-Owned
11 ("CPO") truck which he was informed, at the time of purchase, had a previous accident
12 prior to being acquired by the Defendant. The Vehicle not only had a comprehensive 125-
13 point inspection, but additional warranties and other add-ons available only on CPOs.
14

15
16 Plaintiff happily drove the Vehicle incurring zero repairs, zero warranty claims, and
17 zero other safety issues for nearly two years. Plaintiff then sought a third refinance of the
18 Vehicle, which he had already successfully refinanced twice, in approximately May 2016, at
19 which time he allegedly was informed from an "internet report" (which he never produced),
20 and an "unidentified state farm representative" who never inspected the Vehicle, that it had
21 "frame" damage. Instead of going to Defendant's dealership and speaking with a manager
22 or mechanic, he contacted his sales person and claimed he was never told that the Vehicle
23 was in any accident. Plaintiff then, of course, contacted an attorney, who filed a Complaint
24 alleging significant "frame/unibody damage" and/or a significant collision. However, after
25 receiving the CarFax signed by Plaintiff, which disclosed the previous accident, Plaintiff
26 then amended his Complaint to change his allegations to include some non-legal duty to
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 disclose each and every fact a car dealer might have regarding any used vehicle in their
2 inventory, whether or not it had any effect whatsoever on a vehicle.

3 Defendant disclosed the accident, the single possibly stigma causing event, relating
4 to the Vehicle at the time of purchase. Plaintiff still purchased the Vehicle and drove it for
5 approximately 16,000.00 miles, over the course of three years, with no repair, no
6 maintenance issues, and no safety issues, and now wants all of his money back because he
7 essentially forgot that he purchased a car that had been in an accident. Defendant did not
8 deceive Plaintiff, in fact, it sold him a vehicle that it inspected, certified, and provided
9 additional warranties on. As such, this lawsuit as is evidenced by the convoluted First
10 Amended Complaint is trying to create non-existent duties, based on a hired expert's
11 "opinion."
12

13 **II. STATEMENT OF UNDISPUTED MATERIAL FACTS ("UF").**

14
15 1. On or about May 5, 2014, Defendant acquired a used 2013 Dodge Ram truck,
16 VIN1C6RR6GT8DS558275 (the, "Vehicle") from a private third-party. *See Exhibit 1-*
17 *Documents related to purchase of Subject Vehicle from Dale Hinton.*

18
19 2. At the time of acquisition, the private third-party provided Joshua Grant ("J.
20 Grant") copies of documents evidencing repairs on the Vehicle, in the form of an Allstate
21 estimate. *See Exhibit 2- Excerpts of Deposition of Joshua Grant ("J. Grant Depo."), 97:23-*
22 *98:21, Exhibit 3, Allstate estimate dated March 31, 2014 (photos omitted).*

23
24 3. J. Grant had significant experience in dealing with used vehicles, and reviewed the
25 Allstate estimate which were given to him by the third-party, specifically to determine
26 whether the Vehicle had any indications of frame damage, and he did not observe
27 information evidencing any such damage, which was confirmed by the subsequent
28 inspection. *Exhibit 2, 33:17-34:15, 99:2-18.*



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 4. On May 8, 2014, the Vehicle underwent a detailed inspection by a certified
2 mechanic, Ray Gongora, to determine whether it could be a Certified Pre-Owned ("CPO")
3 Vehicle. *Exhibit 4- Certified Pre-Owned checklist, Bates stamped NVAUTO000075-76.*

4 5. The certified mechanic conducting the CPO inspection would have had a CarFax
5 prior or contemporaneous to performing the inspection, as such here, the mechanic would
6 have been aware of a previous accident on the subject Vehicle. *Exhibit 5- Excerpts of*
7 *Deposition of Ray Gongora ("Gongora Depo."), 40:17-41:7.*

8 6. It was not required for the inspecting technician to report any repaired items if
9 those repairs were performed correctly, only if it was not a proper repair. *Id.* at 38:18-39:12.

10 7. The Vehicle passed the CPO 125-point inspection, performed by Ray Gongora
11 and accordingly was designated as a CPO vehicle in Defendant's inventory. *See Exhibit 4,*
12 *Exhibit 5 at 56:9-18.*

13 8. On May 26, 2014, Plaintiff entered into a contract with Defendant to purchase the
14 Vehicle with financing, and Plaintiff was also given trade-in value for his former vehicle in
15 the amount of Four Thousand Dollars (\$4,000.00). *See Exhibit 6- Portion of Sales Contract,*
16 *NV000100-106; Exhibit 7- Excerpts of Deposition of Derrick Poole Poole, 20:19-23.*

17 9. At the time of the Vehicle purchase, sales person Travis Spruell went through a
18 Certified Pre-Owned Vehicle Delivery Check Sheet, which was signed by Plaintiff. *Exhibit*
19 *8- Certified Pre-Owned Vehicle Delivery Check Sheet, NVAUTO000095-99.*

20 10. Additionally, Defendant presented a CarFax to Plaintiff, dated May 10, 2014,
21 (the "CarFax") pursuant to the CPO Delivery Check Sheet. *Exhibit 9-CarFax,*
22 *NVAUTO000079-86.*

23 11. The CarFax on both the front page, the second page, and on page 3 reflect that
24 the Vehicle had been in an accident, and states "Damage reported...". *Id.*



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 12. At the time of the sale of the Vehicle, Defendant disclosed the previous accident
2 and presented the CarFax reflecting the accident on the Vehicle to Plaintiff, and Plaintiff
3 signed the CarFax, acknowledging it had been in a previous accident. *Id.*, see also Exhibit 7
4 at 18:3-19:9.

5
6 13. Despite being informed of the accident on the Vehicle, Plaintiff did not ask any
7 questions regarding any specifics about accident, he did not ask if there were any documents
8 regarding the accident, and he himself walked around the Vehicle. *Exhibit 7, 19:2-20:6.*

9 14. At the time of the sale, the Vehicle had Six Thousand Seven Hundred Sixteen
10 (6,716) miles. It currently has approximately Twenty-Three Thousand Miles. *See Exhibit 7,*
11 *89:8-10, Exhibit 8.*

12
13 15. At the time of the sale, Defendant also provided and proffered Plaintiff
14 additional warranties for the Vehicle based on the fact that it was a CPO vehicle. *Exhibit 10,*
15 *Excerpts of Deposition of Travis Spruell, 19:1-13, see also Exhibit 7, 32:21-24.*

16 16. Plaintiff left with the Vehicle on the day he purchased it, and drove the Vehicle
17 over the course of the following three years with no problems whatsoever. *Exhibit 7, 17:23-*
18 *18:2.*

19
20 17. Plaintiff has not personally experienced any safety issues with his Vehicle.
21 *Exhibit 7, 39:7-24, 60:11-13.*

22 18. Plaintiff did not have to have any repairs performed on the Vehicle during the
23 time he drove the Vehicle. *Exhibit 7, 64:3-12.*

24
25 19. Plaintiff subsequently got in to a collision accident in May 2017, during which
26 the Vehicle sustained approximately \$5,000.00 of damage. *Exhibit 7, 48:14-17.*

27 20. Plaintiff never attempted to perform any investigation, at the time of purchase,
28 into the previous accident the Vehicle had been in, despite being informed of it, prior to



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 purchasing the Vehicle. *Exhibit 7, 19:2-21.*

2 21. Plaintiff only performed any kind of investigation into the Vehicle's history,
3 independently, in approximately April or May 2016, when he attempted to obtain a third
4 refinance of the Vehicle after driving it for approximately two years. *Exhibit 7, 23:4-18.*

5 22. Plaintiff's Vehicle was not inspected after the CPO inspection until May 2016,
6 after he had driven it for two years, by his retained counsel's "expert" Rocco Avellini.
7 *Exhibit 11, Plaintiff's Expert Report (without attachments).*

8 23. Plaintiff continued to drive the Vehicle after Rocco Avellini inspected it, and
9 after the filing of his initial complaint, prior to its inspection by Defendant's expert, Thomas
10 Lepper. *Exhibit 12, Defendant's Expert Report (without attachments).*

11 24. Plaintiff continued to drive his vehicle for approximately, 5500 miles after his
12 expert inspected, and allegedly found problems with the Vehicle. *Exhibit 11 Expert Report,*
13 *Exhibit 7, 17:23-18:2.*

14 25. Plaintiff subsequently got into what he considers to be a major accident in May
15 2017, where the Vehicle sustained damage. However, according to Plaintiff, the Vehicle has
16 been completely repaired from his collision. *Exhibit 7, 35:5-36:5, 48:14-17.*

17 **III. FACTS SUMMARY**

18 The facts are clear. The Vehicle had been in a previous accident and Defendant
19 disclosed this fact regarding the Vehicle to Plaintiff at the time of purchase. *UFs 8-11.*
20 Plaintiff, despite learning prior to his purchase, that the Vehicle had been in an accident
21 from which it had to be towed, Plaintiff still chose to purchase the Vehicle. *UFs 12-15.*
22 Plaintiff then happily drove the Vehicle for nearly two years, without any problems. *UF 15.*

23 Upon Defendant's acquisition of the Vehicle, its experienced manager inspected
24 documentation regarding a previous accident for any immediate signs that the Vehicle could
25



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 not be a CPO. *UFs 1-3*. After seeing no such alarming information, Defendant's subsequent
2 inspection found the Vehicle to be suitable to be sold as a CPO vehicle. *UFs 5-7*. The only
3 significant fact regarding the Vehicle's history was that the Vehicle had been in a previous
4 accident, from which it had been fully repaired. *UFs 1-2, 10*. Defendant represented to
5 Plaintiff that it was selling a CPO vehicle, and accordingly sold a CPO vehicle to Plaintiff.
6 *UFs 5-13*.

7
8 The Vehicle also came with additional warranties from Defendant because it was a
9 CPO. *UF 15*. The nature and extent of the accident previously sustained by the Vehicle is
10 not material, as all of the damage was repaired, and the Vehicle passed a 125-point
11 inspection by Defendant. *UFs 1-7*. Most significantly, the accident itself was disclosed to
12 Plaintiff at the time of the sale. *UF 10-12*. Defendant has no legal duty, and Plaintiff has not
13 cited any legal duty, to disclose any extra information a dealership may have on a used
14 vehicle aside from the fact that there was a previous accident. *See generally, First Amended*
15 *Complaint ("FAC")*. Defendant represented it was selling Plaintiff a vehicle that had passed
16 a CPO inspection and had met Chrysler CPO standards, and sold Plaintiff that Vehicle. *UFs*
17 *4-16*.

18
19
20 Ironically, Plaintiff, just prior to filing his original complaint, tried to claim that he
21 discovered that the Vehicle had been in an accident, and also sustained over Ten Thousand
22 Dollars (\$10,000.00) of damage and/or frame damage. *Exhibit 13, Plaintiff's 7th*
23 *Supplement- Copies of Text Messages*. However, during discovery, Plaintiff was unable to
24 produce any documentation that would substantiate this contention, and only provides
25 "opinion" from a hired plaintiff-oriented expert, as "evidence" for his allegations.
26 Accordingly, summary judgment is appropriate as to all of Plaintiff's claims.
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1
2 **IV. LEGAL STANDARD**

3 Pursuant to *N.R.C.P. 56(c)*, summary judgment is appropriate when the pleadings
4 and other evidence on file, construed in a light most favorable to the non-moving party,
5 demonstrate that no genuine issue as to any material fact remains and the moving party is
6 entitled to judgment as a matter of law. *See Holcomb v. Georgia Pacific, LLC, 128 Nev.*
7 *Adv. Rep. 56 *9-10, 289 P.3d 188, 192 (2012); and Wood v. Safeway, 121 Nev. 724, 729,*
8 *121 P.3d 1026, 1029 (2005).* The substantive law controls which factual disputes are
9 material. *See Wood, 121 Nev. at 731.* A factual dispute is genuine “when the evidence is
10 such that a rational trier of fact could return a verdict for the non-moving party.” *Id.*
11
12

13 The nonmoving party may not defeat a motion for summary judgment on the
14 “gossamer threads of whimsy, speculation, and conjecture.” *See Wood, 121 Nev. at 732.*
15 The nonmoving party must by affidavit or otherwise, set forth specific facts demonstrating
16 the existence of a genuine issue of material fact for trial. *See Id.*
17

18 Here, Defendant is entitled to a judgment as a matter of law, since no genuine issue
19 of material fact remains regarding the fact that Defendant did not meet the requisites for
20 Plaintiff’s claim for consumer fraud and/or deceptive trade practices. Accordingly,
21 Defendant is also entitled to judgment, as a matter of law, with respect to Plaintiff’s other
22 claims and requested remedies.
23

24 **V. LEGAL ARGUMENT**

25 **A. Plaintiff Fails to Satisfy the Requisites for his Claim for Consumer Fraud**
26 **and/or Deceptive Trade Practices.**

27 In order to prevail on a claim for Fraud/Deceptive Trade Practices, a plaintiff must
28 prove that, (1) the defendant made a false representation; (2) the defendant knew or believed



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 the representation to be false; (3) the defendant intended to induce plaintiff to act or refrain
2 from acting on the misrepresentation; (4) the plaintiff justifiably relied on the representation
3 of defendant; and (5) the plaintiff suffered damages as a result of his reliance. *Barmettler v.*
4 *Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382, 1386 (Nev. 1998); *Blanchard v. Blanchard*,
5 108 Nev. 908, 839 P.2d 1320 (1992). Here, Plaintiff fails to actually produce evidence that
6 demonstrates any of these elements. In particular, Plaintiff fails to provide evidence that
7 Defendant made any false representation, or that Defendant knew or believed any
8 representations it made were false, or made any such representations without a sufficient
9 basis. *Blanchard v. Blanchard*, 108 Nev. 908 (1992).

11
12 Plaintiff alleges his first claim pursuant to NRS 41.600(2)(e), which provides that a
13 person may commence an action for the violation of “Deceptive Trade Practices”, as
14 delineated in NRS 598.015 and 598.0923. However, Plaintiff’s allegations do not constitute
15 any of the alleged specific “Deceptive Trade Practices” which are clearly defined within the
16 statute, and thus were not false representations. Plaintiff continually references a “stigma”
17 and “misrepresentations and/or omissions” regarding the subject Vehicle. *See generally*,
18 *FAC*. However, Plaintiff was fully aware that the Vehicle had been in a prior accident, and
19 that damage had been reported, as such he already was informed of and accepted any
20 associated “stigma” that there may be with respect to an accident. *See UFs 9-13*. The
21 Vehicle was still a CPO pursuant to Defendant’s inspection, and Plaintiff continually drove
22 it without any actual problems with the Vehicle. *UFs 16-18*.

23
24
25 Indeed, Plaintiff testified simply that he wanted all of his money back, despite the
26 fact he had been driving the Vehicle for the past three years. *Exhibit 7, 87:13-24*. Plaintiff
27 specifically testified that his money could have been going “[T]owards paying off a vehicle
28 that wasn’t damaged before (he) bought it.” *Id.* It is clear that Plaintiff forgot he had agreed



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 to purchase, and purchased a vehicle that he knew had been damaged before he bought it at
2 the time of purchase. *See Exhibit 13.* Plaintiff is grasping to impose a duty upon Defendant
3 regarding additional disclosures, which does not exist and for which he does not provide any
4 actual authority.

5
6 **1. Defendant Did Not Make a False Representation as to the Source,
Sponsorship, Approval or Certification of Goods for Sale and thus did not
7 engage in a deceptive trade practice per NRS 598.0915(2).**

8 Plaintiff's First Amended Complaint contends that Defendant somehow engaged in
9 statutory consumer fraud/deceptive trade practices pursuant to NRS §41.600(e) and NRS
10 598.0915(2) by allegedly making a false representation as to the source, sponsorship,
11 approval or certification of goods for sale. *See FAC, ¶ 12.* However, Plaintiff's First
12 Amended Complaint actually does not identify the allegedly false representation made to
13 Plaintiff regarding the source, sponsorship, approval, or certification of any goods for sale
14 by Defendant that constituted a deceptive trade practice under NRS 598.0915(2). *See Id. at*
15 *10-12.*

16
17 As admitted in Plaintiff's First Amended Complaint, the Vehicle underwent the 125-
18 point CPO inspection required for Defendant to certify the Vehicle as CPO. *UFs 4-7, see*
19 *also, Plaintiff's FAC at 10-11.* The mechanic who inspected the Vehicle testified that by
20 signing the 125-point inspection checklist, it was his opinion that the Vehicle qualified as a
21 factory-backed certified pre-owned vehicle (*i.e.*, "CPO"). *Exhibit 5, 56:9-18.* The mechanic
22 who inspected the Vehicle had approximately twenty (20) years of experience and was
23 certified to work in the service department and received online training specifically from
24 Defendant. *Id. at 12:11-13:4.* Furthermore, expert Thomas Lepper opined that the Vehicle
25 was correctly certified as a Certified Pre-Owned Vehicle. *See Exhibit 12.* Defendant also
26 provided extra warranties on the Vehicle that were provided specifically as a result of its
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 successful certification as a CPO. *UF 15.*

2 Furthermore, Plaintiff was informed of the Vehicle's CPO certification. *Exhibit 7,*
3 *78:13-21.* More importantly, Plaintiff also was informed that the Vehicle had been in a
4 previous accident. *UFs 10-12.* Plaintiff then, with the full knowledge that the Vehicle had
5 been certified CPO while being in a previous accident, made no further inquiries and
6 purchased the Vehicle. *UFs 10-13.*

7
8 Accordingly, no issue of material fact remains that Defendant knowingly made any
9 false representation to Plaintiff regarding the Vehicle's source, sponsorship, approval, or
10 certification at the time Plaintiff purchased the Vehicle. As such, Defendant is entitled to a
11 judgment as a matter of law as to Plaintiff's claim that Defendant violated NRS §
12 598.0915(2).
13

14 **2. Defendant Accurately Represented that the Vehicle was of a Particular**
15 **Standard, Quality or Grade and thus Did Not Engage in a**
16 **Deceptive Trade Practice per NRS 598.0915(7).**

17 Plaintiff's First Amended Complaint contends that Defendant somehow engaged in
18 statutory consumer fraud/deceptive trade practices pursuant to NRS §41.600(2)(e) and NRS
19 598.0915(7) by allegedly knowingly representing falsely that the Vehicle for sale to Plaintiff
20 was of a particular standard, quality or grade, style or model. See First Amended Complaint
21 at 13. Again, however, Plaintiff's First Amended Complaint actually does not identify the
22 allegedly false representation knowingly made to Plaintiff by Defendant that constitutes a
23 deceptive trade practice under NRS 598.0915(7). *See Id. at 10-12.*
24

25 Regardless, no evidence exists in this matter that establishes that the standard,
26 quality, or grade of the Vehicle was anything other than CPO at the time Plaintiff purchased
27 the Vehicle from Defendant. *Cf. supra.* Plaintiff does not allege and no evidence exists that
28 Defendant did not perform the required 125-point inspection of the Vehicle before certifying



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 the Vehicle as a CPO. Plaintiff does not allege and no evidence exists that demonstrates the
2 Vehicle failed its 125-point inspection and Defendant certified the Vehicle as CPO
3 regardless of this failure. *See Id.*

4 To the contrary, the only admissible evidence that exists demonstrates that the
5 Vehicle was inspected and accordingly certified as a CPO vehicle at the time Plaintiff
6 purchased it. *See infra.* Defendant's representative, Josh Grant, testified that he thoroughly
7 reviewed all information he received to determine whether the Vehicle was suitable to be
8 considered as a CPO before it was sold to Plaintiff. *UF 2.* Defendant's representatives
9 testified that the Vehicle underwent the required 125-point CPO inspection as was required
10 by Defendant, in order to certify the Vehicle as CPO. *UFs 4-7, see also, FAC at 10-11.*
11 Based upon his inspection, mechanic Ray Gongora, signed a CPO inspection checklist,
12 certifying the Vehicle as a CPO. *Id., Exhibit 5., 38:18-39:2.*

13 It is clear that Defendant could not, and did not knowingly make a false
14 representation about the certification of the Vehicle, or otherwise falsely certified it, prior to
15 it being sold to Plaintiff. Defendant had a sufficient basis for making the representation that
16 the Vehicle was suitable for CPO. *See supra. Blanchard.* Accordingly, Defendant had a
17 reasonable basis for representing that the Vehicle was a suitable and met CPO standards.

18 Plaintiff's expert attempts to opine that the Vehicle should not have been a CPO
19 vehicle, however, he never inspected the Vehicle in 2014, at the time Defendant acquired it,
20 did not inspect it in 2015, and did not inspect it until Plaintiff had driven it for two years, in
21 May 2016. *See Exhibit 11.* Furthermore, Plaintiff's expert has not performed any CPO
22 inspections himself, and did not do a CPO checklist inspection when he inspected the
23 Vehicle in 2016. *Exhibit 14, Excerpts from Deposition of Rocco Avellini, 21:20-22:12.* The
24 ONLY methodology that Mr. Avellini relies upon in rendering his opinion conclusions, and



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 in making the various comments in his report, is his “observations” and experience. *See*
2 *Exhibit 10*. He proffers no solid data or evidence to support his conclusions, nor is he
3 certified to opine on CPO certification, and/or what Defendant “knew or should have
4 known” at the time of the CPO inspection. *Id.* Plaintiff’s expert is not qualified to determine
5 whether the Vehicle in 2014 (or at any time) was unsuitable for CPO certification when
6 trained mechanic, Ray Gongora performed his inspection and certified the Vehicle. *Id.*

8 Plaintiff even testified that the only maintenance he ever did on the Vehicle was oil
9 changes, until 2016 when he got an alignment on the Vehicle. *Exhibit 7, 22:15-17*. Plaintiff
10 did not have any issues with his Vehicle, which evidences a lack of any actual problems
11 with the Vehicle. Therefore, again, Defendant clearly did not knowingly make any
12 representations about the standard or quality of the Vehicle that were false at the time of the
13 Vehicle’s sale.

15 The only “evidence” which the Plaintiff has to support any of his allegations that the
16 Vehicle was not properly certified as a CPO, and that there was damage from the 2014
17 accident which was not repaired properly, is opinion from his hired expert who inspected
18 the Vehicle two years after he purchased and drove it, and at the request of retained counsel.
19 *UF 22, Exhibit 14, 32:8-9*. Allegedly, at this expert inspection, Mr. Avellini noted many
20 observations” about the Vehicle, including improper repairs and residual damage. *See*
21 *Exhibit 11*. However, Mr. Avellini did not utilize any measurement specifications, dealer
22 specifications or tolerances, and/or other standards, and utilized a variety of unverifiable,
23 uncited, and unsubstantiated sources. *Id.* Mr. Avellini attempted to testify during his
24 deposition that there was a safety issue with a “reconditioned” wheel. *Exhibit 14 at 166-167*.
25 However, Mr. Avellini did not actually note any safety issues in his actual opinions, and
26 Plaintiff drove the Vehicle for another year after Mr. Avellini’s inspection, without incident



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 (save for the collision he was involved in). *UFs 24-25; see also Exhibit 11.* Clearly, there
2 could be no actual “safety” concerns, if the Plaintiff was then permitted to drive it for a year
3 (and thousands of miles) after his expert’s inspection, and with no repairs. And, despite Mr.
4 Avellini’s testimony, the First Amended Complaint does not actually allege any specific
5 safety issues and/or concerns. *See generally, FAC.*
6

7 Defendant had the Vehicle inspected and had a sufficient basis for making the
8 representation that the Vehicle was suitable for CPO. *See supra., Blanchard.* As such, it is
9 clear that Defendant could not, and did not knowingly make a false representation about the
10 certification of the Vehicle, or otherwise falsely certify its condition, or falsely represent
11 that the Vehicle met the Chrysler standards that were checked on the CPO checklist.
12

13 **3. Plaintiff Does Not Allege that Defendant Knowingly makes any other false**
14 **representation in a transaction, other than those relating to the CPO of the**
15 **Vehicle and therefore there is no deceptive trade practice pursuant to NRS**
16 **598.0915(15).**

17 NRS 598.0915 is designed as a catchall for any other misrepresentations which were
18 not necessarily encompassed by the other delineated misrepresentations of NRS 598. Here,
19 the allegations within Plaintiff’s First Amended Complaint relate directly to the
20 certification/quality of the Vehicle or the nature and extent of the accident, and Plaintiff’s
21 expectations. *See generally, FAC.* As such, any allegations made by Plaintiff are
22 encompassed in the other specifically defined “deceptive trade practice” definitions in the
23 other sections of NRS 598.0915 as alleged in the First Amended Complaint. *Id.* Defendant
24 made no false representations regarding the overall quality, condition, and certification of
25 the Vehicle. *UFs 4-16.* Defendant disclosed that the Vehicle had previously been in an
26 accident where damage was reported. *UFs 10-12.* Plaintiff accepted that the Vehicle had
27 been in an accident, and made no reasonable investigation into any details. *UFs 13, 20.*
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 Plaintiff then happily drove his Vehicle for multiple years without any incident. *UFs 16, 24.*
2 Therefore, Plaintiff does not have a claim that Defendant engaged in “deceptive trade
3 practice” pursuant to 598.015(15).

4 **4. Defendant Disclosed All Material Facts Which it was Legally Required to**
5 **Disclose, and therefore Did Not Commit a Deceptive Trade Practice Pursuant**
6 **to NRS 598.0923(2).**

7 Plaintiff continually alleges that he should have been informed of the nature and
8 extent of the previous accident. Plaintiff has failed to provide any actual legal citation which
9 would have required Defendant to provide Plaintiff with the Allstate estimate, or otherwise
10 inform him of the contents of the Allstate estimate. *See generally, FAC.* It is undisputed
11 that Defendant informed Plaintiff of the previous accident, and the CarFax reflected that
12 damage was reported, and that the Vehicle was towed. *UFs 10-12.* Plaintiff acknowledged
13 and accepted that the Vehicle had been in a previous accident prior to the finalization of his
14 purchase. *UFs 13, 14, 21.*

15
16 However, it is only the omission of a “material fact” which may constitute a false
17 representation. *See Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (2007). Here, the only
18 “material fact” about the Vehicle’s history was that there was a previous accident, and that
19 damage was reported. The nature and extent of any accident is not material, in particular,
20 because the Vehicle had been repaired prior to Defendant’s acquisition of it, and then was
21 put through a comprehensive multi-point inspection. *UFs 4-7.* Mechanic Ray Gongora
22 specifically testified that in performing a CPO inspection pursuant to the CPO checklist, he
23 only had to notate or report damage that was improperly or shabbily performed, not any
24 conditions which had been repaired to CPO standards. *Exhibit 5, 38:18-39:2.* As such, it is
25 purely speculative that Plaintiff would not have purchased the Vehicle if he had obtained
26 any other additional information about specific parts that had been replaced/repaired on the
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 Vehicle, or the amount of money which was spent on repairs or replacements. Again,
2 Plaintiff purchased the car knowing it had sustained damage from a previous accident. *UFs*
3 *10-13*.

4 Plaintiff testified that he is “not really a mechanic or a car guy.” *Exhibit 7, 13:16*. As
5 such, it is unlikely he would have knowledge of the individual replacement and/or repair
6 parts. And, again, the Vehicle was a CPO vehicle, therefore it is actually more likely that
7 Plaintiff would have still purchased the Vehicle, because he did, in fact, purchase it knowing
8 there was previous damage. *UFs 8-13*. Indeed, even Plaintiff’s “expert” testified, that
9 hearing a car had sustained damage that required repairs in the amount of \$4,088.77 would
10 not signify anything to him. *Avellini Depo., 142:12-17*. The Vehicle was repaired by another
11 shop through Allstate, and then the Vehicle passed a comprehensive inspection and was
12 properly and reasonably designated as a CPO vehicle, despite the previous accident. *UFs 4-*
13 *7*. As such, not disclosing irrelevant details about an accident from which the Vehicle had
14 been repaired, prior to Defendant’s acquisition of it, does not constitute a “deceptive trade
15 practice”, a misrepresentation or a deceitful omission. Therefore, Defendant did not violate
16 NRS 598.023(2).
17
18
19

20 **5. Defendant Did Not Misrepresent the Mechanical Condition of the Vehicle,**
21 **and Did Not Violate any other State or Federal law, including 16 C.F.R.**
22 **§455.1(a)(1).**

23 Plaintiff has provided no admissible evidence that Defendant made any
24 misrepresentations about the mechanical condition of the Vehicle at the time of sale. It is
25 undisputed that Defendant conducted a 125-point CPO inspection on the subject Vehicle
26 prior to Plaintiff purchasing it. *UF 4*. Additionally, it is an undisputed fact that Defendant
27 sold Plaintiff a CPO vehicle, that came with a manufacturer’s warranty, and specifically a
28 “Mechanical Repair Service Contract for Manufacturer’s Certified Vehicles.” *See UF 15*,



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 see also *Exhibit 15, NVAUTO000077-78*. It is also undisputed that Plaintiff did not make a
2 single claim under this warranty (or any other one). *UFs 17-18*. Plaintiff drove his Vehicle
3 for three years, and as of August 2017, he had not made any repairs, mechanical or
4 otherwise, until he made repairs for his own collision. *UFs 17-18*. As such, there is no actual
5 evidence that the Vehicle's mechanical condition was anything different from what
6 Defendant represented; a CPO vehicle that is in a mechanical condition that meets
7 applicable CPO standards.

9 Indeed, despite Plaintiff's "expert's" opinion that there are mechanical issues with
10 the Vehicle, the "expert" did not inspect the Vehicle until approximately two years after
11 Plaintiff purchased and drove it. *UF 22, Exhibit 10*. Plaintiff did not make any repairs, and
12 kept driving the Vehicle continuously, even after filing this lawsuit, again until his own
13 collision. *UFs 22-25*. Plaintiff has not alleged or identified any actual mechanical problem
14 in the Vehicle. *See generally, FAC*. This is particularly notable because Plaintiff filed his
15 First Amended Complaint, after his expert's inspection, and he still failed to identify
16 anything that was actually mechanically uncertifiable. Defendant represented that the
17 Vehicle was in good mechanical condition, the Vehicle operated in a manner for the past
18 three-years that evidences that representation, and Plaintiff has provided no admissible
19 evidence to contradict those facts.

22 Additionally, Plaintiff has provided no other specific statutory or other legal duty
23 mandating the disclosure of any details about repairs and/or replacements made to the
24 Vehicle. *See generally, FAC*. Accordingly, there are no material facts in dispute regarding
25 Defendant engaging in a "deceptive trade practice" as defined in NRS 598.023(3), and
26 summary judgment, as a matter of law is appropriate as to Plaintiff's claims.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1
2 **6. Defendant Did Not Make a Misrepresentation, and Plaintiff's Reliance**
3 **Could Not Be Justified.**

4 Although Defendant did not make any misrepresentations and/or unlawful
5 omissions, Plaintiff's reliance could not be justified. In order to establish justifiable reliance
6 on a purported misrepresentation, a plaintiff must show that: "[T]he false representation
7 must have played a material and substantial part in leading the plaintiff to adopt his
8 particular course..." *Nevada Power Co. v. Monsanto Co.*, 891 F. Supp. 1406 (D. Nev.
9 1995). Here, Plaintiff testified that he was going to Defendant's dealership to look at
10 trucks. *Exhibit 7, 10:24-11:1*. In fact, Plaintiff had already been prequalified to purchase a
11 vehicle. *Id. at 16:8-14*. Plaintiff selected and test drove the Vehicle, and while on the test
12 drive was informed that the Vehicle was in an accident. *Exhibit 7, 12:12-18, 15:16-18*.
13 Then, Plaintiff was informed that the Vehicle was involved in an accident, and damage was
14 reported on the CarFax, prior to Defendant's acquisition of the Vehicle. UF 1-4, 10-12.
15 Despite being informed of the previous accident, Plaintiff undertook no independent
16 investigation of the accident and/or damage that was reported. UF 13. Plaintiff alleges that
17 since Defendant had the Allstate estimate, it had some vague duty to disclose that
18 information. *See generally, FAC*. However, it is undisputed that Plaintiff was informed that
19 the accident occurred, and it is undisputed that Plaintiff accepted that fact. UFs 8-16.

20
21 Most importantly, Plaintiff purchased the Vehicle, and subsequently happily drove it
22 for the following two years prior to filing his original complaint. UF 16. Fraudulent
23 misrepresentation requires actual proof that a plaintiff was supplied false information. *See*
24 *Guilfoyle v. Olde Monmouth Stock Transfer*, 335 P.3d 190 (Nev. 2014.) Again, here,
25 Plaintiff has supplied no evidence that any "false representation" occurred. There is no
26
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 evidence that any of Defendant's representations regarding the Vehicle's status and
2 certification as a CPO at the time of the sale were false or fraudulent. And, regardless,
3 Plaintiff should have undertaken a reasonable investigation of the accident, as opposed to
4 not asking any questions regarding damage, the nature, and/or the extent of the previous
5 accident (which occurred prior to Defendant's acquisition of the Vehicle and was repaired
6 through Allstate). Therefore, Plaintiff's reliance could not have been justified.

7
8 **7. Plaintiff has Not Suffered Damages, and Cannot Recover Damages.**

9 Regardless of any of these allegations, it is unclear precisely how Plaintiff has not
10 been damaged. Plaintiff testified that he merely wanted a "return of his money" and for
11 Defendant to take back his truck. *Exhibit 7, 87:9-12*. Plaintiff's Sixth Supplement also only
12 details (aside from attorneys' fees and punitive damages) damages in the amount of
13 payments that Plaintiff made on the truck, while he was driving it, for three years. *See*
14 *Exhibit 16, Plaintiff's Sixth Supplement*. Plaintiff received the Vehicle, and Plaintiff has
15 used the Vehicle over the course of the past three years, and in that bargained for exchange,
16 Plaintiff accordingly made payments. *UFs 8, 14*. As such, Plaintiff has not suffered even
17 nominal damages on which to recover, and enjoyed the full use of the Vehicle.

18
19
20 Additionally, even if Plaintiff had sustained actual damages, he is barred from
21 recovery. A party is under the duty to make a reasonable investigation of any "alleged
22 misrepresentation" if that party has received information that would serve as a "danger
23 signal" and "red light" to a normal comparable person. *Blanchard v. Blanchard*, 108 Nev.
24 908, 839 P.2d 1320 (1992.) Plaintiff directly received information via the CarFax that the
25 Vehicle had been in an accident, that damage had been reported, and that the Vehicle had
26 been towed. *UFs 10-12*. Despite this information, Plaintiff did not ask whether Defendant
27 had any documents relating to the accident, did not speak to any mechanic, and did not
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 otherwise make any reasonable investigation. *UF 13*. The only thing Plaintiff did was
2 allegedly ask a question about the accident, which the salesperson mentioned during the test
3 drive of the Vehicle. *Exhibit 7, 15:17-16:1*. Plaintiff did not even inquire again at the time
4 of acquiring the CarFax which specifically states that the Vehicle was towed. *Id.*

5
6 Plaintiff works in a mechanical profession, air conditioning, and owns his own
7 company which includes a company van, in addition to having purchased multiple vehicles
8 previously. *Exhibit 7, 7:25-8:6, 13:25-14:19*. A person of comparable intelligence and
9 experience, would view the fact that the Vehicle has been in a reported accident with
10 damage, as a signal to do some investigation. As such, Plaintiff is barred from recovery as
11 he did not make any reasonable investigation into the facts which would signal a possible
12 “danger” and “red light” to a comparable person. Plaintiff has no admissible evidence that
13 Defendant engaged in any statutory “deceptive trade practices” or fraud. Additionally,
14 Plaintiff has failed to meet the requisites to establish his claim of consumer fraud, and
15 therefore, based on the undisputed facts, Defendant is entitled to summary judgment, as a
16 matter of law.
17

18
19 **B. Plaintiff’s Cause of Action for Rescission Fails as a Matter of Law, Because He**
20 **Fails to Meet the Elements of that Claim.**

21 Plaintiff claims that due to the alleged deceptive trade practices he is entitled to
22 rescission. Plaintiff is not entitled to Rescission because Defendant did not engage in any
23 “deceptive trade practices” therefore, he is not permitted a return of all of his payments.
24 “Rescission is an equitable remedy which totally abrogates a contract and which seeks to
25 place the parties in the position they occupied prior to executing the contract.” *Scaffidi v.*
26 *United Nissan*, 425 F. Supp. 2d 1172, 1183 (2005) *citing Bergstrom v. Estate of DeVoe*, 109
27 Nev. 575, 854 P.2d 860, 861 (Nev. 1993). Where a contract between two parties has been
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 partially performed, and one party does not fully perform, the other has a choice of
2 remedies. *Id.* Here, Plaintiff's claim fails because Plaintiff and Defendant cannot be put in
3 the same position they occupied prior to executing the contract, because Plaintiff got into a
4 collision accident, which caused over \$5,000.00 in damage to the Vehicle. *UF* 22.

5
6 Additionally, Plaintiff is barred from seeking both damages and restitution. "The law
7 is clear that damages and restitution are alternative remedies and an election to pursue one is
8 a bar to invoking the other in a suit for breach of contract. *Mullinix v. Morse*, 81 Nev. 451,
9 454, 406 P.2d 298, 300 (1965). Plaintiff must, "rescind or affirm the contract, but he cannot
10 do both. If he would rescind it, he must immediately return whatever of value he has
11 received under it, and then he may defend against an action for specific performance . . . and
12 he may recover back whatever he has paid..." *Scaffidi v. United Nissan*, 425 F. Supp. 2d
13 1172, 1183 (2005)(internal citation omitted)(emphasis added). Again, here, despite any
14 "notice" of rescission per the Complaint, Plaintiff continued to utilize the Vehicle and in
15 fact, put another 5,500 miles on the Vehicle, and got into a collision. *UFs* 23-25. Plaintiff is
16 not entitled to Rescission, because the parties can never be put back into their original
17 position. *See generally, Id.* In *Scaffidi*, the Court found that summary judgment was
18 appropriate for that defendant dealership because the plaintiff did not provide evidence that
19 the defendant failed to perform, and the vehicle at issue in that case was totaled. *Id.*

20
21
22 Here, summary judgment is similarly appropriate, because Plaintiff has not produced
23 any admissible evidence that Defendant actually engaged in any "deceptive trade practice"
24 and the Vehicle has had an additional accident, repair work, and three additional years of
25 use. In fact, Plaintiff is still utilizing the Vehicle. As such, Plaintiff has failed to meet the
26 requisites for a claim for rescission, and there are no material facts in dispute regarding this
27 claim, summary judgment for Defendant is appropriate, as a matter of law.
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1
2 **D. Plaintiff Fails to Satisfy the Requisites of Equitable Estoppel, therefore his**
3 **Claim Fails as a Matter of Law.**

4 The doctrine of "equitable estoppel operates to prevent a party from asserting legal
5 rights that, in equity and good conscience, they should not be allowed to assert because of
6 their conduct." *Nevada State Bank v. Jamison Partnership*, 106 Nev. 792, 799, 801 P.2d
7 1377, 1382 (1990). The elements of estoppel are as follows:

8
9 (1) the party to be estopped must be apprised of the true facts; (2) he
10 must intend that his conduct shall be acted upon or must so act that the
11 party asserting estoppel has the right to believe it was so intended; (3)
12 the party asserting estoppel must be ignorant of the true state of facts; (4)
he must have relied to his detriment on the conduct of the party to be
estopped.

13 *NGA #2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1160 (1997)(internal citation
14 omitted). Here, as detailed above, Plaintiff has failed to provide evidence that Defendant
15 conducted itself in a way that precludes it from asserting its legal rights and defenses. *See*
16 *generally FAC*. Plaintiff testified to only speaking with two individuals at Defendant's
17 dealership, Noah Grant and Travis Spruell. *Exhibit 7, 21:9-11*. Plaintiff was informed that
18 the Vehicle was in a previous accident and made no investigation into the nature and extent
19 of the accident at the time of purchase. *Exhibit 7, 19:2-21*. Both Noah Grant and Travis
20 Spruell testified to having no knowledge of the Allstate estimate and/or its contents prior to
21 this litigation. *Exhibit 17, Excerpt of Noah Grant Deposition.*, 38:5-8; *Exhibit 10, 63:25-*
22 *64:5*. The Vehicle was thoroughly inspected and then certified as a CPO vehicle. *UFs 4-7*.

23
24
25 As such, the fact that Defendant specifically informed Plaintiff that he was
26 purchasing a CPO vehicle that had been in a previous accident, and the fact that it was
27 actually a CPO who had been thoroughly inspected are the true facts that were presented to
28 Plaintiff. Plaintiff has produced no evidence that he relied on Defendant's representations to



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 his "detriment." To reiterate, Plaintiff had no repairs performed on his car (until his own
2 collision). *UFs 17-18*. Plaintiff drove his car without any incident which could be
3 attributable to any of Defendant's conduct. Accordingly, summary judgment is appropriate
4 with respect to this claim.

5
6 **E. Defendant is Entitled to Summary Judgment on Plaintiff's Claim for**
7 **Restitution/Unjust Enrichment Because He Fails to Meet the Requisites for his**
8 **Claim.**

9 Plaintiff fails to meet the basic requisites for a claim for unjust enrichment and his
10 claim fails, as a matter of law, with respect to Defendant. In Nevada, "[U]njust enrichment
11 occurs whenever a person has and retains a benefit which in equity and good conscience
12 belongs to another." *In re Amaro Derivative Litig.*, 252 P.3d 681 (Nev. 2011)(internal
13 citation omitted). Here, Plaintiff paid monthly payments on the Vehicle, which he used
14 and/or had the ability to use, from the time of his purchase through the time of filing his
15 Complaint, and past that date. *See generally, FAC, Exhibit 7, 20:24-21:3*. In fact, Plaintiff
16 neither ceased using the Vehicle (aside from the collision he was in), nor sold it or
17 attempted to sell it. *Id., Exhibit 7, 83:8-21*. Plaintiff's claim for unjust enrichment fails, on
18 its face, because he has a full and adequate remedy at law. Plaintiff had a purchase
19 agreement for the Vehicle with Defendant, and Plaintiff obtained and utilized the Vehicle
20 for two (2) years prior to filing his Complaint and continued to use the Vehicle after he filed
21 his Complaint. *See UFs 22-24*. In fact, Plaintiff utilized the Vehicle until he got into a
22 collision accident in May 2017. *Exhibit 7, 89:4-10*. As such, Defendant has not been
23 unjustly enriched, as it has only been paid for Plaintiff's usage and ownership for the car to-
24 date, and therefore cannot be inequitably retaining any "benefit" that belongs to Plaintiff.

25
26
27 Additionally, Nevada maintains the long-standing general rule that a plaintiff may
28 not recover equitable remedies where a plaintiff has a full and adequate remedy at law. *See*



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 *State v. Second Judicial Dist. Court in & for Washoe County*, 49 Nev. 145, 159, 241 P. 317,
2 322 (1925). Since Plaintiff has an express agreement with Defendant regarding the
3 purchase of the Vehicle, his claims in equity fail, as a matter of law. *UF* 8. Therefore, entry
4 of summary judgment is appropriate for Defendant.
5

6 **F. Plaintiff's Claim for Declaratory Judgment is Duplicative, Thus Summary
7 Judgment is Appropriate.**

8 Plaintiff alleges that he entered into the RISC contract with Defendant and Wells
9 Fargo, and further alleges that he is entitled to Rescission and/or Restitution because the
10 RISC is void ab initio or voidable. Defendant maintains that the RISC is valid and binding
11 contract, and that Plaintiff accepted and utilized the full value for which he agreed,
12 including up until this date. The elements of an equitable claim for declaratory relief are:

- 13 1. A justifiable controversy exists between two or more parties;
- 14 2. Regarding their respective rights pursuant to a contract;
- 15 3. Such that the plaintiff asserts a claim of a legally protected right;
- 16 4. The issue is ripe for judicial determination; and
5. Plaintiff asks the court to determine the parties' relative rights under the contract.

17 *See Nev. R. Civ. P. 57; NRS Chapter 30; Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948).
18 Here, the "justifiable controversy" stems from Plaintiff's First Cause of Action for
19 Fraud/Deceptive Trade Practices, the contract itself, and the Parties' respective positions is
20 not what is actually at issue. Plaintiff's claim for Declaratory Judgment therefore completely
21 encompasses claims and defenses of both, Plaintiff and Defendant, which would be
22 resolvable ultimately at the time of trial (or pursuant to summary judgment). *See FAC*.
23 Here, Plaintiff has already alleged a claim for Rescission and therefore the declaratory
24 judgment claim is redundant and rendered moot by adjudication of the main action. *See*
25 *FAC*. The main purpose for the Declaratory Relief cause of action is solely related to the
26 other claims, upon which any voiding of the RISC is dependent. As such, a determination on
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 the RISC is inappropriate and summary judgment is properly entered in favor of Defendant.

2
3 **G. Plaintiff's Claim for Recovery Under the Auto Dealership Bond, does Not**
4 **Satisfy the Requisites of that Claim, and therefore Fails as a Matter of Law.**

5 Plaintiff asserts a claim under NRS 482.345(7), which provides in pertinent part:

6 If a consumer has a claim for relief against a dealer, distributor,
7 rebuilder, manufacturer, representative or salesperson, the consumer
8 may:

9 (a) Bring and maintain an action in any court of competent
10 jurisdiction. If the court enters:

11 (1) A judgment on the merits against the dealer, distributor, rebuilder,
12 manufacturer, representative or salesperson, the judgment is binding on
13 the surety.

14 Here, this claim should be summarily dismissed, because the Court has not entered a
15 judgment on the merits against any "dealer, distributor, rebuilder, manufacturer,
16 representative or salesperson." Plaintiff has not obtained a judgment on the merits or a
17 judgment in any other capacity with respect to Defendant, and therefore, Corepointe should
18 be entitled to summary dismissal on this claim, as it is entirely premature, and subject only
19 to the entry of a judgment.

20 **H. Plaintiff is Not Entitled to Punitive Damages.**

21 Plaintiff cannot prevail on his punitive damages claim under Nevada law and it must,
22 therefore, be summarily dismissed. In Nevada, "a plaintiff is never entitled to punitive
23 damages as a matter of right." *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 380,
24 989 P.2d 882, 887 (1999). To prevail on a claim for punitive damages, a plaintiff must
25 prove "by clear and convincing evidence" the defendant "has been guilty of oppression,
26 fraud or malice, express or implied." Nev. Rev. Stat. 42.005(1). Typically, a Nevada
27 corporation cannot be held liable for punitive damages. *N.R.S. 42.007* specifies the
28 exceptional circumstances when a company can be held liable for punitive damages, and



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

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

1 provides in pertinent part:

2 the employer is not liable for the exemplary or punitive damages unless:

3 (a) The employer had advance knowledge that the employee was unfit
4 for the purposes of the employment and employed the employee
5 with a conscious disregard of the rights or safety of others;

6 (b) The employer expressly authorized or ratified the wrongful act of
7 the employee for which the damages are awarded; or

8 (c) The employer is personally guilty of oppression, fraud or malice,
9 express or implied.

10 If the employer is a corporation, the employer is not liable for exemplary or
11 punitive damages unless the elements of paragraph (a), (b) or (c) are met by an
12 officer, director or managing agent of the corporation who was expressly
13 authorized to direct or ratify the employee's conduct on behalf of the
14 corporation.

15 See also *Countrywide Homes Loans, Inc. v. Thitchener*, 124 Nev. 725, 747, 192 P.3d 243,
16 257-258. NRS 42.001 defines the terms utilized in NRS 42.007(c) as follows:

17 1. "Conscious disregard" means the knowledge of the probable harmful
18 consequences of a wrongful act and a willful and deliberate failure to act
19 to avoid those consequences.

20 2. "Fraud" means an intentional misrepresentation, deception or concealment
21 of a material fact known to the person with the intent to deprive
22 another person of his or her rights or property or to otherwise injure
23 another person.

24 3. "Malice, express or implied" means conduct which is intended to
25 injure a person or despicable conduct which is engaged in with a
26 conscious disregard of the rights or safety of others.

27 4. "Oppression" means despicable conduct that subjects a person to cruel
28 and unjust hardship with conscious disregard of the rights of the
person.

29 The Supreme Court of Nevada has clarified recklessness or even gross negligence is
30 insufficient to impose punitive damages, and there must be more than a "theoretical" risk of
31 harm to a particular person. See *Thitchener*, 192 P.3d at 255. Plaintiff has plainly failed to
32 plead allegations to impose punitive damages on Defendant as a company. See generally,
33 *FAC*. Plaintiff has not provided evidence of any of the categories delineated in 42.007(a)-
34 (c). There was no unfitness by any employee alleged. Plaintiff does not allege that the



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 employer “expressly authorized or ratified” any legally wrongful act. Again, Plaintiff does
2 not provide any actual admissible evidence that Defendant engaged in any “deceptive trade
3 practices.” And, his testimony that he would not had purchased the Vehicle if he had been
4 provided more information, is merely speculation and conjecture, which is insufficient to
5 defeat summary judgment. *See Wood, 121 Nev. at 732.* Any testimony by his expert is
6 equally conjecture, as he provided no actual measurements or proof regarding any frame
7 damage nor is he otherwise qualified to opine on whether the Vehicle should have qualified
8 as a CPO vehicle. *See generally, Exhibit 11.* There is no evidence that Defendant itself is
9 guilty of conduct meriting punitive damages, as by all accounts, Defendant abided by CPO
10 standards of submitting the Vehicle for inspection to its qualified mechanic, and then
11 certifying the Vehicle which was reasonably based on that inspection. *UFs 4-7.* Plaintiff
12 failed to sufficiently plead facts that suggest the Defendant’s actions rose to the level
13 necessary to prevail on a claim for punitive damages. *See FAC.* At most, all of the
14 allegations, if taken as true, would amount to reckless or grossly negligent behavior, which
15 still fails to rise to the level of egregiousness necessary to impose punitive damages. *Id.*
16 Plaintiff has failed to make the requisite showing for punitive damages, and any such any
17 claim should be summarily dismissed.
18
19
20

21 VI. CONCLUSION

22 Based on the foregoing, Plaintiff has failed to meet the requisites for any of his
23 causes of action, therefore they each fail. The undisputed facts, clearly merit summary
24 judgment in favor of Defendant, as a matter of law, and as such, Defendant respectfully
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) 384-6568

1 requests that judgment be entered for Defendant with respect to each of Plaintiff's claims.

2 DATED this 2nd day of October, 2017

3 MORAN BRANDON BENDAVID MORAN

4 /s/Jeffery A. Bendavid

5 JEFFERY A. BENDAVID, ESQ.

6 Nevada Bar No. 6220

7 STEPHANIE J. SMITH, ESQ.

8 Nevada Bar No. 11280

9 630 South 4th Street

10 Las Vegas, Nevada 89101

11 (702) 384-8424

12 Fax: (702) 384-6568

13 j.bendavid@moranlawfirm.com

14 s.smith@moranlawfirm.com

15 *Attorney for Defendants, Nevada Auto*

16 *Dealership Investments LLC d/b/a Sahara*

17 *Chrysler and Corepointe Insurance Co.*



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

Exhibit “1”

ADDITIONAL INFORMATION - IF APPLICABLE

CHECK	VENDOR	VENDOR NAME			CHECK DATE
105015	HINT001	DALE ANDREW HINTON			5/05/2014
ACCOUNT	CONTROL #	REFERENCE #	AMOUNT	INVOICE #	DESCRIPTION
	HINT001	105015	24500.00CR		HINTON, DALE ANDREW
	9344	105015	24500.00		9344 RAM 2013 558275

(S) 2010 DEALERTRACK SYSTEMS, Inc. - DealerTrack Application Group (2007) 10-1628

19208 B_NC_A2

Sahara Chrysler Jeep Dodge Ram
5050 West Sahara Avenue
Las Vegas, NV 89146

SAHARA

CHRYSLER Jeep DODGE RAM

5050 West Sahara Ave. - Las Vegas, NV 89146
Ph: (702) 479-2121 - Fax: (702) 479-2124

Wells Fargo
AZ 00193-1802
91-6271221

DATE	CHECK
5/05/2014	105015

AMOUNT
\$ 24,500.00
VOID IF NOT CASHED WITHIN 90 DAYS

Pay Twenty-Four Thousand, Five Hundred Dollars and no/Cents

TO THE ORDER OF
DALE ANDREW HINTON
LAS VEGAS, NV 89135

** Accounting Copy **
NON-NEGOTIABLE

Issued By: EBONE KIPER
Issue Date: 5/05/14

NVAUTO000001

JOINT APPENDIX 079

CHECK REQUEST FORM

CHECK DRAWN ON ☒ DODGE
☒ CHRYSLER
☐ MITS/SUZ
☐ SUBARU
☐ KIAREQUESTED BY Josh Grant ID # _____ EXT _____
(PRINTED NAME)AUTHORIZED BY per Josh Grant DATE OF REQUEST 5/5/15AMOUNT OF CHECK \$14500⁰⁰ ACCOUNT# _____

REASON FOR REQUEST:

CHECK TO: ☐ RETURN TO REQUESTOR☐ MAIL☒ CUSTOMER PICK UP☐ SPIFF CHECK☐ BIRD DOG** STOCK # _____ DEAL # _____☐ REFERRAL** STOCK # _____ DEAL # _____☐ REFUND☐ OTHER boyfriend vehiclePAYABLE TO Dale Hinton
(Printed Name)CUSTOMER# Dale HintonADDRESS [REDACTED]
Las Vegas NV 89135PHONE# 702-[REDACTED]

*If the check request is submitted by 10:00 AM, a check will be available by 2:00 PM the same day in most cases. If received after 10:00 AM, a check will be available the following day by 2:00 PM..

* *All Bird Dog and referrals need a Stock # and a Deal # to process.

*****ALL AREAS MUST BE COMPLETED FOR PROCESSING*****

STATE OF NEVADA

DEPARTMENT OF MOTOR VEHICLES

CERTIFICATE OF TITLE

VIN	YEAR	MAKE	MODEL	VEHICLE BODY	TITLE NUMBER
1C6RR6GT8DS558275	2013	RAM	RAM TRUCK	TCW	NV006191479
DATE ISSUED	ODOMETER MILES	FUEL TYPE	SALES TAX PD	EMPTY WT	GROSS WT
05/29/2013	168	G			6001
VEHICLE COLOR	ODOMETER BRAND			BRANDS	
	ACTUAL MILES				

OWNER(S) NAME AND ADDRESS

HINTON DALE ANDREW
2315 MALAGA PEAK ST
LAS VEGAS NV 89135-1345

LIENHOLDER NAME AND ADDRESS

LIENHOLDER RELEASE - INTEREST IN THE VEHICLE DESCRIBED ON THIS TITLE IS HEREBY RELEASED:

SIGNATURE OF AUTHORIZED AGENT DATE

PRINTED NAME OF AGENT AND COMPANY



FEDERAL AND STATE LAW REQUIRES THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.
The undersigned hereby certifies the vehicle described in this title has been transferred to the following buyer(s):

Sabrina Chrysler Jeep Dodge Ram
Printed Full Legal Name of Buyer Nevada Driver's License Number or Identification Number ☐ AND ☐ OR

Printed Full Legal Name of Buyer Nevada Driver's License Number or Identification Number

5050 W. Sahara Ave Las Vegas NV 89146
Address City State Zip Code

I certify to the best of my knowledge the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked.
6711 ☐ NO ☐ TENTHS ☐ The mileage stated is in excess of its mechanical limits.
The odometer reading is not the actual mileage. WARNING: ODOMETER DISCREPANCY.
Exempt - Model year over 9 years old.

Signature of Seller(s)/Agent/Dealership

Dale Andrew Hinton
Printed Name of Seller(s)/Agent/Dealership

I am aware of the above odometer certification made by the seller/agent. ☒Dealer's License Number 42428 Date of Sale 5/5/14

Signature of Buyer

Shane Hinton
Printed Full Legal Name of Buyer

ACCORDING TO THE RECORDS OF THE DEPARTMENT OF MOTOR VEHICLES, THE PERSON NAMED HEREON IS THE OWNER OF THE VEHICLE DESCRIBED ABOVE, SUBJECT TO LIEN AS SHOWN.

CONTROL NO.

1255602C

(THIS IS NOT A TITLE NO.)

VP-2 (Rev. 8/10)

ALTERATION OR ERASURE VOIDS THIS TITLE

NVAUTO000011

JOINT APPENDIX 081

Date: 5-5-14 Salesperson: Tony C
 Customer Name: Andrew Hinton D Phone: _____

Year: 2003 Make: Dodge Ram Model: 1500 Bighorn Body: 2W Trim: Hem Q2x Q4x
 Engine: 5.7L Color: Blue Mileage: 6716 Q Actual Q Over 100K Q Unknown

Lic. # _____ State: NV
 VIN: 1C6RR6G18D9558275

- CHECK OPTIONS INCLUDED ON VEHICLE**
- ☒ Auto Trans. ☒ Tilt ☐ Leather ☐ Moon or Sun Roof ☐ Dually
 - ☐ Manual Trans. ☒ Cruise ☒ Power Seats ☒ Tow Package ☐ 2+ Keys
 - ☒ A/C ☒ Power Windows ☐ Third Seat ☒ Alloy Wheels ☐ Remarks Runner boards
 - ☒ Rear A/C ☒ Power Locks ☒ Quad Seats ☐ Other

Has this vehicle ever been in an accident? ☐ Yes ☐ No Does the vehicle have a salvage title? ☐ Yes ☐ No The mileage on this vehicle is true and accurate? ☐ Yes ☐ No

Customer Signature: _____

1 <u>Small Accident</u>	Paint/Body \$ _____
2 _____	Frame/Unibody \$ _____
3 _____	Glass \$ _____
4 <u>Has Title NV</u>	Upholster/Carpet \$ _____
5 _____	Tires \$ _____
6 _____	Brakes \$ _____
7 _____	Radio \$ _____
8 _____	Pwr Accessories \$ _____
9 _____	Engine/Trans. \$ _____
10 _____	A/C/Heater \$ _____
11 _____	Total \$ _____
12 _____	
13 _____	
14 _____	
15 _____	
16 _____	
17 _____	
18 _____	
19 _____	
20 _____	
21 _____	

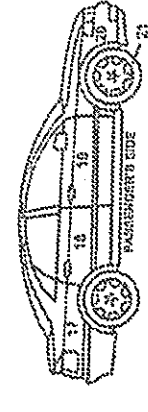
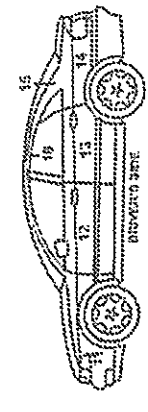
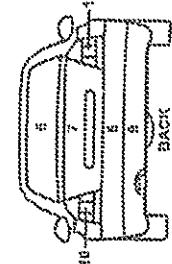
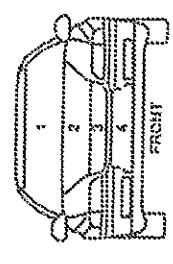


Exhibit “2”

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

1 APPEARANCES:

2

3 For the Plaintiff, Derrick Poole:

4

5 **GEORGE O. WEST, III, ESQ.**
6 Law Offices of George O. West, III
7 10161 Park Run Drive
8 Suite 150
9 Las Vegas, NV 89145

8

9 For the Defendants, Nevada Auto Dealership
Investments, LLC:

10

11 **BRIAN TERRY, ESQ.**
12 Thondale Armstrong
13 1100 East Bridger Avenue
14 Las Vegas, NV 89101

13

14 For the Defendant, Wells Fargo Dealer Services, Inc.:

15

16 **NATHAN KANUTE, ESQ.**
17 Snell & Wilmer
18 3883 Howard Hughes Parkway
19 Suite 1100
20 Las Vegas, NV 89169

19

20

21

22

23

24

25

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

2

1 (Court reporter's opening statement was waived.)

2

* * * * *

3

(Witness sworn.)

4

WHEREUPON:

5

JOSHUA GRANT

6

having been first duly sworn, was

7

examined and testified as follows:

8

9

EXAMINATION

10

BY MR. WEST:

11

Q. Can you please state and spell your

12

name for the record, please?

13

A. Joshua Grant. J-O-S-H-U-A, G-R-A-N-T.

14

Q. Mr. Grant, have you ever had your

15

deposition taken before?

16

A. No.

17

Q. I know that Mr. Terry has gone over

18

with you some of the rules and explained to you

19

what this process is all about, but I have to go

20

over a few of the ground rules with you so that

21

we have a clear understanding of what this

22

procedure is all about and so that you know

23

exactly what is going on here.

24

The person to your left is a Certified

25

Court Reporter. She is empowered under the laws

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

4

1

INDEX OF EXAMINATIONS

2

3 EXAMINATIONS

PAGE

4

BY MR. WEST

4

5

6

INDEX OF EXHIBITS

7

NO.

DESCRIPTION

PAGE

8

1. Second Amended Notice of Taking
Deposition of 30(b)(6) Representative
from Sahara Chrysler and Notice to
produce Documents 21

11

2. Website 53

12

3. CD 166

13

4. Appraisal form 72

14

5. Allstate Estimate of Record,
NVAUTO000017-20 96

15

6. CarFax, NVAUTO000013-16 100

16

7. CarFax, NVAUTO000079-86 113

17

8. Dealer Operations Manual 115

18

9. Certified Pre-Owned Vehicle Inspection
Checklist, NVAUTO000075-76 116

19

10. 5/6/14 Repair Order, NVAUTO0000253-255 154

21

22

23

INFORMATION TO BE PROVIDED

24

None

25

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

3

5

1 of the State of Nevada to give you an oath to
2 tell the truth, which you just took. It is the
3 same oath you would take in a court of law as if
4 we were in front of a judge and jury. And even
5 though we are in an informal setting here today
6 and there is no judge and jury present, the oath
7 you took today carries the same penalties of
8 perjury and the same requirements to tell the
9 truth as if we were in court. Consequently, you
10 are giving sworn testimony in this case here
11 today as if we were in front of a judge and jury.

12 Because of that, it is extremely
13 important for you to give your best and most
14 accurate testimony here today with respect to the
15 questions that I have to ask.

16 As you sit here today, is there any
17 reason why you believe you cannot give your best
18 and most accurate testimony here today?

19 A. No.

20 Q. No issues with medications, no issues
21 with not getting enough sleep, anything like
22 that? You feel comfortable going forward here
23 today?

24 A. I do.

25 Q. So far, you are doing very well, but I

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

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

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

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.**

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

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.**

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

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.

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

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?

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

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

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

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

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

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

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

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**

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

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

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

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

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

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?**

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

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.

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

1 **BY MR. WEST:**

2 **Q.** On May 5, 2014 when you received this
3 from 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

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

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

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

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

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

Exhibit “3”

Allstate Fire and Casualty Ins. Co.

SOUTHWEST AUTO-LAS VEGAS

222 S.Mill Ave

Suite 511

Tempe, AZ 85281

Phone: (800) 347-4488

Claim #:

000320887250D01

Workfile ID:

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
915-888-1111	5588 SPRING MOUNTAIN RD	(702) 630-2292	5588 SPRING MOUNTAIN RD
LAS VEGAS, NV 89147-8080	LAS VEGAS, NV		LAS VEGAS, NV
(702) 754-6043 Other	Repair Facility		(702) 754-6774 Business
DALEHINTON@AOL.COM	(702) 754-6774 Business		(702) 754-6043 Fax
			info@universalfv.com

VEHICLE

Year:	2013	Color:	GRAY Int: GRAY	License:	10S YYA	Production Date:	10/2012
Make:	DODG	Body Style:	4D P/U	State:		Odometer:	6632
Model:	RAM 1500 4X2	Engine:	B-5.7L-FI	VIN:	1C6RR6GT8DS558275	Condition:	
	QUAD BIG HORN						

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	Incl.	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	Incl.	1.6
8		Add for Clear Coat		0	0.00	0.0	0.6
9		Repl RT Lamp bracket	68196980AA	1	0.00	Incl.	0.0
10		Repl RT Bumper bracket	68196981AA	1	239.00	Incl.	0.0
11		Repl Lower deflector w/painted bumper	68033135AA	1	96.20	Incl.	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	Incl.	0.0
14	GRILLE						
15		R&I R&I grille assy		0	0.00	Incl.	0.0
16	FRONT LAMPS						
17		Repl LT Headlamp assy w/o multi-beam	68096439AC	1	190.00	Incl.	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	<u>3.5</u>	2.5
		NOTE: PARTIAL REFINISH TO KEEP FROM HAVIGF 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 B-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	Incl.	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 Prii + 0.3 ea addit'l prls							
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			3,882.56
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

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. Blnd=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. Subl=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.

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	#NCP2653022 A/M LT Stabilizer link	\$ 55.11

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 “4”



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/Maxwell			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. Multifunction 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"/>		Qualification Standards (continued)		
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"/>		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"/>			

NVAUTO000075

JOINT APPENDIX 100

Dealership Name Solera
 Year, Make and Model 2013 Dodge Ram 1500 Stock Number 9344
 Color Black R.O. Number(s) 6013972
 VIN 1C4RRGAT8DS558295
 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)			Detail Standards (continued)		
83. Identify non-Mopar accessories in Additional Information box	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Interior detailing		
84. Tires match and are manufacturer's recommended size/load capacity	<input checked="" type="checkbox"/>		121. Clean ashtray/cigarette lighter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
85. Wheels match and are correct size and offset	<input checked="" type="checkbox"/>		122. Clean vinyl, plastic and leather surfaces	<input checked="" type="checkbox"/>	
86. Tread depth is 4/32" remaining	<input checked="" type="checkbox"/>		123. Clean glass surfaces	<input checked="" type="checkbox"/>	
87. Tire sidewall condition	<input checked="" type="checkbox"/>		124. Vacuum and/or shampoo all interior carpets	<input checked="" type="checkbox"/>	
88. Tire pressures are set to Chrysler specifications	<input checked="" type="checkbox"/>		125. Free of odors/moisture and water leaks	<input checked="" type="checkbox"/>	
89. Brake-line condition	<input checked="" type="checkbox"/>				
90. Shocks and struts condition	<input checked="" type="checkbox"/>		Satellite Equipped Vehicle		
91. CV joints boot condition	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Retrieve the Radio Electronic Serial Number (ESN)		
92. Exhaust system	<input checked="" type="checkbox"/>				
93. Front suspension	<input checked="" type="checkbox"/>		Authorized Signature		
94. Rear suspension	<input checked="" type="checkbox"/>		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.		
95. Steering components	<input checked="" type="checkbox"/>		Authorized Signature <u>[Signature]</u>		
96. Wheel bolts torqued to specifications	<input checked="" type="checkbox"/>		Title <u>Used Car Test</u>		
97. Tire-changing equipment (including spare, if applicable)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Date <u>5/8/14</u>		
98. Drive belts are tight and not damaged	<input checked="" type="checkbox"/>		Customer Signature		
99. Engine hoses	<input checked="" type="checkbox"/>		Signature <u>[Signature]</u>		
00. Emissions system hoses	<input checked="" type="checkbox"/>		Date		
01. State/local testing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Additional Information		
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 jams	<input checked="" type="checkbox"/>				

Chrysler, Jeep, Dodge, Ram and Mopar are registered trademarks of Chrysler Group LLC.
 CARFAX is a registered trademark of CARFAX, Inc.

Exhibit “5”

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 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

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

1	2	4
2		
3	For the Plaintiff, Derrick Poole:	(Court reporter's opening statement was waived.)
4		* * * * *
5	GEORGE O. WEST, III, ESQ.	(Witness sworn.)
6	Law Offices of George O. West, III	WHEREUPON:
7	10161 Park Run Drive	RAY GONGORA
8	Suite 150	having been first duly sworn, was
9	Las Vegas, NV 89145	examined and testified as follows:
10		
11	For the Defendants, Nevada Auto Dealership	EXAMINATION
12	Investments, LLC:	BY MR. WEST:
13		Q. Mr. Gongora, have you ever had your
14	BRIAN TERRY, ESQ.	deposition taken before?
15	Thondale Armstrong	A. No.
16	1100 East Bridger Avenue	Q. My name is George West. I represent
17	Las Vegas, NV 89101	the Plaintiff in this particular case. You are
18		not a party in this case at all. You are a
19	For the Defendant, Wells Fargo Dealer Services, Inc.:	witness. We are trying to get some information
20		with respect to this particular case.
21	NATHAN KANUTE, ESQ.	The reason you were subpoenaed was
22	Snell & Wilmer	because you are no longer an employee of the
23	3883 Howard Hughes Parkway	dealership. But you were gracious enough and
24	Suite 1100	counsel was gracious enough to agree to change
25	Las Vegas, NV 89169	your deposition for your convenience and so that
		we didn't need to bring you back here at a
		different day.
	HUEBNER COURT REPORTING, INC. (702) 374-2319	HUEBNER COURT REPORTING, INC. (702) 374-2319
1	3	5
2	INDEX OF EXAMINATIONS	The person on your left is a court
3	EXAMINATIONS PAGE	reporter who is licensed -- yeah, your left --
4	BY MR. WEST 4	licensed court reporter who has administered an
5	BY MR. TERRY 56	oath for you to tell the truth. It is the same
6		oath that you would take as if we were in front
7	INDEX OF EXHIBITS	of a judge and jury, and it does have the same
8	NO. DESCRIPTION PAGE	penalties of perjury. So it is very important
9	1. Certified Pre-Owned Vehicle Inspection 21	for you to give your best and most accurate
10	Checklist, NVAUTO000075-76	testimony here today.
11	2. Allstate Estimate of Record, 27	Even though we are not in front of a
12	NVAUTO000017-20	judge and jury, you are actually giving sworn
13	3. Copy of photographs 46	testimony as if we were. So it is very important
14		for you to give your best testimony here today.
15	INFORMATION TO BE PROVIDED	Is there any reason as you sit here
16		today why you think you can't give your best
17	None	testimony?
18		A. No.
19		Q. So far, you are doing very well in
20		audibilizing your responses. Many times, it is
21		human nature for us to shrug our shoulders and
22		nod our heads to respond. We are a nonverbal
23		species, contrary to popular belief. While I
24		might be able to interpret a nod of the head in
25		the up and down as affirmative yes, the court
	HUEBNER COURT REPORTING, INC. (702) 374-2319	reporter needs to hear everything.
		HUEBNER COURT REPORTING, INC. (702) 374-2319

1 **A. No.**

2 **Q.** Why not?

3 **A. Because it is at a standard of the**
4 **vehicle. If it was bent, yes. If it is up to**
5 **standard, no.**

6 **Q.** Were you trained or -- were you trained
7 or did someone tell you that if a vehicle had
8 been in a previous accident but was properly
9 repaired, that did not have to be notated on the
10 report?

11 MR. TERRY: On his inspection report?

12 MR. WEST: Yes, on the inspection
13 report, Exhibit 1.

14 THE WITNESS: As far as -- can you
15 rephrase that?

16 BY MR. WEST:

17 **Q.** Sure.

18 In the normal custom and practice of
19 you conducting the 125-point CPO inspection in
20 Exhibit 1, if a car had indications that it was
21 in a previous accident based upon a series of
22 components and parts being replaced, were you
23 ever told or was it custom and practice for you
24 not to notate that on the report if the repair
25 was done correctly?

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

1 **A. No. You didn't have to report it if it**
2 **was correctly. If it was shabby work, yes.**

3 **Q.** Who told you that, with respect to what
4 your protocol was, if you found work that was
5 either done properly or improperly with respect
6 to a previous accident?

7 **A. You deal with experience. If the work**
8 **wasn't up to standard, that is when you notate**
9 **it. If it was fine, it was fine.**

10 **Q.** So if there was a proper repair, it
11 wasn't something that was notated?

12 **A. Not notated.**

13 **Q.** If it was a proper repair, it was not
14 notated, correct?

15 **A. It was not notated.**

16 **Q.** Thank you.

17 MR. WEST: Let's go ahead and take a
18 quick five-minute potty break real quick.

19 (Recessed from 3:05 p.m. to 3:11
20 p.m.)

21 BY MR. WEST:

22 **Q.** Back on the record.

23 Going back and looking at Exhibit 2,
24 which is the body shop estimate, and in
25 conjunction with the vehicle inspection report

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

1 and your usual customary way of conducting the
2 125-point inspection, with respect to the things
3 we talked about specifically on this report,
4 would you have been able to identify all of those
5 replaced parts upon your inspection?

6 **A. Yes.**

7 **Q.** And you had specific training, given
8 your vast experience, that you would be able to
9 identify those as replaced parts, correct?

10 **A. To the point if the stickers were left**
11 **on them and up to that point if -- if it is up to**
12 **a standard, that's -- it's up to a standard. But**
13 **if you were to look at a vehicle and parts were**
14 **replaced, usually it has new part stickers on**
15 **them and that's up to standard. They have been**
16 **replaced.**

17 **Q.** If you will look at Exhibit 1 which is
18 a certified pre-owned, up on Page 1, it says
19 CarFax report Item 9 checked off. You would have
20 had the CarFax report in your possession before
21 you did the inspection, that's why you checked it
22 off, correct?

23 **A. I believe so.**

24 **Q.** Was that -- I understand you don't have
25 any personal recollection, so I totally get why

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

1 you have to go on "this is what I would do all
2 the time." I mean, you don't have any personal
3 recollection. So based upon your custom and
4 practice as you know it to be when you did these
5 inspections, would it be your custom and
6 practice, based on your recollections, to always
7 look at the CarFax before you did the inspection?

8 **A. Yes.**

9 **Q.** And that's the prudent thing to do,
10 correct?

11 **A. Yes.**

12 **Q.** And if the CarFax report that you
13 looked at in this particular -- with respect to
14 this particular vehicle would indicate the car
15 was in an accident, it was towed, would that be
16 an important fact for you in determining -- as to
17 looking at the vehicle in a different way than
18 you otherwise would if there was a clean CarFax?

19 **A. No, not necessarily.**

20 **Q.** You as a mechanic, would you want to be
21 given a heightened awareness or put on alert if a
22 vehicle was in a previous accident if you are
23 going to conduct a safety inspection? You would
24 want that information?

25 **A. Yes. I would have to say yes.**

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

1 Q. When you say work order, are you
2 talking about the ticket or RO?
3 A. Yes.
4 Q. Would you write it in manually or was
5 it something you saw typed in?
6 A. Sometimes manually.
7 Q. Would you ever, based on your custom
8 and practice, ever indicate on the inspection
9 report that it failed with respect to the
10 125-point inspection on the report itself at
11 Exhibit 1? If it didn't pass, would you say on
12 this report, Exhibit 1, it failed?
13 A. Yes, yes.
14 Q. That would be your standard practice,
15 correct?
16 A. Yes.
17 Q. What were the types of things as you
18 recall on those ones that didn't meet
19 specifications and failed, what were the types of
20 things you saw wrong with the car?
21 A. The car was pulling really bad or the
22 whole -- the car was pulling, I test drove it and
23 racked it and I noticed it right away, or I saw
24 really bad welding and there was no parts
25 replaced. That one I remember correctly and that

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

1 was it. There were two vehicles.
2 Q. It is good I am checking things off.
3 It makes it go faster.
4 With respect to the replaced inner and
5 outer tie rod, the stabilizer bar, front left
6 quarter panel, the radiator support, left front
7 frame end bracket, those aren't parts that would
8 usually wear out within 6,500 miles on a car,
9 correct?
10 A. No.
11 Q. Those parts would only be replaced in
12 conjunction with each other based upon a previous
13 accident based upon your previous experience,
14 knowledge, and training?
15 A. Yes.
16 Q. Do you have any plans on moving from
17 your current address within the next year?
18 A. No.
19 Q. I think I am done, but give me a couple
20 minutes to go over my notes. Okay?
21 MR. TERRY: Absolutely.
22 MR. WEST: Thank you.
23 (Discussion held off the record.)
24 MR. WEST: I am done.
25 MR. TERRY: Counsel, do you have any

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

1 questions?
2 MR. KANUTE: No.
3 MR. TERRY: I may have just a couple.
4
5 EXAMINATION
6 BY MR. TERRY:
7 Q. Mr. Gongora, I have just a couple
8 questions for you.
9 On Exhibit 1, is that your signature on
10 Page 2?
11 A. Yes.
12 Q. And did you sign that after you had
13 completed the inspection of the vehicle?
14 A. Yes.
15 Q. And by signing that, was it your
16 opinion that the vehicle qualified as a
17 factory-backed certified pre-owned vehicle?
18 A. Yes.
19 Q. Did you find anything on the
20 inspection -- on this 125-point inspection that
21 would have prevented you from certifying the
22 vehicle?
23 A. No.
24 Q. Was there any frame damage to this
25 vehicle that you saw at all?

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

1 A. No.
2 Q. If there had been frame damage to the
3 vehicle, would that preclude and prevent the
4 vehicle from being certified?
5 A. Yes.
6 Q. In Exhibit 3, the photographs, the one
7 that is a close-up of the bushing and the
8 attachment for the bed and the other one is a
9 little bigger.
10 A. Yes.
11 Q. Is there anything in either of those
12 photographs that would have prevented this
13 vehicle from being certified? Any frame damage
14 in either of those?
15 A. No, I don't.
16 Q. And when you inspected the vehicle
17 because you certified it, it had no frame damage,
18 correct?
19 A. No frame damage.
20 Q. When you undertook -- strike that.
21 You do not remember or recall, as you
22 sit here today, if you had the repair estimate or
23 any other information aside, possibly, from the
24 CarFax at the time you did your certification.
25 Is that accurate?

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

58

1 A. Yes. I don't recall.

2 Q. When you did your certification, was it

3 a comprehensive 125-point certification?

4 A. Yes.

5 Q. If you had the repair estimate, would

6 that have changed the comprehensive 125-point

7 examination that you did of the car?

8 A. No.

9 Q. Or of the truck. It would have been

10 the same?

11 A. Yes.

12 Q. Have there ever -- let me back up.

13 We talked earlier that you have seen

14 some photographs of the truck and the repairs of

15 the truck. Do you remember that?

16 A. Yes.

17 Q. And those were the photographs that I

18 think I represented that we received from

19 Allstate, and those were shown to you by my

20 staff; is that correct?

21 A. Yes.

22 Q. Was there anything on any of those

23 photographs that depicted any frame damage to

24 this vehicle?

25 A. With the pictures I saw, I couldn't

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

59

1 come to the conclusion there was any frame

2 damage.

3 MR. TERRY: I don't have any other

4 questions. Thanks.

5 MR. WEST: I have nothing.

6 MR. KANUTE: Nothing.

7 COURT REPORTER: Copies, Counsel?

8 MR. TERRY: Yes. I represent him and I

9 will contact him for purposes of reviewing and

10 signing. I'd like a hard copy.

11 MR. KANUTE: I will take e-trans.

12 (Proceedings concluded at 3:46 p.m.)

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

60

1

2 **CERTIFICATE OF DEPONENT**

3

4 PAGE LINE CHANGE REASON

5 -----

6 -----

7 -----

8 -----

9 -----

10 -----

11 -----

12 -----

13 -----

14 -----

15 -----

16 -----

17 -----

18 -----

19

20 **DECLARATION OF DEPONENT**

21 I, **RAY GONGORA**, Deponent herein, do hereby

22 declare the within and foregoing transcription

23 to be my deposition in said action; that I have

24 read, corrected and do hereby affix my signature

25 to said deposition this _____ day of

_____, 2017.

24 -----

RAY GONGORA
Deponent

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

61

1

2 **REPORTER'S DECLARATION**

3 STATE OF NEVADA)

4) SS.

5 COUNTY OF CLARK)

6

7 I, **CINDY L. HUEBNER**, Certified Court

8 Reporter No. 806, declare as follows:

9 That I reported the taking of the deposition

10 of the witness, **RAY GONGORA**, commencing on

11 December 14, 2016 at the hour of 2:18 p.m.

12 That prior to being examined, the witness

13 was by me duly sworn to testify to the truth,

14 the whole truth, and nothing but the truth.

15 During the deposition, the deponent was

16 advised of the opportunity to read and sign the

17 deposition transcript under Rule 30, the

18 original signature page is being forwarded to

19 Brian Terry, Esq. to obtain the deponent's

20 signature.

21 That I thereafter transcribed said shorthand

22 notes into typewriting and that the typewritten

23 transcript of said deposition is a complete,

24 true and accurate transcription of said

25 shorthand notes taken down at said time.

I further declare that I am not a relative

or employee of counsel of any party involved in

said action, nor a relative or employee of the

parties involved in said action, nor a person

financially interested in the action.

Dated at Las Vegas, Nevada this 16th day of

January, 2017.

22 -----

Cindy L. Huebner, CCR 806

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

Exhibit “6”

SECTION A:

Buyer's Name(s): DERRICK RAY POOLE

Name:

Address: [REDACTED]

City: LAS VEGAS County: N/A

State: NV Zip: 89117

Bus. Phone: (702) 882-1952 Res. Phone: (702) [REDACTED]

Stock No.: 9344 Salesman: TRAVIS SERRUELL

Date: 05/25/14

CREDITOR: Sahara Chrysler Jeep Dodge Ram

Address: 5050 West Sahara Avenue

City: Las Vegas

County:

State: NV

Zip: 89146

Phone: (800) 586-5050

SECTION B:**DISCLOSURE MADE IN COMPLIANCE WITH FEDERAL TRUTH IN LENDING ACT.**

Your Payment Schedule will be:

(e) means an estimate

ANNUAL PERCENTAGE RATE

The cost of your credit as a yearly rate.

15.40%

FINANCE CHARGE

The dollar amount the credit will cost you.

\$ 16,487.39

Amount Financed

The amount of credit provided to you or on your behalf.

\$ 30,638.77

Total of Payments

The amount you will have paid after you have made all payments as scheduled.

\$ 47,126.16

Total Sales Price

The total cost of your purchase on credit, including your down payment of \$ 3,190.99

\$ 50,317.15

Number of payments:	Amount of payments:	When payments are due:
72	654.53	MONTHLY, BEGINNING 06/25/14

INSURANCE AND DEBT CANCELLATION: Credit life insurance, credit disability insurance and debt cancellation coverage, which is also known as GAP coverage, are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

	Premium:	Term:	Signature(s):
Credit life:	\$ N/A	N/A	I want credit life insurance: <input checked="" type="checkbox"/> Signature(s)
Joint credit life:	\$ N/A	N/A	We want joint credit life insurance: <input checked="" type="checkbox"/> Signature(s)
Credit disability:	\$ N/A	N/A	I want credit disability insurance: <input checked="" type="checkbox"/> Signature(s)
Credit life and disability:	\$ N/A	N/A	I want credit life and disability insurance: <input checked="" type="checkbox"/> Signature(s)
Joint credit life and disability:	\$ N/A	N/A	We want joint credit life and single disability insurance: <input checked="" type="checkbox"/> Signature(s)
Debt cancellation coverage (GAP coverage):	\$ N/A	N/A	I want debt cancellation coverage (GAP coverage): <input checked="" type="checkbox"/> Signature(s)

You may obtain property insurance from anyone you want that is acceptable to the Creditor on page 1 of 2. If you get the insurance from the Creditor, you will pay \$ _____ and the term of the insurance will be _____.

SECURITY: You are giving a security interest in the goods or property being purchased.

☐ If checked, you are giving a security interest in _____.

LATE CHARGE: If a payment is more than 10 days late, you will be charged \$15 or 8 percent of the payment, whichever is less.

PREPAYMENT: If you pay off early, you will not have to pay a penalty.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and penalties.

SECTION C: ITEMIZATION OF AMOUNT FINANCED.**SECTION D: VEHICLE RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT.**

1. Vehicle Selling Price	\$ 28,482.00
Plus: Documentary Fee	\$ 487.00
(This charge represents costs and profit to the dealer for items such as inspecting, cleaning, adjusting vehicles, and preparing documents related to the sale.)	
Plus: Emissions Inspection Fee	\$ N/A
Plus: Other ()	\$ N/A
Plus: Other ()	\$ N/A
Plus: Other ()	\$ N/A
Total Taxable Selling Price	\$ 28,969.00
2. Total Sales Tax	\$ 2,395.01
3. Amounts Paid to Public Officials	\$ 28.25
a. Tiling Fee	\$ N/A
b. Registration Fee	\$ N/A
c. Other	\$ N/A
Total Official Fees (Add 3a through 3c)	\$ 28.25
4. Optional, nontaxable, fees or charges	\$ 186.50
a. DATA DOTS DNA	\$ N/A
b.	\$ N/A
c.	\$ N/A
d. SWDS-ALARM	\$ 599.00
e.	\$ N/A
f.	\$ N/A
Total Optional, nontaxable, fees or charges	\$ 186.50
(Add 4a through 4f)	

This contract is made the 26 (day) of May (month) of 2014 (year), between you, the Buyer(s) shown on page 1 of 2, and us, the Seller shown as Creditor on page 1 of 2. Having been quoted a cash price and a credit price and having chosen to pay the credit price (shown as the Total Sales Price in Section B on page 1 of 2), you agree to buy and we agree to sell, subject to all the terms of this contract, the following described vehicle, accessories and equipment (all of which are referred to in this contract as "Collateral"):

New or Used: USED Year and Make: 2013 RAM

Series: 1500 BIG HORN 2WD QUAD CAB AUTO No. Cyl.: 6

If truck, ton capacity: 0

Manufacturer's Serial Number: 1C6RR6GT5DS558275

Use for which purchased: ☒ Personal ☐ Business ☐ Agriculture

INCLUDING:

<input type="checkbox"/> Sun/Moon Roof	<input type="checkbox"/> Air-Conditioning	<input type="checkbox"/> Automatic Transmission
<input type="checkbox"/> Power Steering	<input type="checkbox"/> Power Door Locks	<input type="checkbox"/> Power Seats
<input type="checkbox"/> Power Windows	<input type="checkbox"/> Tilt Wheel	<input type="checkbox"/> Vinyl Top
<input type="checkbox"/> Cassette	<input type="checkbox"/> Cruise Control	<input type="checkbox"/> AM/FM Stereo
<input type="checkbox"/> Compact Disc Player		

BLUE Color Tires N/A Lic. No.

You, severally and jointly, promise to pay us the Total of Payments (shown in NVAUTO000100

AND SECURITY AGREEMENT.

1. Vehicle Selling Price \$ 28,482.00
 Plus: Documentary Fee \$ 437.00
 (This charge represents costs and profit to the dealer for items such as inspecting, cleaning, adjusting vehicles, and preparing documents related to the sale.)
 Plus: Emissions Inspection Fee \$ N/A
 Plus: Other () \$ N/A
 Plus: Other () \$ N/A
 Plus: Other () \$ N/A
 Total Taxable Selling Price \$ 28,969.00
 2. Total Sales Tax \$ 2,395.01
 3. Amounts Paid to Public Officials
 a. Tilling Fee \$ 28.25
 b. Registration Fee \$ N/A
 c. Other \$ N/A
 Total Official Fees (Add 3a through 3c) \$ 28.25
 4. Optional, nontaxable, fees or charges
 a. DATA DOTS DNA \$ 188.50
 b. \$ N/A
 c. \$ N/A
 d. SWDS-ALARM \$ 599.00
 e. \$ N/A
 f. \$ N/A
 Total Optional, nontaxable, fees or charges (Add 4a through 4f) \$ 787.50
 5. TOTAL CASH SALES PRICE \$ 32,179.76
 6. Gross Trade-In Allowance \$ 4,000.00
 2005 DODGE DURANGO 104HB58D55F531538
 Year Make Model VIN
 Less Prior Credit or Lease Balance \$ 1,133.01
 Net Trade-In Allowance \$ 2,866.99
 (If negative, enter 0 and see line 11a)
 7. Down Payment (Other Than Net Trade-In Allowance)
 a. Trade-In Sales Tax Credit \$ 324.00
 b. Cash \$ N/A
 c. Manufacturer's Rebate \$ N/A
 d. Deferred Down Payment \$ N/A
 e. Other () \$ N/A
 Down Payment (Add 7a through 7e) \$ 324.00
 8. TOTAL DOWN PAYMENT AND NET TRADE-IN ALLOWANCE (Add 6 and 7) \$ 3,190.99
 9. UNPAID BALANCE OF CASH SALES PRICE (Subtract 8 from 5) \$ 28,988.77
 10. Plus Optional Insurance and Debt Cancellation Charges*
 a. Credit Life Insurance Premium
 Paid to () Term () \$ N/A
 b. Credit Disability Insurance Premium
 Paid to () Term () \$ N/A
 c. Debt Cancellation Coverage (GAP Coverage)
 Paid to () Term () \$ N/A
 d. Other Insurance
 Paid to () Term () \$ N/A
 Total Optional Insurance and Debt Cancellation Charges (Add 10a through 10d) \$ N/A
 11. Other Amounts Financed*
 a. Prior Credit or Lease Balance
 Paid to () \$ N/A
 b. SERVICE CONTRACT
 Paid to (AUTO WARR SERV) \$ 1,650.00
 c.
 Paid to () \$
 Total Other Amounts Financed (Add 11a through 11c) \$ 1,650.00
 12. TOTAL AMOUNT FINANCED (Add 9, 10 and 11) \$ 30,638.77
 *Seller may retain or receive a portion of this amount.

This contract is made the 26 (day) of May (month) of 2014 (year), between you, the Buyer(s) shown on page 1 of 2, and us, the Seller shown as Creditor on page 1 of 2. Having been quoted a cash price and a credit price and having chosen to pay the credit price (shown as the Total Sales Price in Section B on page 1 of 2), you agree to buy and we agree to sell, subject to all the terms of this contract, the following described vehicle, accessories and equipment (all of which are related to in this contract as "Collateral"):

New or Used: USED Year and Make: 2013 RAM
 Series: 1500 BIG HORN 2WD QUAD CAB AUTO No. Cyl.: 0

If truck, ton capacity: 0

Manufacturer's Serial Number: 1C6RR6GT8DS558275

Use for which purchased: ☒ Personal ☐ Business ☐ Agriculture

INCLUDING:
☐ Sun/Moon Roof ☐ Air-Conditioning ☐ Automatic Transmission
☐ Power Steering ☐ Power Door Locks ☐ Power Seats
☐ Power Windows ☐ Tire Wheel ☐ Vinyl Top
☐ Cassette ☐ Cruise Control ☐ AM/FM Stereo
☐ Compact Disc Player

BLUE Color N/A Llc. No.

You, severally and jointly, promise to pay us the Total of Payments (shown in Section B) according to the Payment Schedule (also shown in Section B), until paid in full, together with interest after maturity at the Annual Percentage Rate disclosed on page 1 of 2.

To secure such payment, you grant to us a purchase money security interest under the Uniform Commercial Code in the Collateral and in all accessions to and proceeds of the Collateral. Insurance in which we or our assignee are named as beneficiary or loss payee, including any proceeds of such insurance or refunds of unearned premiums, or both, are assigned as additional security for this obligation and any other obligation created in connection with this sale. We, our successors and assigns, hereby waive any other security interest or mortgage which would otherwise secure your obligations under this contract except for the security interests and assignments granted by you in this contract.

Address where Collateral will be located:

Street LAS VEGAS City

County N/A State NV

Your address after receipt of possession of Collateral:

Street LAS VEGAS City

County N/A State NV

Notice of Rescission Rights (Option to Cancel)

If the Buyer signs here, the notice of rescission rights on page 2 of 2 is applicable to this contract.

Buyer's signature

Co-Buyer's signature X

NVAUTO000101

Street 3311 HEAVENLY VIEW CT City LAS VEGAS
County N/A State NV

Notice of Rescission Rights
(Option to Cancel)

If the Buyer signs here, the notice of rescission rights on page 2 of 2 is applicable to this contract.

Buyer's signature: [Signature]

Co-Buyer's signature X _____

Additional Terms and Conditions: The additional terms and conditions set forth in this contract are a part of this contract and are incorporated herein by reference.

OPTION: N/A You pay no Finance Charge if the Total Amount Financed, Item No. 12, Section C, is paid in full on or before the _____ (day) of _____ (month) of _____ (year).

SELLER'S INITIALS:

SECTION 54

☒ If checked, you agree to use electronic records and electronic signatures to document this contract. Your electronic signatures on electronic records will have the same effect as signatures on paper documents. We may designate one authoritative copy of this contract. If we do, the authoritative copy will be the electronic copy in a document management system we designate for storing authoritative copies. We may convert the authoritative copy to a paper original. We will do so by printing one paper copy marked "Original." This paper original will have your electronic signature on it. It will have the same effect as if you had signed it originally on paper.

If you agree to use electronic records and electronic signatures, we will comply with all applicable federal, state and local law and regulations.

UPON ENTERING INTO THIS CONTRACT, YOU WILL RECEIVE A PAPER COPY OF THE ORIGINAL CONTRACT ELECTRONICALLY SIGNED AND COMPLETE WITH ALL TERMS, CONDITIONS AND DISCLOSURES TO TAKE WITH YOU.

NOTICE TO BUYER

Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completed copy of this agreement. If you pay the amount due before the scheduled date of maturity of the indebtedness and you are not in default in the terms of the contract for more than 2 months, you are entitled to a refund of the unearned portion of the finance charge. If you fail to perform your obligations under this agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by this agreement.

If you are buying a used vehicle with this contract, as indicated in the description of the vehicle on page 1 of 2, federal regulation may require a special buyer's guide to be displayed on the window.

THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

The text of the preceding two paragraphs is set forth below in Spanish:

Si usted está comprando un vehículo usado mediante este contrato según la descripción del vehículo en la página 1 de 2, la ley federal podrá exigir que la ventanilla demuestre una guía especial para el comprador.

LA INFORMACIÓN QUE USTED VE EN LA FORMA DE VENTANILLA PARA ESTE VEHÍCULO ES PARTE DE ESTE CONTRATO. LA INFORMACIÓN EN LA FORMA DE VENTANILLA DOMINA CUALESQUIER ESTIPULACIÓN CONTARIA EN EL CONTRATO DE VENTA.

BUYER AND CO-BUYER ACKNOWLEDGE RECEIPT OF A TRUE AND COMPLETELY FILLED-IN PAPER COPY OF THIS CONTRACT AND THE DISCLOSURE ON PAGE 1 OF 2 AT THE TIME OF SIGNING.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED UNLESS OTHERWISE INDICATED IN SECTION C.

Buyer: [Signature] Date: 05/26/14 Co-Buyer: X Date: 05/26/14
Creditor: _____ Date: _____ By: X Title: Finance Manager

LAB FORM NO. 553-NV (REV. 12/21)

©2012 Reynolds and Reynolds. TO ORDER: www.reynolds.com; 1-800-344-2296; fax 1-800-531-9055.
THE PRINTER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO CONTENT OR
FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

Page 7

ORIGINAL LIENHOLDER

NVAUTO0000102

JOINT APPENDIX 111

regulation may require a special buyer's guide to be displayed on the window.

THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

Assignment: Seller may transfer this contract to another person ("Assignee"). That person will have all of Seller's rights, privileges and remedies. The Seller may assign this contract electronically. Contact Assignee about this contract at WELLS FARGO DIRECT SERVICES P.O. Box 997577 SACRAMENTO, CA 95899
(Insert Assignee contact information)

Seller Signs:

By: [Signature]
Title: FIN. MGR.

To induce Assignee to purchase the contract, Seller represents and warrants to Assignee as follows: (a) the contract is genuine and the statements and amounts inserted herein are correct; (b) the contract and security interest arose entirely from the sale of the Collateral or services described in the contract, or both; (c) the down payment, if any, be shown on page 1 of 2 of this contract, has been received and no part thereof was advanced directly or indirectly by Seller to Buyer; (d) the goods and services have been furnished to the satisfaction of Buyer and all obligations of warranty to Buyer, either express or implied, have been and will continue to be fulfilled by Seller; (e) the Collateral or services, or both, have been sold, provided and delivered to and accepted by Buyer; (f) the security interest granted to Seller in the contract constitutes a valid first lien on the Collateral and has been filed or recorded according to law to preserve the priority of each lien; (g) the Collateral is free and clear of all liens and encumbrances, except the security interest granted by this contract; (h) the full amount of the stated Total of Payments remains unpaid; (i) Seller is the holder of the contract and the security interest in the Collateral free and clear of all liens and encumbrances and Seller has full power and authority to assign the same; (j) the transaction was consummated on the above date set forth in the contract and Buyer did not receive possession of the Collateral prior to the date of consummation; (k) Buyer was furnished a completed copy of the contract prior to consummation; (l) the Collateral is insured with a company acceptable to Assignee against physical damage in addition to such other risks as Assignee requires under an insurance policy acceptable to Assignee; (m) Seller has not knowingly communicated to Assignee incorrect information relating to the Buyer's application or credit statement or knowingly failed to communicate information relating to such application or credit statement; (n) the facts set forth in the contract are true; (o) Buyer has no defense or counterclaim to payment of the obligation evidenced by the contract; (p) Buyer is or, if more than one each is not a minor and has legal capacity to execute this contract and is liable thereon; and (q) Seller has no reason to believe the Buyer has ever violated any laws concerning liquor or narcotics.

In the event any warranty shall be breached or any representation shall be false, Seller shall, upon demand and irrespective of whether the contract is then in default repurchase the contract from Assignee at a price equal to the unpaid balance of the contract plus accrued interest, or such other amount agreed to by Seller and Assignee in a separate agreement as in effect on the date of such demand by Assignee, plus any costs or expenses of collection, including attorney's fees, whether incurred by Assignee by suit or on appeal or otherwise. Seller waives all defenses that otherwise might have been available but nothing herein contained shall preclude Assignee from enforcing against Seller any other remedies provided by law for misrepresentation or breach of warranty. In the event of any proceedings commenced by Assignee against Buyer with respect to the contract, services or the Collateral, if Buyer asserts as a defense, setoff or counterclaim any act, omission or default by Seller, Seller shall forthwith on demand repurchase the contract for the amount set forth above. The provisions of this assignment shall be binding on the heirs, representatives, successors and assigns of Seller and shall inure the benefit of the successors and assigns of Assignee. The above assignment provisions apply and are in addition to any obligations of Seller as provided in the paragraph below endorsed by Seller.

1. RECOURSE: Seller absolutely and unconditionally guarantees the prompt payment of either the total unpaid amount of the contract and any accrued interest or such other amount agreed to by Seller and Assignee in a separate agreement, together with all costs, expenses and reasonable attorney's fees incurred in the collection of said amount. Seller waives all defenses arising by reason of any failure to give notice of acceptance of this guaranty or default of Buyer, or arising by reason of any extension of time given to Buyer, or by reason of any failure by Assignee to pursue Buyer or the Collateral or other property of Buyer or to resort to other security or remedies which may be available, and waives any and all defenses arising out of the guarantor relationship.

Seller: _____ By: _____
Title: _____ Date: _____

2. REPURCHASE: In the event of default by the Buyer under any of the terms or conditions of the contract, Seller will repossess and repurchase the Collateral, or if the Collateral has already been repossessed, Seller will repurchase the Collateral at the place of repossession or recovery. The Collateral will be repurchased in any event AS IS, at a price equal to the then unpaid balance of the contract and any accrued interest, or such other amount agreed to by Seller and Assignee in a separate agreement as in effect as of the default, together with all costs, expenses and reasonable attorney's fees incurred by Assignee in the collection of said amount. Seller waives all defenses arising by reason of any failure to give notice of acceptance of this agreement or default of Buyer, or arising by reason of extension of time given to Buyer, or by reason of any failure by Assignee to pursue Buyer or the Collateral or other property of Buyer or to resort to other security or remedies which may be available, and waives all other defenses that might otherwise have been available. At the time of repurchase, Seller shall pay to Assignee the purchase price in cash and Assignee may reassign to Seller without recourse and without warranties, express or implied, all title retention or lien instruments and all contracts or promissory notes which Assignee then holds upon such Collateral.

Seller: _____ By: _____
Title: _____ Date: _____

3. LIMITED ENDORSEMENT: In the event of default of Buyer before Buyer shall have paid the first _____ installments under the foregoing contract, Assignee may reassign the contract to Seller and Seller agrees, upon tender of such reassignment and in consideration thereof to pay to Assignee either the then unpaid balance of the contract and any accrued interest, or such other amount agreed to by Seller and Assignee in a separate agreement as in effect as of the reassignment, together with all costs, expenses and reasonable attorney's fees incurred in the collection of said amount. Seller waives all defenses arising by reason of any failure to give notice of acceptance of this agreement or default of Buyer, or arising by reason of any extension of time given to Buyer, or by reason of any failure by Assignee to pursue Buyer or the Collateral or other property of Buyer or to resort to other security or remedies which may be available, and Seller waives any other defenses that might otherwise have been available.

Seller: _____ By: _____
Title: _____ Date: _____

4. WITHOUT RECOURSE: This assignment shall be without recourse against Seller except for such obligations as are set forth in the assignment above.

Seller: [Signature] By: [Signature]
Title: FIN. MGR. Date: 05/27/14

SIMPLE INTEREST VEHICLE CONTRACT FOR SALE AND SECURITY AGREEMENT

SECTION A:

Buyer's Name(s): DERRICK RAY POOLE

Name:

Address:

City: LAS VEGAS

County: N/A

State: NV

Zip: 89117

Bus. Phone: (702) 682-1952

Res. Phone: (702) 682-1952

Stock No.:

9344

Salesman: TRAVIS SPRUELL

Date: 05/26/14

CREDITOR: Sahara Chrysler Jeep Dodge Ram

Address: 5050 West Sahara Avenue

City: Las Vegas

County:

State: NV

Zip: 89146

Phone: (702) 506-5050

SECTION B:

DISCLOSURE MADE IN COMPLIANCE WITH FEDERAL TRUTH IN LENDING ACT.

(e) means an estimate

Your Payment Schedule will be:

Number of payments:	Amount of payments:	When payments are due:
72	\$19.28	MONTHLY, BEGINNING 06/25/14

ANNUAL PERCENTAGE RATE

The cost of your credit as a yearly rate.

15.40 %

FINANCE CHARGE

The dollar amount the credit will cost you.

\$ 15,593.39

Amount Financed

The amount of credit provided to you or on your behalf.

\$ 25,983.77

Total of Payments

The amount you will have paid after you have made all payments as scheduled.

\$ 44,582.16

Total Sales Price

The total cost of your purchase on credit, including your down payment of \$ 2,100.00.

\$ 47,770.15

INSURANCE AND DEBT CANCELLATION: Credit life insurance, credit disability insurance and debt cancellation coverage, which is also known as GAP coverage, are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

	Premium:	Term:	Signature(s):
Credit life:	\$ N/A	N/A	I want credit life insurance: <input checked="" type="checkbox"/> Signature: _____
Joint credit life:	\$ N/A	N/A	We want joint credit life insurance: <input checked="" type="checkbox"/> Signature: _____
Credit disability:	\$ N/A	N/A	I want credit disability insurance: <input checked="" type="checkbox"/> Signature: _____
Credit life and disability:	\$ N/A	N/A	I want credit life and disability insurance: <input checked="" type="checkbox"/> Signature: _____
Joint credit life and disability:	\$ N/A	N/A	We want joint credit life and single disability insurance: <input checked="" type="checkbox"/> Signature: _____
Debt cancellation coverage (GAP coverage):	\$ N/A	N/A	I want debt cancellation coverage (GAP coverage): <input checked="" type="checkbox"/> Signature: _____

You may obtain property insurance from anyone you want that is acceptable to the Creditor on page 1 of 2. If you get the insurance from the Creditor, you will pay \$ _____ and the term of the insurance will be _____.

SECURITY: You are giving a security interest in the goods or property being purchased.

☐ If checked, you are giving a security interest in _____.

LATE CHARGE: If a payment is more than 10 days late, you will be charged \$15 or 8 percent of the payment, whichever is less.

PREPAYMENT: If you pay off early, you will not have to pay a penalty.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and penalties.

SECTION C: ITEMIZATION OF AMOUNT FINANCED.

SECTION D: VEHICLE RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT.

1. Vehicle Selling Price \$ 28,482.00
 Plus: Documentary Fee \$ 487.00

(This charge represents costs and profit to the dealer for items such as inspecting, cleaning, adjusting vehicles, and preparing documents related to the sale.)

Plus: Emissions Inspection Fee \$ N/A

Plus: Other () \$ N/A

Plus: Other () \$ N/A

Plus: Other () \$ N/A

Total Taxable Selling Price \$ 28,969.00

2. Total Sales Tax \$ 2,595.01

3. Amounts Paid to Public Officials

a. Tiling Fee \$ 28.25

b. Registration Fee \$ N/A

c. Other \$ N/A

Total Official Fees (Add 3a through 3c) \$ 28.25

4. Optional, nontaxable, fees or charges

a. DATA DOCS DNA \$ 138.50

b. \$ N/A

c. \$ N/A

d. SCISSOR ALARM \$ 599.00

e. \$ N/A

This contract is made the 26 (day) of May (month) of 2014 (year), between you, the Buyer(s) shown on page 1 of 2, and us, the Seller shown as Creditor on page 1 of 2. Having been quoted a cash price and a credit price and having chosen to pay the credit price (shown as the Total Sales Price in Section B on page 1 of 2), you agree to buy and we agree to sell, subject to all the terms of this contract, the following described vehicle, accessories and equipment (all of which are referred to in this contract as "Collateral"):

New or Used: USED Year and Make: 2013 RAM

Series: 1500 BIG HORN Body Style: 2ND QUAD CAB AUTO No. Cyl: 6

If truck, ton capacity: 0

Manufacturer's Serial Number: 1C6RR6BT80S668275

Use for which purchased: ☐ Personal ☐ Business ☐ Agriculture

INCLUDING:

☐ Sun/Moon Roof ☐ Air-Conditioning ☐ Automatic Transmission☐ Power Steering ☐ Power Door Locks ☐ Power Seats☐ Power Windows ☐ Tilt Wheel ☐ Vinyl Top☐ Cassette ☐ Cruise Control ☐ AM/FM Stereo☐ Central Door Locks

NVAUTO0000104

Total Official Fees (Add 3a through 3c) \$ 28.25
 4. Optional, nontaxable, fees or charges
 a. DATA NOTS ONA \$ 188.50
 b. \$ N/A
 c. \$ N/A
 d. SWUS-ALARM \$ 599.00
 e. \$ N/A
 f. \$ N/A
 Total Optional, nontaxable, fees or charges
 (Add 4a through 4f) \$ 787.50
 5. TOTAL CASH SALES PRICE \$ 32,179.75
 6. Gross Trade In Allowance \$ 4,000.00
 2005 DODGE DURANGO 104H358055F531632
 Year Make Model VIN
 Less Prior Credit or Lease Balance \$ 1,135.01
 Net Trade In Allowance \$ 2,865.99
 (If negative, enter 0 and see line 11a)
 7. Down Payment (Other Than Net Trade-In Allowance):
 a. Trade-In Sales Tax Credit \$ 324.00
 b. Cash \$ N/A
 c. Manufacturer's Rebate \$ N/A
 d. Deferred Down Payment \$ N/A
 e. Other () \$ N/A
 Down Payment (Add 7a through 7e) \$ 324.00
 8. TOTAL DOWN PAYMENT AND NET TRADE-IN ALLOWANCE (Add 6 and 7) \$ 3,190.99
 9. UNPAID BALANCE OF CASH SALES PRICE (Subtract 8 from 5) \$ 28,988.77
 10. Plus Optional Insurance and Debt Cancellation Charges*
 a. Credit Life Insurance Premium
 Paid to () Term () \$ N/A
 b. Credit Disability Insurance Premium
 Paid to () Term () \$ N/A
 c. Debt Cancellation Coverage (GAP Coverage)
 Paid to () Term () \$ N/A
 d. Other Insurance
 Paid to () Term () \$ N/A
 Total Optional Insurance and Debt Cancellation Charges (Add 10a through 10d) \$ N/A
 11. Other Amounts Financed*
 a. Prior Credit or Lease Balance
 Paid to () \$ N/A
 b. \$ N/A
 Paid to () \$ N/A
 c. \$ N/A
 Paid to () \$ N/A
 Total Other Amounts Financed (Add 11a through 11c) \$ N/A
 12. TOTAL AMOUNT FINANCED (Add 9, 10 and 11) \$ 28,988.77
 *Seller may retain or receive a portion of this amount.

STATE DISCLOSURE REQUIREMENTS: The provisions of Section B and Section C are incorporated into this agreement for purposes of state disclosure requirements.

Additional Terms and Conditions: The additional terms and conditions set forth in this contract are a part of this contract and are incorporated herein by reference.

OPTION: N/A You pay no Finance Charge if the Total Amount Financed, item No. 12, Section C, is paid in full on or before the (day) of (month) of (year).

SELLER'S INITIALS: _____

SECTION E:

☐ If checked, you agree to use electronic records and electronic signatures to document this contract. Your electronic signatures on electronic records will have the same effect as signatures on paper documents. We may designate one authoritative copy of this contract. If we do, the authoritative copy will be the electronic copy in a document management system we designate for storing authoritative copies. We may convert the authoritative copy to a paper original. We will do so by printing one paper copy marked "Original." This paper original will have your electronic signature on it. It will have the same effect as if you had signed it originally on paper.

If you agree to use electronic records and electronic signatures, we will comply with all applicable federal, state and local law and regulations.

Manufacturer's Serial Number: _____

Use for which purchased: ☒ Personal ☐ Business ☐ Agriculture

INCLUDING:

☐ Sun/Moon Roof ☐ Air-Conditioning ☐ Automatic Transmission
☐ Power Steering ☐ Power Door Locks ☐ Power Seats
☐ Power Windows ☐ Tire Wheel ☐ Vinyl Top
☐ Cassette ☐ Cruise Control ☐ AM/FM Stereo
☐ Compact Disc Player

BLUE Color Tires N/A Lic. No. _____

You, severally and jointly, promise to pay us the Total of Payments (shown in Section B) according to the Payment Schedule (also shown in Section B), until paid in full, together with interest after maturity at the Annual Percentage Rate disclosed on page 1 of 2.

To secure such payment, you grant to us a purchase money security interest under the Uniform Commercial Code in the Collateral and in all accessions to and proceeds of the Collateral. Insurance in which we or our assignee are named as beneficiary or loss payee, including any proceeds of such insurance or refunds of unearned premiums, or both, are assigned as additional security for this obligation and any other obligation created in connection with this sale. We, our successors and assigns, hereby waive any other security interest or mortgage which would otherwise secure your obligations under this contract except for the security interests and assignments granted by you in this contract.

Address where Collateral will be located:

Street _____ City LAS VEGAS

County N/A State NV

Your address after receipt of possession of Collateral:

Street _____ City LAS VEGAS

County N/A State NV

Notice of Rescission Rights (Option to Cancel)

If the Buyer signs here, the Notice of rescission rights on page 2 of 2 is applicable to this contract.

Buyer's signature X _____

Co-Buyer's signature X _____

to this contract. _____

Buyer's signature X _____

Co-Buyer's signature X _____

Additional Terms and Conditions: The additional terms and conditions set forth in this contract are a part of this contract and are incorporated herein by reference.

SELLER'S INITIALS: _____

☐ If checked, you agree to use electronic records and electronic signatures to document this contract. Your electronic signatures on electronic records will have the same effect as signatures on paper documents. We may designate one authoritative copy of this contract. If we do, the authoritative copy will be the electronic copy in a document management system we designate for storing authoritative copies. We may convert the authoritative copy to a paper original. We will do so by printing one paper copy marked "Original." This paper original will have your electronic signature on it. It will have the same effect as if you had signed it originally on paper.

UPON ENTERING INTO THIS CONTRACT, YOU WILL RECEIVE A PAPER COPY OF THE ORIGINAL CONTRACT ELECTRONICALLY SIGNED AND COMPLETE WITH ALL TERMS, CONDITIONS AND DISCLOSURES TO TAKE WITH YOU.

Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completed copy of this agreement. If you pay the amount due before the scheduled date of maturity of the indebtedness and you are not in default in the terms of the contract for more than 2 months, you are entitled to a refund of the unearned portion of the finance charge. If you fail to perform your obligations under this agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by this agreement.

THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

Si usted está comprando un vehículo usado mediante este contrato según la descripción del vehículo en la página 1 de 2, la ley federal podrá exigir que la ventanilla demuestre una guía especial para el comprador.

LA INFORMACIÓN QUE USTED VE EN LA FORMA DE VENTANILLA PARA ESTE VEHÍCULO ES PARTE DE ESTE CONTRATO. LA INFORMACIÓN EN LA FORMA DE VENTANILLA DOMINA CUALESQUIER ESTIPULACION CONTARIA EN EL CONTRATO DE VENTA

BUYER AND CO-BUYER ACKNOWLEDGE RECEIPT OF A TRUE AND COMPLETELY FILLED-IN PAPER COPY OF THIS CONTRACT AND THE DISCLOSURE ON PAGE 1 OF 2 AT THE TIME OF SIGNING.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED
UNLESS OTHERWISE INDICATED IN SECTION C.

LAFF FORM NO. 553-NV (REV. 10/74)
©2012 Nevada and Reynolds TOUGHNESS www.pittsburgh.com 1-800-345-5553 ext. 1-800-345-5553
THE PAINTER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO CONTENT OR
FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR CIVIL LEGAL COUNSEL.

ORIGINAL LENGTH: 1089

Location and type of Company: This office is hereby notified of any change of your address or of any change in the location of the Company. Unless you that have received the written consent, you may not voluntarily take the Company out of the state shown in Section D in the section entitled "Articles, Writings, Exhibits and the like" and you may not sell, lease or otherwise dispose of any equipment or any part of it by any means. You will comply with all laws, ordinances, regulations and orders relating to the Company. You will keep the Company in good condition and will not allow it to be used for any other or substantially modifying it or otherwise if you will not allow any other security interest on the Company neither. The security interest granted to us under this contract.

Interest: This is the interest of the Company in the real estate.

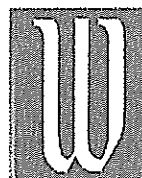
NVAUTO0000108

Exhibit “7”

Poole v. Nevada Auto Dealership Investments LLC, et al.

Deposition of:
Derrick Poole

August 14, 2017



WESTERN REPORTING
SERVICES, INC.

500 South Rancho Drive, Suite 8A
Las Vegas, Nevada 89106
Telephone **702.474.6255**
Facsimile 702.474.6257

www.westernreportingservices.com

Poole v. Nevada Auto Dealership Investments LLC, et al.

1	1	3
2	DISTRICT COURT	
3	CLARK COUNTY, NEVADA	
4	DERRICK POOLE,)	
5	Plaintiff,)	
6	vs.) Case No. A-16-737120-C	
7)	
8	NEVADA AUTO DEALERSHIP)	
9	INVESTMENTS LLC, a Nevada)	
10	Limited Liability Company d/b/a)	
11	SAHARA CHRYSLER; JEEP, DODGE,)	
12	WELLS FARGO DEALER SERVICES)	
13	INC., COREPOINTE INSURANCE)	
14	COMPANY; and DOES 1 through)	
15	100, inclusive,)	
16)	
17	Defendant.)	
18		
19	DEPOSITION OF DERRICK POOLE	
20	Taken on Monday, August 14, 2017	
21	At 9:34 a.m.	
22	At 630 South Fourth Street	
23	Las Vegas, Nevada	
24		
25	Reported by: Manita J. Goddard, RPR, CCR No. 344	
	EXHIBITS	
	Number Description Page	
	Ex. 1 Carfax 17	
	Ex. 2 Certified Pre-owned Vehicle Inspection Checklist 41	
	Ex. 3 Certified Pre-owned Vehicle Delivery Check Sheet 46	
	Ex. 4 Disbursement Request Form 65	
	Ex. 5 Complaint for Damages and Equitable and Declaratory Relief and Demand for Jury Trial 71	
	Ex. 6 Plaintiff's Sixth Supplement [Corrected] 79	
	Ex. 7 Arbitration Agreement 80	
	Ex. 8 Buyers Guide 81	

1	2	4
2	APPEARANCES	
3	FOR THE PLAINTIFF:	
4	GEORGE O. WEST III, ESQ	
5	ATTORNEY AT LAW	
6	10161 Park Run Drive	
7	Suite 150	
8	Las Vegas, Nevada 89145	
9	FOR DEFENDANT NEVADA AUTO DEALERSHIP INVESTMENTS LLC	
10	STEPHANIE J. SMITH, ESQ	
11	MORAN BRANDON BENDAVID MORAN	
12	630 South Fourth Street	
13	Las Vegas, Nevada 89101	
14	FOR DEFENDANT WELLS FARGO DEALER SERVICES INC.:	
15	MICHAEL PARETTI, ESQ.	
16	SNELL & WILMER LLP	
17	3883 Howard Hughes Parkway	
18	Suite 1100	
19	Las Vegas, Nevada 89169	
20	INDEX	
21	WITNESS EXAMINATION	
22	DERRICK POOLE 4, 91	
23	(BY MS. SMITH)	
24	(BY MR. WEST) 90	
25		
	(Upon inquiry by the reporter prior to the commencement of the proceedings, Counsel present agreed to waive the reporter requirements as set forth in NRCP 30(b)(4) or FRCP (b)(5), as applicable.)	
	DERRICK POOLE,	
	having been first duly sworn, was	
	examined and testified as follows:	
	EXAMINATION	
	BY MS. SMITH:	
	Q. Hi, Mr. Poole.	
	A. Hi.	
	Q. We met previously, but my name is Stephanie Smith. I'm here on behalf of Nevada Auto Dealership Investments, LLC. I think you would more commonly know them as Sahara Chrysler, Jeep, Dodge, Ram.	
	A. Yes, ma'am.	
	Q. When I say "defendant," I'll be referring to that entity. Does that make sense?	
	A. Yes, ma'am.	
	Q. I may also refer to them as Nevada Auto or Sahara Chrysler. Is that all right?	
	A. Yes, ma'am.	
	Q. Okay. I'm also representing Corepointe Insurance, and I likely will not be referring to them,	

5

1 but if I do it will probably be as Corepointe.
 2 A. Okay. Sounds good.
 3 Q. You're doing a great job so far. The
 4 court reporter is here to record down everything we're
 5 saying to each other. So just try to keep your
 6 answers verbal. I know it's very common to nod your
 7 head, say "uh-huh" or "huh-uh" or "yeah." Sometimes
 8 that's hard to read when you go back and understand
 9 what's being said.
 10 A. Okay.
 11 Q. The court reporter just gave you a swearing
 12 in. That holds the same weight as if you were in
 13 court. Carries with it the penalty of perjury.
 14 A. Okay.
 15 Q. So today I'm just going to be seeking your
 16 best testimony.
 17 A. Okay.
 18 Q. That means if you have to guess at
 19 something, you have no idea, you can say that you
 20 don't have an idea. I am entitled to your best
 21 estimate. Do you understand the difference between a
 22 guess and an estimate?
 23 A. I do.
 24 Q. What is your understanding of that?
 25 A. One is a guess and one is an educated

7

1 Q. The only thing I do request is that if I
 2 have a question pending, answer the question and then
 3 we can go ahead and take a break after that.
 4 A. Sure.
 5 Q. From time to time your attorney may have
 6 objections. Sometimes it gets tricky. But if you can
 7 try and pause just for a second so his objections can
 8 be recorded on the record and we don't make things too
 9 difficult for the court reporter.
 10 A. Yes, ma'am.
 11 Q. All right. Mr. Poole, what is your highest
 12 level of education?
 13 A. High school graduate.
 14 Q. Where did you go to high school?
 15 A. I went to Bonanza High School here in
 16 Las Vegas and graduated in Venice, California.
 17 Q. You made it back to the desert, huh?
 18 A. I did.
 19 Q. What do you do for employment?
 20 A. I'm a self-employed contractor.
 21 Q. What kind of contracting work do you do?
 22 A. Air conditioning.
 23 Q. Summer must be a busy time for you, huh?
 24 A. It's a very busy time.
 25 Q. How long have you been a self-employed

6

1 estimate.
 2 Q. A basis for the knowledge?
 3 A. Yes.
 4 Q. Great. Have you consumed any drugs and
 5 alcohol this morning?
 6 A. No.
 7 Q. How about last night?
 8 A. No.
 9 Q. Are you on any medications?
 10 A. No, I'm not.
 11 Q. Anything that would prevent us from going
 12 forward today?
 13 A. No, ma'am.
 14 Q. So as we go along, I'm going to be asking
 15 questions, obviously, and you may have questions about
 16 the questions I ask you. Perfectly okay for you to
 17 ask me what I mean by something. If you have any
 18 questions, don't understand the question, feel free to
 19 ask.
 20 A. Okay.
 21 Q. We can also take breaks at your convenience.
 22 I usually like to take a short break for everyone
 23 about every hour anyhow. But if you need to use the
 24 restroom or make a phone call, feel free to ask.
 25 A. Okay.

8

1 contractor?
 2 A. Just earlier this year. In January.
 3 Actually, I left in May. I previously worked for
 4 another company part-time and for myself part-time.
 5 Q. What's the name of your company?
 6 A. Bulldog Air Conditioning & Heating.
 7 Q. Congratulations.
 8 A. Thank you.
 9 Q. Who did you work for prior to starting
 10 Bulldog?
 11 A. Mojave Air Conditioning.
 12 Q. Are they still in business?
 13 A. Yes.
 14 Q. How long did you work for them?
 15 A. Just under a year. I want to say about nine
 16 months.
 17 Q. How about before Mojave?
 18 A. Alaskan Air Conditioning.
 19 Q. Are they here in Nevada?
 20 A. Yes.
 21 Q. Is Mojave in Nevada?
 22 A. Yes, they are.
 23 Q. How long did you work for Alaskan?
 24 A. I believe about two and a half years maybe.
 25 Q. Do you have an estimate on those dates?

9

1 A. I believe I started in -- let's see --
2 February of 2014 to July of 2015.
3 Q. Then --
4 A. Or '16. I'm sorry.
5 Q. '16?
6 A. Yes.
7 Q. When did you start at Mojave Air?
8 A. Actually August 1st of 2016.
9 Q. And then before Alaskan?
10 A. I worked for Yes Air Conditioning.
11 Q. Was that also Nevada?
12 A. Yes.
13 Q. And how long were you with them?
14 A. Just shy of two years. I started in 2012 in
15 March and I left to go to Alaskan in February of 2014.
16 Q. How long have you lived in Las Vegas?
17 A. Let's see. I've been in Nevada since 1978.
18 When I graduated high school, it was only for four
19 months. I still traveled back and forth.
20 Q. Do you currently reside here?
21 A. Yes, I do.
22 Q. Do you rent or own a home?
23 A. I rent at this time.
24 Q. Do you currently own a vehicle?
25 A. Just the one that I'm financing.

11

1 A. That's what I went there to look for, yes.
2 Q. Did you look at new trucks there?
3 A. By myself, until the car salesman -- I
4 encountered the car salesman.
5 Q. Can you walk me through what occurred that
6 day?
7 A. I drove down and was just walking through
8 the lot looking at the trucks. The car salesman
9 was -- I want to say was probably by the used car
10 side. There's two different sides, I believe. He was
11 the only one that I really saw that wasn't talking to
12 somebody, so I walked up to him and asked him about
13 the new vehicles.
14 Q. Do you recall who that was?
15 A. I believe his name was Travis.
16 Q. After you made contact with the salesperson,
17 then what happened?
18 A. He asked me if I considered buying a used
19 vehicle.
20 Q. What was your response then?
21 A. At that point I hadn't. But he had
22 mentioned that they had some really good used vehicles
23 for good prices.
24 Q. What was your understanding of used vehicles
25 at the time?

10

1 Q. Is that vehicle the one that is the subject
2 of this litigation?
3 A. Yes, it is.
4 My company owns a vehicle, but it's not
5 mine.
6 Q. Okay. There's another separate company
7 truck for Bulldog?
8 A. Yes, there is.
9 Q. What is that?
10 A. It's a 2008 E250 Ford van.
11 Q. Going forward when I'm talking about vehicle
12 or your vehicle, I'm going to be referring to the 2013
13 Dodge Ram that is the subject of this litigation.
14 Does that make sense?
15 A. Yes, ma'am.
16 Q. When did you first purchase the vehicle?
17 A. I want to say it was in May of 2014.
18 Q. How did you go about locating this vehicle
19 in particular?
20 A. I believe I was off of work because it was
21 Memorial Day, and I saw the commercial on TV for
22 Sahara Dodge. So I decided to drive down there and
23 take a look at new trucks.
24 Q. At that point in time, were you in the
25 market to buy a brand-new truck?

12

1 A. You know, you are kind of buying somebody
2 else's problems sometimes. But with the CPO vehicles,
3 I understand they are, like, brand new.
4 Q. So after you expressed an openness to look
5 at used trucks -- were you always in the market to buy
6 just a truck?
7 A. Yes.
8 Q. So after you expressed your interest in
9 possibly buying a used vehicle, then what happened?
10 A. He walked me over to the newer trucks -- or
11 the used trucks and showed me some of them.
12 Q. Okay. And then the vehicle you ended up
13 with, did you locate that one yourself in particular?
14 A. I don't recall the exact event. But it was
15 on the line. There wasn't a lot of them right there.
16 I think there was maybe ten in total. So we walked by
17 a few of them and looked at them. When I looked at
18 that one, I realized that I wanted to test drive it.
19 Q. So you test drove the car at that point in
20 time?
21 A. Yes, I did.
22 Q. Sorry. Truck. If I say car, talking about
23 the truck.
24 A. I understand.
25 Q. So you test drove it at that point in time?

13

1 A. Yes, I did.
 2 Q. What did you think about that?
 3 A. I liked the truck. I liked the interior.
 4 That was one of the things I liked about it. I liked
 5 the motor that was in it.
 6 Q. Did you pop the hood of the truck?
 7 A. I believe he opened it to show me. But I'm
 8 not really a mechanic. I don't really know anything
 9 about cars. All I know is I liked the motor.
 10 Q. Did you walk around the truck at all?
 11 A. Yes.
 12 Q. You looked at all of its specifications that
 13 you could see?
 14 A. On the window sticker. And then, you know,
 15 just visually looking at the interior. Like I said,
 16 I'm not really a mechanic or a car guy. So I don't
 17 really know when it comes to what I'm looking at as
 18 far as details and stuff.
 19 Q. What kind of vehicle did you have when you
 20 drove down to the dealership to look at trucks?
 21 A. It was a 2005 Dodge Durango. It had the
 22 hemi motor. That's why I was interested in the truck.
 23 Q. Is the Durango also a truck?
 24 A. It's an SUV.
 25 Q. Had you had trucks previously?

15

1 took a test drive. Do you recall what happened next?
 2 A. During the test drive or after the test
 3 drive?
 4 Q. Let's go with you during the test drive.
 5 A. He basically talked up the vehicle.
 6 Q. Okay. Anything in particular?
 7 A. Talked about the CPO, about the safety
 8 inspection that's done on it.
 9 Q. Were you happy with the way the vehicle
 10 drove?
 11 A. Yeah.
 12 MR. WEST: Yes?
 13 THE WITNESS: Yes. Sorry.
 14 Q. (BY MS. SMITH) Did you notice any issues?
 15 A. Not that I knew of, no.
 16 Q. Then after the test drive was over?
 17 A. During the test drive, he had mentioned that
 18 it was in a minor accident.
 19 Q. Okay. Anything else about that conversation
 20 that you can recall?
 21 A. I asked him about it, but he said it was a
 22 minor accident, that it was a CPO vehicle, and there
 23 was nothing to worry about.
 24 Q. That was the only discussion that you had
 25 about that?

14

1 A. I had in the past, yes.
 2 Q. How long had you had the Dodge Durango?
 3 A. I want to say four years maybe.
 4 Q. Do you remember where you bought that?
 5 A. I want to say it's Towbin in Henderson. Is
 6 that the chopper? Chopper, Towbin.
 7 Q. I'm not sure. There's so many commercials
 8 out there.
 9 When you bought that Dodge Durango, was that
 10 a new vehicle?
 11 A. No. It was used.
 12 Q. Do you know if that had any certification on
 13 it when you purchased it?
 14 A. I don't recall, to be honest with you.
 15 Q. Do you recall what you had before the Dodge
 16 Durango?
 17 A. Yes. I actually had two different vehicles.
 18 I had a pickup truck, 2002 Chevy, and I had a 2002
 19 Ford Taurus.
 20 Q. Were either of those purchased as new
 21 vehicles?
 22 A. No. Both used.
 23 Q. So you mostly purchase preowned vehicles?
 24 A. Yes.
 25 Q. So going back to the subject vehicle, you

16

1 A. Yes.
 2 Q. What about when the test drive ended?
 3 A. We went in to -- I guess on the sales floor
 4 to do the application.
 5 Q. Okay. And did you fill out paperwork that
 6 day?
 7 A. Yes, I did.
 8 Q. Were you approved to purchase that day?
 9 A. Yes, I was. I actually went in preapproved
 10 but still had to fill out an application.
 11 Q. When you say you went in preapproved, what
 12 do you mean by that?
 13 A. I did a preapproval with Capital One. So I
 14 had that with me when I went in.
 15 Q. When did you do that?
 16 A. Oh, geez. I actually probably had it for a
 17 couple months, because I had thought about it for a
 18 while. Kind of tossed around the idea of buying a new
 19 vehicle.
 20 Q. Had you looked at any other new or used
 21 vehicles prior to this subject vehicle?
 22 A. No.
 23 Q. Did you end up purchasing the vehicle that
 24 day, then?
 25 A. Yes, I did.

17

1 Q. Did you drive it off the lot?
 2 A. I did.
 3 Q. During the purchase, do you recall any other
 4 paperwork you had to fill out?
 5 A. On the floor or in finance?
 6 Q. At any point in time.
 7 A. Yes.
 8 Q. Do you recall any of those documents?
 9 A. I guess all the basic documents that come
 10 along with a car purchase. I don't know them by name.
 11 Q. I'm going to show you a document that is
 12 Bates stamped NVAUTO000079 through 86. Going to have
 13 the court reporter mark it as Exhibit 1.
 14 (Exhibit 1 was marked)
 15 Q. (BY MS. SMITH) Mr. Poole, I'm going to give
 16 you a minute to look at that.
 17 MR. WEST: Do you have a copy I could look
 18 at? I can look on it with him. You probably want one
 19 too; right?
 20 MR. PARETTI: If you have it.
 21 MS. SMITH: Can we go off the record for a
 22 minute?
 23 MR. WEST: Sure.
 24 (Recess was taken)
 25 Q. (BY MS. SMITH) Sorry about that little

19

1 A. Yes.
 2 Q. So when you read the comments that an
 3 accident had been reported, did you ask any questions
 4 about that to anyone at defendant's dealership?
 5 A. Not at the time, no, because it had already
 6 been handled during the test drive.
 7 Q. So once you saw the Carfax, you didn't ask
 8 any further questions?
 9 A. No.
 10 Q. Why is that?
 11 A. Because he assured me that the vehicle was a
 12 CPO'd vehicle, that there was no issues. It was a
 13 minor accident.
 14 Q. Did you at any point ask what area of the
 15 vehicle had been involved in any kind of accident?
 16 A. I did not.
 17 Q. Did you ask if they had any documents
 18 regarding the accident that's reflected on the Carfax?
 19 A. I did not.
 20 Q. Any particular reason why you didn't ask?
 21 A. I didn't feel the need to.
 22 Q. Did you personally walk around the vehicle
 23 and inspect it?
 24 A. I did.
 25 Q. Did you ask any questions about anything you

18

1 break, Mr. Poole.
 2 A. You are fine. Thank you.
 3 Q. Have you had a chance to look over that
 4 document I handed you as Exhibit 1?
 5 A. I was waiting for the other guys to get
 6 theirs. Sorry.
 7 Q. No problem.
 8 A. I have seen the document before, though.
 9 Q. Did you ever receive a copy of that
 10 document?
 11 A. I believe I did, yes.
 12 Q. Is that your signature reflected on the
 13 first page?
 14 A. Yes, ma'am.
 15 Q. Do you recall signing that?
 16 A. Yes, I do.
 17 Q. And then if you look through there, do you
 18 see any indications that the vehicle was in any kind
 19 of accident?
 20 A. I do. It's the very top item.
 21 Q. Anywhere else in that?
 22 A. Does say here on the second page, accident
 23 reported. On the third page it mentions accident
 24 reported, vehicle towed.
 25 Q. You recall that whole document; correct?

20

1 saw on the vehicle?
 2 A. I didn't see anything other than a nice
 3 vehicle.
 4 Q. Were you happy with your purchase at the
 5 time of purchase?
 6 A. Yes, I was.
 7 Q. Have you purchased any other CPO vehicles?
 8 By CPO I mean certified preowned.
 9 A. No, I haven't.
 10 Q. What's your understanding of what that
 11 means?
 12 A. That you're basically buying the best of the
 13 best, that it's like buying new at a used price, that
 14 it's gone through a comprehensive inspection that is
 15 guaranteeing quality and safety and value.
 16 Q. How much did you purchase the vehicle for?
 17 A. I believe all together it was 32,000 and
 18 some change. I don't know exact numbers.
 19 Q. What did you do with your Dodge Durango?
 20 A. I used that as a trade-in.
 21 Q. Did you do a straight trade-in? Did they
 22 give you a check for it?
 23 A. No, it was a straight trade-in.
 24 Q. Are you currently driving the subject
 25 vehicle?

5 (Pages 17 to 20)

21

1 A. I had been very limited. It was in the auto
2 body shop for about two months. I have drove it a
3 little bit since then. I recently became aware of a
4 problem with the left front wheel, so I'm not driving
5 it until that's repaired. Or replaced, I should say.
6 So today, no, I'm not driving the vehicle.
7 Q. How are you getting around?
8 A. I have my company van.
9 Q. Did you speak to anyone else at the
10 dealership besides the salesperson?
11 A. The finance guy.
12 Q. Did you ask any questions about the status
13 of the vehicle or the safety with the vehicle during
14 that time?
15 A. I did not.
16 Q. Just financing questions?
17 A. I don't think I even really asked financing
18 questions.
19 Q. Why is that?
20 A. Because I had already been preapproved.
21 Q. Did you ask for any copies of paperwork
22 relating to the vehicle?
23 A. I didn't have to ask. They provided the
24 copies of everything that I signed.
25 Q. I believe you already testified that you

23

1 took it to 215 Dodge for the oil change. Then they
2 did a -- what do you call it? -- alignment. Because I
3 got a really good coupon in the mail.
4 Q. Now, you just referenced some kind of issue
5 discovered by you. Can you describe to me what you're
6 talking about?
7 A. The accident before, the extent of the
8 damage of the accident, I was told there was frame
9 damage.
10 Q. Who told you that?
11 A. State Farm when I tried to refinance my
12 vehicle through State Farm.
13 Q. So at what point in time did you try and
14 refinance your vehicle?
15 A. It was last year. I don't remember. I
16 would say it was in May. I don't remember exactly
17 when.
18 Q. So approximately May of 2016?
19 A. Yes. I believe so. May have been April.
20 Q. Can you describe to me the process that you
21 went through to try and refinance your vehicle?
22 MR. WEST: Let me lodge an objection as to
23 time. Which finance, refinance?
24 Q. (BY MS. SMITH) Had you previously tried to
25 refinance your vehicle before April or May of 2016?

22

1 didn't ask if they had any documents pertaining to the
2 vehicle prior to your purchase.
3 A. Yes.
4 Q. You didn't ask for them?
5 A. I did not ask.
6 Q. Do you still have copies of all the
7 documents that they gave you at the time of your
8 purchase?
9 A. Yes, I do. I always keep them in the
10 glove box.
11 Q. After you drove off the lot with the
12 vehicle, did you have any follow-up with Sahara
13 Chrysler?
14 A. As far as -- what do you mean?
15 Q. Did you ever take the vehicle in for any
16 service or maintenance?
17 A. I took it in for oil changes, yes.
18 Q. You took it in to Sahara Chrysler
19 specifically?
20 A. Yes.
21 Q. What about any other vehicle maintenance?
22 A. No. Not there.
23 Q. Where would you take your vehicle in for any
24 other kind of maintenance?
25 A. After the issue had been discovered by me, I

24

1 A. I did. I actually refinanced with
2 Wells Fargo through the online portal.
3 Q. So we'll call that first refinance.
4 A. Yes.
5 Q. Approximately when did that occur?
6 A. I want to say it was the same year that I
7 purchased the vehicle. Late in the year of 2014. I
8 was told that I could refinance every six months as
9 long as payments were on time.
10 Q. Who told you that?
11 A. I don't recall if it was the finance guy or
12 if it was somebody at Wells Fargo. I don't recall.
13 Q. So describe to me the process you went
14 through for your first refinance with Wells Fargo.
15 A. I just went online and applied. It was just
16 an application.
17 Q. Did you have to fill out vehicle
18 information?
19 A. Just the year, make, and VIN number, things
20 like that. Basic information.
21 Q. Did anyone come look at the car?
22 A. No. I was already financed through
23 Wells Fargo.
24 Q. But you didn't have to take the vehicle in
25 anywhere for that one?

29

1 to the salesman before I did my own AutoCheck.
 2 Q. The same salesperson that sold you the
 3 vehicle originally?
 4 A. Yes.
 5 Q. And do you recall that conversation?
 6 A. Not verbatim, no. I just basically had
 7 mentioned that I tried to refinance and that they had
 8 mentioned there was frame damage to the truck. I
 9 asked him how come I wasn't made aware of that.
 10 Q. Any response you recall?
 11 A. He said that he would have to get the
 12 paperwork, the reports, and get back to me.
 13 Q. What occurred after that?
 14 A. They basically led me on for about two
 15 weeks.
 16 Q. When you say led you on, what do you mean?
 17 A. Kept saying that they didn't have a chance
 18 to get the reports. The gal that has to get the
 19 reports wasn't there. They had already left for the
 20 night. On and on and on. The same type of deal every
 21 day.
 22 Q. Then what did you do?
 23 A. I asked him for the Carfax, and he said that
 24 they don't have it anymore, that I'd have to run my
 25 own. That's when I ran the AutoCheck report.

31

1 Q. Do you still have that phone?
 2 A. I do. It's not with me, but I do.
 3 Q. Do you think you would be able to get copies
 4 of those text messages to your attorney?
 5 MR. WEST: If he's got them, we'll produce
 6 them.
 7 THE WITNESS: If I have them.
 8 Q. (BY MS. SMITH) All right. Hadn't seen
 9 them.
 10 Do you know what kind of phone it's on?
 11 A. iPhone.
 12 Q. Just wondering, because they do have the
 13 magical cloud.
 14 A. Everything has the cloud.
 15 Q. So after you exchanged -- I don't know. How
 16 many text messages with the salesperson?
 17 A. I couldn't tell you. I don't know off the
 18 top of my head. It was numerous ones over a couple
 19 weeks.
 20 Q. At some point, did you stop communicating
 21 with him?
 22 A. I believe he quit responding after I did the
 23 AutoCheck report.
 24 Q. Did you send a copy of the AutoCheck report
 25 that you ran to anyone at the dealership?

30

1 Q. Did you run a Carfax?
 2 A. I don't recall if I actually ran the Carfax
 3 or if I just went to AutoCheck. Because at that point
 4 I had called the gal at the State Farm, and she had
 5 recommended using AutoCheck.com.
 6 Q. Do you know who your contact was at
 7 State Farm?
 8 A. I don't recall her name off the top of my
 9 head. I'm sure I have it in emails. But I don't
 10 know.
 11 Q. Are you currently insured with State Farm?
 12 A. I am.
 13 Q. For your automobile also?
 14 A. Yes. And renters insurance.
 15 Q. What did you do after you ran your own
 16 AutoCheck report?
 17 A. I believe that there's a point where Travis
 18 had started texting me instead of calling. So I
 19 texted him and said, hey, I ran an AutoCheck report
 20 and it says that it was classified as frame/unibody
 21 damage, how come I wasn't made aware of it?
 22 Q. Then what occurred?
 23 A. I don't remember exactly how he responded.
 24 Q. Do you have those text messages?
 25 A. I would have to check. I'm not sure.

32

1 A. No. I don't believe so. Because they
 2 didn't send me a copy of the Carfax. Why would I send
 3 them something that I paid for?
 4 Q. Did you ever go in to Sahara Chrysler?
 5 A. No, I didn't.
 6 Q. Why is that?
 7 A. It wasn't going to do me any good. They
 8 weren't doing anything to help out as it was. Going
 9 down there wouldn't do anything good other than
 10 causing a scene.
 11 Q. So after the salesperson, you testified,
 12 stopped responding --
 13 A. Uh-huh.
 14 Q. -- what did you do then?
 15 A. I contacted George.
 16 Q. How did you meet George?
 17 A. I found his information online.
 18 Q. About what time frame was that?
 19 A. I want to say that was in May of last year
 20 as well.
 21 Q. At the time of your purchase, did you
 22 receive any warranties with the vehicle?
 23 A. The standard warranty I guess that comes
 24 with it. Then I purchased an extended warranty.
 25 Q. When you say a standard warranty that comes

33

1 with it, do you mean --
 2 A. The manufacturer's warranty. I think it's a
 3 seven-year/100,000 mile.
 4 Q. Did you ever utilize any of those benefits?
 5 A. No.
 6 Q. Do you recall speaking to anyone from the
 7 dealership in approximately September of 2014?
 8 A. I don't recall, no.
 9 Q. Were you happy with your vehicle at that
 10 point in time?
 11 A. Yes.
 12 Q. I'm not going to ask you for any direct
 13 communications or advice your counsel has given you,
 14 but you said that you contacted George West.
 15 A. Yes.
 16 Q. And then at some point was your vehicle
 17 inspected?
 18 A. Yes, it was.
 19 Q. Were you present at that inspection?
 20 A. I was there but not with him while he was
 21 doing the inspection.
 22 Q. Did you have any independent inspections
 23 done of your vehicle?
 24 A. No, I didn't.
 25 Q. So the only inspection done was arranged by

35

1 blends together. I apologize. I've been very, very
 2 busy. So the six to seven days a week has taken a
 3 toll on my recent memory. I want to say it was about
 4 three months ago.
 5 Q. What happened during that accident?
 6 A. I was driving in a parking lot, down the
 7 main aisle, and a car came from one of the side aisles
 8 and ran the stop sign and hit me.
 9 Q. What area of the vehicle did that person
 10 hit?
 11 A. The right front.
 12 Q. Did that have to be repaired?
 13 A. Yes, it did.
 14 Q. Do you know what portions of the vehicle had
 15 to be repaired?
 16 A. The bumper, headlight, I believe the wheel
 17 and tire and part of the fender maybe. I don't know
 18 exact parts or anything.
 19 Q. How many days, if you can recall, was it out
 20 of commission?
 21 A. It was about two months that I didn't have
 22 it due to the insurance company of the other party.
 23 Q. So was it not drivable during that entire
 24 time?
 25 A. It was at the auto body shop.

34

1 your attorney?
 2 A. And then I guess the firm -- you guys as
 3 well. Or the other lawyer had an inspection done as
 4 well.
 5 MR. WEST: Can't look to me for the answers.
 6 THE WITNESS: I was just trying to think of
 7 what his name was.
 8 MR. WEST: Just so you know.
 9 Q. (BY MS. SMITH) It's common. I understand.
 10 A. I couldn't remember the other lawyer's name
 11 before you guys. I apologize.
 12 Q. That's all right.
 13 But no one from State Farm ever inspected
 14 the vehicle?
 15 A. No.
 16 Q. And no one from Wells Fargo?
 17 A. No.
 18 Q. And you didn't take it back to the
 19 dealership at any point?
 20 A. No.
 21 Q. Now, you've been in, I believe, a subsequent
 22 accident; is that correct?
 23 A. Yes, I have.
 24 Q. When was that?
 25 A. Three months ago. My whole summer kind of

36

1 Q. Then do you have that back now?
 2 A. I do.
 3 Q. Okay. Approximately when did you get the
 4 vehicle back?
 5 A. About a month ago.
 6 Q. Then I believe you testified that you were
 7 just driving it somewhat sporadically; is that
 8 correct?
 9 A. Very limited.
 10 Q. Can you describe why that is?
 11 A. I work a lot. And then recently I was made
 12 aware of the left front wheel could have some safety
 13 issues. Until I get that replaced, I won't drive it.
 14 Q. What do you mean made aware?
 15 A. The expert's report. Our expert's report.
 16 Q. Do you recall what you were specifically
 17 informed of was an issue with the left front wheel?
 18 A. I don't know the exact details other than
 19 the fact that the wheel could fall apart.
 20 Q. Are you planning on making repairs, then, to
 21 the vehicle?
 22 A. Yes, I am.
 23 Q. Do you have those scheduled?
 24 A. Not as of yet. But I will.
 25 Q. What about the most recent accident? As far

37

1 as you know, has that been fully repaired?
 2 A. Yes, it has.
 3 Q. Do you know when you were informed of an
 4 issue with the left wheel?
 5 A. Do I know when?
 6 Q. Yes.
 7 A. Yesterday.
 8 Q. Yesterday?
 9 A. Uh-huh.
 10 Q. Do you know the last time that your vehicle
 11 was inspected?
 12 A. Prior to the subsequent accident?
 13 Q. By anyone.
 14 A. I guess when they looked at it during this
 15 past accident. I don't know the exact date.
 16 Q. What about prior to that?
 17 A. It was when the lawyer before you guys had
 18 it inspected at 215 Dodge.
 19 Q. Do you intend on purchasing another vehicle?
 20 A. In the future?
 21 Q. Yes.
 22 A. Yes.
 23 Q. Are you planning on purchasing another
 24 vehicle in the next six months?
 25 A. I don't know. I have no plans as of right

39

1 35 and 36?
 2 A. I don't know. I never got to look.
 3 Q. You didn't test drive any new trucks?
 4 A. No.
 5 Q. Why is that?
 6 A. He talked me into looking at the used ones.
 7 Q. When you were driving your vehicle, did you
 8 ever notice any issues personally when you were
 9 driving it?
 10 MR. WEST: Let me just object to the extent
 11 of time.
 12 You can answer.
 13 THE WITNESS: No. I mean, I felt -- I
 14 always felt that it handled a little bit differently.
 15 But every vehicle handles differently than the other.
 16 Q. (BY MS. SMITH) So no issues in 2014?
 17 A. No.
 18 Q. What about in 2015?
 19 A. No.
 20 Q. What about in 2016?
 21 A. No. Not that I recall.
 22 Q. Nothing occurred that caused you to take it
 23 in possibly for tire check?
 24 A. No.
 25 Q. Any kind of alignment?

38

1 now, no.
 2 Q. Before you went in to Sahara Chrysler, did
 3 you do any online research of other car dealerships?
 4 A. Not so much research. I might have just
 5 looked at vehicles online trying to find exactly what
 6 I wanted. Looking at all the different options,
 7 basically.
 8 Q. Did you have a specific price range you
 9 wanted to be in?
 10 A. I did. I don't remember exactly the number,
 11 but it was below, I think, 33,000 or 34,000 or
 12 something. I think I was approved through Capital One
 13 for 35 or 36. I don't recall. But I still wanted to
 14 be lower than that. I didn't want to use the whole
 15 thing.
 16 Q. What types of trucks that were brand new
 17 fall into that type of price range? Do you recall?
 18 A. I don't.
 19 Q. Anything that you had your eye on when you
 20 had gone down to Sahara Chrysler aside from just
 21 trucks generally?
 22 A. Just a Dodge Ram. King cab. Looking at the
 23 hemi motor.
 24 Q. Would you have been able to purchase a
 25 brand-new Dodge Ram with the good motor for between

40

1 A. No. I was just told at 215 Dodge when I
 2 went for the oil change that it was out of alignment.
 3 So I had them do the alignment.
 4 Q. When 215 Dodge did the alignment, did they
 5 say anything to you about your vehicle?
 6 A. No.
 7 Q. Did they mention any issues to you about
 8 your vehicle?
 9 A. Other than the alignment, no.
 10 Q. Do you know if they did any kind of a check
 11 on your vehicle?
 12 A. I don't know. At that time, I don't know.
 13 Other than the oil change and the alignment, I don't
 14 know of anything else they did.
 15 Q. You don't know if they did a multi-point
 16 inspection?
 17 A. If it was part of the service, I guess they
 18 did. I wasn't back there when they did it. I was in
 19 the waiting room.
 20 Q. Did they say -- I'm sorry.
 21 Did 215 Dodge say anything to you about why
 22 the truck might be out of alignment?
 23 A. No. I just assumed it was from being
 24 driven. Our roads in Vegas.
 25 Q. Did you ask them any questions about why it

45

1 THE WITNESS: It would be my opinion that
2 they would have to completely divulge all the
3 information that they have on the vehicle. If they
4 have that report at the time of me purchasing the
5 vehicle, I should have had the report to make the
6 decision whether or not I wanted to buy the vehicle.
7 Q. (BY MS. SMITH) Why do you think that is?
8 A. Because if you know, you got to tell. I
9 mean, it's my right as a consumer to have that
10 information when I'm buying a vehicle.
11 Q. Were you informed that there had been an
12 accident with that vehicle?
13 A. I was informed there was an accident with
14 that vehicle.
15 Q. And you accepted that?
16 A. I accepted that due to the certified
17 preowned vehicle inspection checklist that is sitting
18 in front of me.
19 Q. Did you accept what the certified preowned
20 vehicle inspection checklist -- which we can call CPO
21 checklist just to make it easier.
22 A. Go ahead.
23 Q. Did you accept what that checklist
24 represented to you?
25 MR. WEST: Exhibit 2?

47

1 A. What of it I can see, yes.
2 Q. Do you have any reason to doubt that that's
3 your signature?
4 A. No, ma'am.
5 Q. I understand it looks like it might be a
6 little bit chopped off.
7 A. Got cut off a little bit.
8 Q. So do you have any dispute that that's your
9 signature?
10 A. No, ma'am.
11 MR. WEST: Just for the record, we're not
12 going to dispute that that's his signature.
13 THE WITNESS: It's mine.
14 Q. (BY MS. SMITH) These documents tend to get
15 copied quite a bit. Sometimes it can make it a little
16 fuzzy.
17 Do you believe that you received all the
18 documents and information that's checked off in the
19 predelivery section of the check sheet?
20 A. I don't think the radio was preset. I'm
21 just kidding. Sorry. Yes, I believe so.
22 Q. How about in the section that states
23 delivery? Do you believe that those items were
24 reviewed with you with the sales consultant?
25 A. Yes, ma'am, I do believe so.

46

1 Q. (BY MS. SMITH) Yes.
2 A. I did. So, yes, I trusted their checklist.
3 Q. This is cut off a little bit. I'm going to
4 hand you a certified preowned vehicle delivery check
5 sheet. Let's call it the check sheet.
6 Have the court reporter mark it as
7 Exhibit 3. It's Bates numbered NVAUTO000095 through
8 99.
9 (Exhibit 3 was marked)
10 MR. WEST: Just for the record, we're going
11 to go ahead and -- this is Bates stamped NVAUTO98, 99.
12 They appear to be two of the same copied together.
13 Have been identified as Exhibit 3. I'm going to go
14 ahead on the record and take off the extra copy.
15 Contains two pages. Everyone agreeing to that?
16 MR. PARETTI: Yes.
17 MS. SMITH: Yes. Thanks.
18 Q. (BY MS. SMITH) Do you recall seeing this
19 check sheet, Mr. Poole?
20 A. If my signature is on it, then I saw it. I
21 mean, I don't recall it exactly as this. But...
22 Q. All right. Can you look at the second page
23 of Exhibit 3.
24 A. Uh-huh.
25 Q. Does that appear to be your signature?

48

1 Q. Great.
2 Do you still owe money on the subject
3 vehicle?
4 A. Yes, ma'am.
5 Q. And about how much is that?
6 A. Maybe 17, 18,000.
7 Q. Are you current on your payments?
8 A. Yes, ma'am.
9 Q. About how much are your payments a month?
10 A. 579, I believe.
11 Q. That's lower than the initial payments you
12 were making; is that correct?
13 A. Yes, ma'am.
14 Q. Do you know how much the repairs were as a
15 result of the approximately May of 2017 accident you
16 were in?
17 A. I want to say 5,000. Around there.
18 Q. You said the other person's insurance dealt
19 with that?
20 A. It was actually Enterprise Rental Car. But
21 yes.
22 Q. I think it's been disclosed to us, but do
23 you recall the name of the person you were in an
24 accident with in 2017?
25 A. I want to say he was Filipino. I don't

57

1 Q. Okay. What was your interpretation of that
2 language?
3 A. Like I said, I would imagine that maybe the
4 tire got flat so they towed it.
5 Q. Flat tire?
6 A. Flat tire.
7 Q. From the accident?
8 A. Yes.
9 Q. Prior to trying to refinance your car the
10 last time with State Farm, did you have any complaints
11 about your vehicle?
12 A. No.
13 Q. Except for maybe the payment?
14 A. Except for maybe the payment.
15 Q. Do you think the vehicle you purchased was
16 appropriate to be a CPO vehicle?
17 A. No, I do not.
18 Q. Why is that?
19 A. Because of the extent of the damage and the
20 type of repairs that they did.
21 Q. Did you come to that conclusion
22 independently or with assistance from your expert?
23 A. Just by reading the estimate I wouldn't have
24 bought that as a CPO vehicle.
25 Q. Why is that?

59

1 outside of manufacturer allowances?
2 A. Not that I know of.
3 Q. You didn't notice anything yourself?
4 A. No. I'm not an expert.
5 Q. When you personally looked at the vehicle,
6 you didn't notice that anything was amiss?
7 A. No. I wouldn't know what to look for.
8 Other than apparent signs of damage. I wouldn't know
9 what to look for as far as anything under the hood.
10 Q. Did you ever ask to speak to a CPO
11 technician?
12 A. No.
13 Q. Why is that?
14 A. I don't know why I would. The inspection
15 report was right there. I don't know what I would ask
16 him. I'm not an expert.
17 Q. When you say "inspection report," do you
18 mean the CPO checklist?
19 A. Yes.
20 MR. WEST: For the record, that's Exhibit 2.
21 Q. (BY MS. SMITH) Okay. When you pulled your
22 AutoCheck report and you looked at it and thought it
23 indicated some kind of extra damage that you didn't
24 know about, did you take that into anyone and ask them
25 about the language you were reading?

58

1 A. The extent of the damage. There was
2 something -- like I said, I'm not a mechanic, but
3 there's something that says frame bracket or something
4 repaired. I would have walked away from that vehicle
5 from that point. I'm not going to look to buy a CPO
6 vehicle that has any type of frame issue or anything
7 like that. Who would do that?
8 Q. But it's your belief that that indicates
9 there was frame damage?
10 A. In my mind, yes.
11 Q. Did you ask anyone what that meant?
12 A. For what? On the estimate?
13 Q. Yes.
14 A. No, I haven't. I haven't had any
15 conversations with experts.
16 Q. Okay. Any other documents you rely upon to
17 make that assertion? Are you just going off of the --
18 A. Just my perception from the estimate and the
19 pictures.
20 Q. Are you aware of any items on your vehicle
21 not meeting manufacturer tolerances at the time of
22 your purchase?
23 A. I'm not aware of any of it. That would be a
24 question for the expert.
25 Q. To your knowledge, was there any that were

60

1 A. No, I didn't.
2 Q. Why not?
3 A. Because it stated that it was frame/unibody
4 damage.
5 Q. What is your understanding of what that
6 means?
7 A. Means unsafe, no value. Danger to the
8 community, basically.
9 Q. What do you base that opinion on?
10 A. Just my own perception.
11 Q. Did you experience a safety issue with your
12 vehicle personally?
13 A. No.
14 Q. Any harm to the community from your vehicle?
15 A. Not as of yet. But if that wheel falls
16 apart, there could be.
17 Q. And you were just told that there might be
18 an issue yesterday?
19 A. Yes. It was in the shop for two months, of
20 course.
21 Q. Who told you that there might be a left
22 wheel issue?
23 MR. WEST: Well, to the extent that it calls
24 for attorney-client privileged information, you can't
25 divulge that. If you got the information from an

61

1 external source other than me, you may answer.
 2 THE WITNESS: It was -- I briefly looked at
 3 the report from the expert.
 4 Q. (BY MS. SMITH) You looked at the report?
 5 A. Briefly.
 6 Q. When it was in the shop for your 2017
 7 accident, did that service -- I'm sorry, where did you
 8 take it into?
 9 A. It was Updated Auto Body.
 10 Q. Do you know if they did any kind of
 11 inspection on your car?
 12 A. I would imagine they did when they brought
 13 it in to look at the damage.
 14 Q. Did Updated Auto Body mention anything
 15 regarding the left front tire of your vehicle?
 16 A. No, they did not.
 17 Q. Aside from the damage that the vehicle
 18 sustained in the 2017 accident, did they -- by "they"
 19 I mean Updated Auto Body -- mention any other issues
 20 with your vehicle?
 21 A. He mentioned replacing a part that wasn't --
 22 I forgot exactly how he worded it. Wasn't what it
 23 should be or as good as it should be. I honestly
 24 don't know what part it was.
 25 Q. You don't recall what part?

63

1 Q. Did you ever ask to meet the person that
 2 certified your vehicle?
 3 A. No.
 4 Q. Why is that?
 5 A. I didn't find it needed. I didn't have any
 6 reason to ask to meet him.
 7 Q. If you recall, when you purchased vehicles
 8 previously, before the subject vehicle, did you
 9 receive Carfaxes on any of those?
 10 A. It's been quite a while ago. I believe on
 11 the Durango I did. Maybe on the other ones before. I
 12 don't recall. It's been quite a few years.
 13 Q. Okay. Do you recall if that had been in any
 14 accidents?
 15 A. Not that I recall, no.
 16 Q. Did you get into any accidents with that
 17 vehicle?
 18 A. No.
 19 Q. Would any repairs have been acceptable to
 20 you in purchasing a used vehicle that you had been
 21 informed had been in an accident?
 22 A. I guess like minor repairs, like I mentioned
 23 before, like a dented bumper or bad rubber on the tire
 24 or something like that.
 25 Q. What do you mean by bad rubber on a tire?

62

1 A. No. I didn't ask. I was just appreciative
 2 that he did it.
 3 Q. Do you recall what portion of the vehicle it
 4 was on, that extra part?
 5 A. I don't. I'm sorry.
 6 Q. But you said that Updated Auto Body -- did
 7 they replace it or did they repair it? Do you recall?
 8 A. He said they replaced it. Like I said, I
 9 didn't really ask what part it was. It could have
 10 been a stalling procedure until they got the check
 11 from the insurance company too. So...
 12 Q. Aside from that one extra part that you
 13 don't recall, nothing else that you think would relate
 14 to the previous accident?
 15 A. No. Nothing was mentioned to me.
 16 Q. When I say "previous accident," I was
 17 referring to the 2014.
 18 A. Yeah. No, nothing that was mentioned to me.
 19 Q. So, to your knowledge, the vehicle has only
 20 been in these two incidents; is that correct?
 21 A. Yes, ma'am.
 22 Q. Aside from the salesperson, who I think you
 23 identified as Travis, and the finance person, did you
 24 speak to anyone else at the dealership?
 25 A. Not that I recall, no.

64

1 A. Like a popped tire or something like that.
 2 A small dent.
 3 Q. Have you taken the vehicle for repairs
 4 anywhere else that we haven't covered? I've got
 5 Updated Auto Body, 215 Dodge, and then you said you
 6 had a couple oil changes at Sahara Chrysler.
 7 A. Yes. I might have done like a
 8 Terrible Herbst oil change or something somewhere. I
 9 don't recall doing it. Actually, I do know that I did
 10 take it to, like, Terrible Herbst for oil change
 11 because I wasn't going to go back to Sahara Dodge
 12 after everything happened.
 13 Q. At Terrible Herbst, do you know if they do
 14 any kind of vehicle inspection?
 15 A. I'm not aware of their procedures, no.
 16 Q. You didn't ask?
 17 A. No. I just went for an oil change.
 18 Q. Is there a reason you didn't have any other
 19 multi-point inspections done to your vehicle?
 20 A. I'm not sure why I would need to.
 21 Q. What about after you pulled that
 22 AutoCheck.com report?
 23 A. That's when I got ahold of George. So the
 24 inspection was done by his expert.
 25 Q. So you didn't have any independent ones?

77

1 less now?
 2 A. Yes.
 3 Q. What is your basis for that?
 4 A. Due to the major accident that it was in
 5 before I bought it.
 6 Q. What about the accident you just had?
 7 A. That's neither really here nor there. That
 8 wasn't my choice. Would I believe it's worth less
 9 now? Yes, I would.
 10 Q. So do you think that the approximately May
 11 of 2017 accident decreased the value of your vehicle?
 12 A. Yes, I do.
 13 Q. Do you know by how much?
 14 A. I have no idea.
 15 Q. What about the 2014 accident? Do you have
 16 an estimate as to how much less you think your
 17 vehicle --
 18 A. I'm not an expert. I wouldn't have any
 19 idea. It's not worth what I paid for it, since I
 20 wasn't given the opportunity to walk away from it.
 21 Q. I'm sorry, it's not worth what you paid for
 22 it?
 23 A. Knowing what I know now, no, I would never
 24 have bought the vehicle.
 25 Q. For any price?

79

1 (Exhibit 6 was marked)
 2 Q. (BY MS. SMITH) Have you had a chance to
 3 look that over, Mr. Poole?
 4 A. Yes.
 5 Q. Do you understand what that document is?
 6 A. Yes.
 7 Q. What's your understanding of it?
 8 A. It's the computation of damages. The amount
 9 of money that I've paid on the vehicle thus far.
 10 Q. Is that accurate?
 11 A. As far as I can tell, yes.
 12 Q. Do you think that that accurately reflects
 13 your reduced payments through refinancing?
 14 A. Without seeing the actual monthly payment on
 15 each one of those, I would have to say, yes, I guess.
 16 Q. Do you have additional documentation
 17 regarding your monthly payments?
 18 A. Other than the statement that I get monthly,
 19 no.
 20 Q. But you do receive a monthly statement?
 21 A. Yes. A monthly bill. It might be through
 22 email. At this point I have gone green, paperless.
 23 Q. Understandable.
 24 Have you subsequently tried to refinance
 25 your vehicle?

78

1 A. No. Why would I buy a vehicle that even had
 2 anything associated with frame damage to it? I mean,
 3 I don't know anybody that walks into a car lot looking
 4 to buy a vehicle that says, hey, do you have one with
 5 frame damage? So I would not have bought it.
 6 Q. Other than being told that the vehicle, I
 7 believe you testified, had been a CPO vehicle,
 8 anything else that the salesperson said to you about
 9 the vehicle?
 10 A. As far as? Could you give me an example?
 11 Q. Any other questions you may have asked?
 12 A. Not that I recall, no.
 13 Q. Did you ask any other questions about the
 14 certification process?
 15 A. No. He went over it pretty well. I believe
 16 the window sticker mentioned like a 125-point
 17 inspection. Of course, all the advertising. The
 18 advertising helps as far as when you go to buy a
 19 vehicle and you're looking at a CPO vehicle to lead
 20 you to believe that it's going to be, like, brand new
 21 for the price of a used vehicle.
 22 Q. I'm going to show you what was plaintiff's
 23 sixth supplement corrected electronically served on
 24 8/13/2017.
 25 MS. SMITH: Mark that as Exhibit 6.

80

1 A. Since I found out about the accident?
 2 Q. Since you tried in I believe it was
 3 April/May of 2016?
 4 A. Not that I believe, no. Not that I
 5 remember.
 6 Q. Any reason for that?
 7 A. Because we've been dealing with this thus
 8 far. I don't want to do anything that will jeopardize
 9 anybody. It's probably not the right thing to do
 10 either.
 11 Q. I'm sorry, when you say it's not the right
 12 thing to do either, what do you mean by that?
 13 A. Just refinance, knowing the damage on the
 14 vehicle.
 15 Q. I'm going to show you a document called
 16 plaintiff's initial disclosure Bates stamped 001,
 17 Exhibit 7.
 18 (Exhibit 7 was marked)
 19 MR. WEST: It's the arbitration agreement.
 20 MR. PARETTI: Thank you.
 21 THE WITNESS: Okay.
 22 Q. (BY MS. SMITH) Now, it looks like the top
 23 line might have been cut off.
 24 A. Yeah.
 25 Q. Does that document look familiar to you?

81

1 A. Looks like many other documents that I've
 2 signed, but that's my signature.
 3 Q. Okay. Do you recall being presented that at
 4 the time of the purchase of your vehicle?
 5 A. I believe I remember so, yes.
 6 Q. No reason to think that that's not -- that
 7 was not presented to you or that wasn't your
 8 signature?
 9 A. No, ma'am.
 10 Q. I'm going to show you what is plaintiff's
 11 initial disclosure Bates stamped No. 11.
 12 MS. SMITH: Mark that as number 8.
 13 (Exhibit 8 was marked)
 14 MR. WEST: "Buyers Guide."
 15 THE WITNESS: Okay.
 16 Q. (BY MS. SMITH) Do you recall receiving that
 17 warranty at the time of your vehicle?
 18 A. I do.
 19 Q. Sorry, at the time of your vehicle purchase.
 20 A. Yes.
 21 Q. I was going to show you a copy of the
 22 contract, but it is very, very light. See if I have a
 23 better copy.
 24 I don't think I have one.
 25 Did the dealership ever contact you to buy

83

1 preowned vehicle or anything to that extent?
 2 A. No.
 3 Q. Did you yourself ever take it in to any
 4 other dealership --
 5 A. No.
 6 Q. -- to do a buyback?
 7 A. No, ma'am.
 8 Q. Have you, I'll say since the time you
 9 purchased the vehicle, ever tried to sell it on your
 10 own to any third parties?
 11 A. No, ma'am.
 12 Q. Any particular reason?
 13 A. I didn't have a reason to sell it subsequent
 14 to finding out about the accident of 2014.
 15 Q. Okay. And then -- I'm sorry, can you
 16 clarify that?
 17 A. I didn't try to trade it in or sell it to
 18 anybody before I found out about the accident and I
 19 haven't tried to since either. So I never have. I'm
 20 just making it clear that I didn't try to do it
 21 beforehand or after.
 22 Q. Understand. Thank you.
 23 A. You are welcome.
 24 Q. Have you ever missed any of your payments on
 25 the vehicle?

82

1 back your vehicle?
 2 A. I believe there was some type of offer at
 3 one point.
 4 Q. Do you recall about when that was?
 5 A. I do not.
 6 Q. No year even?
 7 A. I think it was in 2016, but I don't know for
 8 sure. I'm not a hundred percent.
 9 Q. Do you recall any of the terms of that
 10 offer, or potential offer?
 11 A. If I remember right, it was they would give
 12 me full book value if I bought another car from them.
 13 Q. Did you speak to anyone at Sahara Chrysler
 14 about that deal?
 15 A. No. That was to my lawyer. That was to my
 16 lawyer.
 17 Q. I'm sorry, the buyback --
 18 A. The offer was made to my lawyer, I believe.
 19 MR. WEST: To the extent that he's
 20 inadvertently disclosed attorney-client information, I
 21 would object.
 22 Q. (BY MS. SMITH) Did the dealership ever
 23 communicate directly with you?
 24 A. No.
 25 Q. Okay. No emails about deals to purchase a

84

1 A. No, ma'am.
 2 Q. Any insurance lapses?
 3 A. No, ma'am.
 4 Q. When you spoke to the salesperson about the
 5 accident at the time of purchase, you said that he
 6 told you it was minor?
 7 A. Uh-huh. Yes.
 8 Q. You didn't -- did you have any other
 9 questions as to what constituted minor?
 10 MR. WEST: Objection. Asked and answered I
 11 think for the fourth time at this point on this
 12 particular question.
 13 THE WITNESS: No.
 14 Q. (BY MS. SMITH) Okay. Did you ever pull
 15 your own Carfax vehicle history report for your
 16 vehicle?
 17 A. I believe you asked me that before too. I
 18 think I did. I don't recall for sure. But I think I
 19 did before I did the AutoCheck, yes.
 20 Q. So you think you pulled an AutoCheck and a
 21 Carfax?
 22 A. Yes.
 23 Q. Do you have -- did you run any other reports
 24 for your car on your own?
 25 A. No. Not that I recall.

85

1 Q. Okay. You think that you ran the Carfax
2 around the same time as the AutoCheck.com?
3 A. Yes.
4 Q. Do you know if you gave that to your
5 attorney?
6 A. I don't recall. I don't know if I ever
7 printed it out, to be honest with you.
8 Q. Does that get delivered by email?
9 A. I think it delivers, like, instantaneously
10 on the screen. But I haven't done a lot of them; so I
11 don't know. It's been a few years.
12 Q. Have you ran Carfaxes previously for other
13 vehicles?
14 A. Not that I recall.
15 Q. What about AutoCheck.com reports?
16 A. I had never heard of it before State Farm
17 had recommended it.
18 Q. So I think you testified that was something
19 you had to pay for?
20 A. Yes, it is.
21 Q. Can you tell me a little bit about that
22 site?
23 A. I honestly don't remember a lot about the
24 site. I guess you put in your information about the
25 vehicle and it tells you about the history.

87

1 thought were repaired or replaced?
2 A. No, they did not.
3 Q. Did you ask them to do any additional
4 inspection aside from I believe it was you said oil
5 change?
6 A. No.
7 Q. No particular reason for that?
8 A. No.
9 Q. What result are you hoping to achieve
10 through your lawsuit?
11 A. I would just like to get my money back and
12 have them take the vehicle back.
13 Q. When you say "money back," do you mean all
14 your money?
15 A. Yes, ma'am.
16 Q. Even though you've been driving the car for
17 the past three years?
18 A. Yes, ma'am. Because if I would have bought
19 another vehicle, I would have been working on paying
20 that vehicle off. So my interest and principal would
21 have been going somewhere.
22 Q. What do you mean going somewhere?
23 A. Towards paying off a vehicle that wasn't
24 damaged before I bought it.
25 Q. So it has been going towards paying off a

86

1 Q. So is it a report similar –
2 A. It's similar to Carfax, but it gives you
3 more details. Whether they are a hundred percent
4 accurate, I don't know.
5 Q. So you are not aware of where AutoCheck.com
6 pulls its information from?
7 A. I am not.
8 Q. How about Carfax?
9 A. I am not. I'm just an average consumer.
10 Q. Earlier you testified to the fact that your
11 car had been aligned in I think 2016; is that correct?
12 A. I don't remember saying the date. But it
13 may have been 2016. Actually, I think it was 2016,
14 yes.
15 Q. Your car was aligned; correct?
16 A. That's what they said they did, yes.
17 Q. And that was at 215?
18 A. Yes.
19 Q. Is it your understanding that 215 Dodge was
20 able to put your vehicle into alignment?
21 A. That was my understanding, yes.
22 Q. Did they bring to you any issues about –
23 issues with them aligning the vehicle?
24 A. No, ma'am.
25 Q. Did they point out any areas that they

88

1 vehicle?
2 A. Yes, but not the vehicle that I want.
3 Q. Did you have a vehicle in mind that you
4 wanted?
5 A. One that didn't have a major accident before
6 I bought it.
7 Q. Would that be a new vehicle?
8 A. It could be a CPO vehicle. But now I know
9 more about it. So I guess at this point, I would do
10 an AutoCheck report before I bought one.
11 MS. SMITH: George, are you going to have
12 questions?
13 MR. WEST: Not unless I follow up with him.
14 So far, no. I'm sorry, Wells Fargo Bank's counsel.
15 MR. PARETTI: I won't have questions, no.
16 MS. SMITH: It's approaching lunchtime. I
17 don't think that I'll have much more. But let's take
18 a few-minute break. Hopefully we can get you out of
19 here soon.
20 MR. WEST: Sure.
21 (Recess was taken)
22 Q. (BY MS. SMITH) Just as an additional
23 reminder, you are still under oath that you took this
24 morning.
25 A. Okay.

89

1 Q. Do you recall the mileage on the vehicle
2 when you purchased it?
3 A. It was 6,000 seven something I think.
4 Q. Do you know how many miles you drive per
5 year with that vehicle?
6 A. I think I'm at 23,000 miles. So not very
7 much.
8 Q. Do you know what the current mileage is on
9 it today?
10 A. It's about 23 something now I think.
11 Q. Is the vehicle here today?
12 A. No. No. I drove my work van.
13 Q. Okay. So when you drove off with the
14 vehicle, you didn't ask for any other documentation
15 relating to its history?
16 A. No.
17 MR. WEST: Object to the extent of time.
18 Talking from the dealer? Talking from --
19 Q. (BY MS. SMITH) From the dealer.
20 A. No, I did not.
21 Q. Did you ever inquire as to the previous
22 owner of the vehicle from the dealer?
23 A. No, I didn't.
24 Q. When I say "dealer," I'm encompassing
25 salesperson with that.

91

1 there any insurance losses on the vehicle. Do you
2 recall that?
3 A. I don't recall.
4 Q. Well, let me refresh your recollection. She
5 asked you were there any insurances losses on the
6 vehicle. Your answer was no. Do you recall that?
7 A. Briefly, yes.
8 Q. The term "insurance loss" -- and I want to
9 make sure we're clear. Did you have an insurance loss
10 on your insurance or on someone else's insurance?
11 A. For the 2016 accident? Or '17?
12 Q. For the '17 accident, correct.
13 A. Oh, yes. Sorry.
14 MR. WEST: Just for clarification. That's
15 all I wanted to know.
16 THE WITNESS: I misunderstood, I guess.
17 FURTHER EXAMINATION
18 BY MS. SMITH:
19 Q. I was just going to have you look at a
20 document to confirm it. Trying to make sure your
21 Social isn't on here.
22 MS. SMITH: Off the record.
23 (Discussion off the record)
24 MR. WEST: Counsel and I have discussed off
25 the record with respect to a stipulation involving

90

1 A. Yeah. But, no, I did not.
2 Q. Any reason?
3 A. There was no reason to ask about the
4 previous owner. In my mind, there is no reason to ask
5 about the previous owner.
6 Q. Even when you were informed that it had --
7 the vehicle had been involved in a previous accident?
8 A. Yep, even then. Yes. Sorry. Not yep.
9 Q. So you didn't ask if the dealership had
10 received any documents from the previous owner?
11 A. No. I would imagine that if they did, that
12 that would have been presented to me.
13 Q. But you didn't ask them?
14 A. I didn't ask them.
15 Q. I think I already may have asked you this,
16 but, no, you didn't ask if the dealership had any
17 documents whatsoever pertaining to the accident that
18 they informed you of?
19 A. No, I did not.
20 MS. SMITH: Do you have anything?
21 MR. PARETTI: No.
22 MR. WEST: I have one quick follow-up.
23 EXAMINATION
24 BY MR. WEST:
25 Q. Counsel for the dealership asked you were

92

1 authenticity and the numbers reflected on the original
2 retail installment sales contract that my client
3 entered into May 26th, 2014, and that we are not
4 disputing any of the numbers or the authenticity of
5 that particular retail installment sales contract.
6 Q. (BY MS. SMITH) As for the various exhibits
7 I've shown you reflecting your signature, you don't
8 have any dispute that you signed all those documents?
9 A. No, ma'am.
10 Q. I don't have anything further, other than to
11 just remind you if you can check for your
12 AutoCheck.com report --
13 A. Okay.
14 Q. -- that you had run previously. I don't
15 know if you've given that to your attorney. You and
16 he can discuss that privately.
17 MR. WEST: If we have it and the texts you
18 referred to, we will definitely produce those. I just
19 want to reserve on the record my client's right to
20 review and sign the transcript under penalty of
21 perjury.
22 MS. SMITH: Can we also possibly get the
23 name of the insurance people that he spoke to at
24 State Farm that he referenced whose names he couldn't
25 remember?

Exhibit “8”



CERTIFIED PRE-OWNED VEHICLE DELIVERY CHECK SHEET

Customer Name Derrick Poole VIN 1C6RR6GT8DS558275
 Delivery Date Year 2013 Make RAM Model 1500
 Dealership Name Sahara Chrysler Jeep Dodge Ram Sales Consultant Travis Spruell

Pre-Delivery

To be completed and checked ☒ by Sales Consultant

- | | |
|---|--|
| <input checked="" type="checkbox"/> Vehicle is equipped as indicated in the contract of sale | <input checked="" type="checkbox"/> Preset radio and clock. |
| <input checked="" type="checkbox"/> Vehicle interior/exterior clean | <input checked="" type="checkbox"/> Full CarFax® Vehicle History Report provided to customer |
| <input checked="" type="checkbox"/> Delivery appointment verified (if applicable) | <input checked="" type="checkbox"/> Vehicle is ready for delivery |
| <input checked="" type="checkbox"/> Vehicle and customer paperwork prepared | <input checked="" type="checkbox"/> Activate SIRIUS® Satellite Radio |
| <input checked="" type="checkbox"/> 125-pt mechanical and appearance inspection has been completed, and checklist has been reviewed with, and provided to, the customer | |

Delivery

To be reviewed and checked ☒ by Sales Consultant with customer present.

Vehicle Interior, including:

- ☒ Gauges and instrumentations
- ☒ Radio and clock operation
- ☒ Climate control operation
- ☒ Applicable safety features
- ☒ Seat, seat belt and air bag operation

Vehicle Exterior, including:

- ☒ Inspect exterior
- ☒ Hood operation and engine service checkpoints
- ☒ Tire and jack operation

Warranty and Applicable Service Contracts and Accessories Disclosure

- ☒ FTC Buyer's Guide
- ☒ Certified Pre-Owned Vehicle Limited Warranty coverage and warranty information booklet
- ☒ Roadside assistance benefits
- ☒ Dealership has disclosed the sale of non-Chrysler service contracts and accessories on buyer's order or other required document.

General Information

- ☒ Owner's Manual
- ☒ Vehicle maintenance schedule
- ☒ Vehicle is equipped as agreed upon
- ☒ Dealer has made all disclosures and provided all materials required in the transaction state where the dealership is located
- ☒ Service and Parts Department introduction and business hours

☒ Dealership acknowledges the following services and/or equipment are not available at time of delivery but will be provided as follows:

Scheduled completion date and time _____ Sales Manager initials _____

Customer and/or dealer personnel general comments:

Customer Follow-Up and Contact Information

Customer's preferred contact phone number

Customer's preferred time of contact

Primary _____

Secondary _____

_____ a.m. _____ p.m.

Other means of contact (eMail address)

drpoole76@yahoo.com

Sales Consultant

Customer Acknowledgment

All of the items checked ☒ have been reviewed with the customer.

I acknowledge that all of the items checked ☒ have been reviewed with me. Dealer may provide this information to Chrysler for its use.

Sales Consultant/Date

Customer/Date

K. H. H. = 1 *5/26/14*

Eligibility/Certified Pre-Owned VEHICLE WAS CERTIFIED 2014/05/06 [YYYY/MM/DD]

VIN Last 8:*

Mileage:* [Not required for Unwind]

Price (USD):

Stock Number:

Vehicle Qualifies to be Certified:

Reject Reasons:

* - Required Field

[Clear](#)

[Check Eligibility/VHR Check](#)

[Certify](#)

[Unwind](#)

[Wholesale](#)



CERTIFIED PRE-OWNED VEHICLE DELIVERY CHECK SHEET

Customer Name Derrick Poole VIN 1C6RR6GT8DS558275
 Delivery Date Year 2013 Make RAM Model 1500
 Dealership Name Sahara Chrysler Jeep Dodge Ram Sales Consultant Travis Spruell

Pre-Delivery

To be completed and checked ☒ by Sales Consultant

- | | |
|---|--|
| <input checked="" type="checkbox"/> Vehicle is equipped as indicated in the contract of sale | <input checked="" type="checkbox"/> Preset radio and clock. |
| <input checked="" type="checkbox"/> Vehicle interior/exterior clean | <input checked="" type="checkbox"/> Full CarFax® Vehicle History Report provided to customer |
| <input checked="" type="checkbox"/> Delivery appointment verified (if applicable) | <input checked="" type="checkbox"/> Vehicle is ready for delivery |
| <input checked="" type="checkbox"/> Vehicle and customer paperwork prepared | <input checked="" type="checkbox"/> Activate SIRIUS® Satellite Radio |
| <input checked="" type="checkbox"/> 125-pt mechanical and appearance inspection has been completed, and checklist has been reviewed with, and provided to, the customer | |

Delivery

To be reviewed and checked ☒ by Sales Consultant with customer present.

Vehicle Interior, including:

- ☒ Gauges and instrumentations
- ☒ Radio and clock operation
- ☒ Climate control operation
- ☒ Applicable safety features
- ☒ Seat, seat belt and air bag operation

Vehicle Exterior, including:

- ☒ Inspect exterior
- ☒ Hood operation and engine service checkpoints
- ☒ Tire and jack operation

Warranty and Applicable Service Contracts and Accessories Disclosure

- ☒ FTC Buyer's Guide
- ☒ Certified Pre-Owned Vehicle Limited Warranty coverage and warranty information booklet
- ☒ Roadside assistance benefits
- ☒ Dealership has disclosed the sale of non-Chrysler service contracts and accessories on buyer's order or other required document.

General Information

- ☒ Owner's Manual
- ☒ Vehicle maintenance schedule
- ☒ Vehicle is equipped as agreed upon
- ☒ Dealer has made all disclosures and provided all materials required in the transaction state where the dealership is located
- ☒ Service and Parts Department introduction and business hours

☐ Dealership acknowledges the following services and/or equipment are not available at time of delivery but will be provided as follows:

Scheduled completion date and time _____ Sales Manager initials _____

Customer and/or dealer personnel general comments:

Customer Follow-Up and Contact Information

Customer's preferred contact phone number

Customer's preferred time of contact

Primary _____

Secondary _____

_____: ____ a.m. ____: ____ p.m.

Other means of contact (eMail address)

drpoole76@yahoo.com

Sales Consultant

Customer Acknowledgment

All of the items checked ☒ have been reviewed with the customer. I acknowledge that all of the items checked ☒ have been reviewed with me. Dealer may provide this information to Chrysler for its use.

https://www12.leadcrm.com/evc2/fresh/eLead-V45/eLead_track/reports/dealdesk/worksheet.aspx

5/26/14

Sales Consultant/Date

Customer/Date

Exhibit “9”

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\$49.99
An independent company established in 1986		
Vehicle Information: 2013 RAM RAM TRUCK 1500 SLT VIN: 1C6RR6GT8DS558275 CREW PICKUP 5.7L V8 SFI OHV 16V REAR WHEEL DRIVE <u>Standard Equipment Safety Options</u>		
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.

CARFAX 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	2) CARFAX Price Adjustment™	3) Adjusted Retail Value
\$ <input type="text" value="0"/> Enter retail book value here	-\$260 Below retail book 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.

CARFAX Ownership History	
The number of owners is estimated	1 Owner
Year purchased	2013
Type of owner	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

CARFAX guarantees the information in this section

Owner 1

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

Not all accidents / issues are reported to CARFAX

Owner 1

Total Loss

No total loss reported to CARFAX.

☒ No Issues
Reported

Structural Damage

No structural damage reported to CARFAX.

☒ No Issues
Reported

Airbag Deployment

No airbag deployment reported to CARFAX.

☒ No Issues
Reported

Odometer Check

No indication of an odometer rollback.

☒ No Issues
Indicated

Accident / Damage

Accident reported on 03/26/2014. Damage reported on 03/26/2014.

 Accident
Reported

Manufacturer Recall

Check with an authorized RAM dealer for any open recalls.

☒ No Recalls
Reported

Basic Warranty

Original warranty estimated to have 24 months or 29,284 miles remaining.

☒ Warranty
Active

Tell us what you know about this vehicle

CARFAX Detailed History

Owner 1		Date:	Mileage:	Source:	Comments:
Purchased	2013	11/27/2012	1	Martin Swanty	Vehicle offered for sale
Type	Personal			Chrysler	
Where	Nevada			Kingman, AZ	
Est. miles/yr	7,494/yr			928-753-3131	
Est. length	5/29/13 -			martinswanty@chrysler.com	
owned	4/1/14				
	(10 months)				
Low mileage! This owner drove		12/10/2012		Martin Swanty	Vehicle offered for sale
				Chrysler	

5/10/2014

CARFAX Vehicle History Report on 1C6RR6GT9D9556275

less than the
industry average
of 15,000 miles
per year.



Kingman, AZ
928-753-3131
martinsw antychrysler
.com

12/13/2012		Martin Swanty Chrysler Kingman, AZ 928-753-3131 martinsw antychrysler .com	Pre-delivery inspection completed Tire condition and pressure checked
04/16/2013	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 renewed First owner 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 towed
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-Owned Vehicle Certification includes: Up to 7-year/100,000-mile Powertrain 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
when you go to test drive this 2013 Ram Ram Truck 1500
SLT.

Tell us what 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.

http://www.carfaxonline.com/cfm/Display_Dealer_Report.cfm?partner=VAU_0&UID=C621422&vin=1C6RR6GT9D9556275

NVAUTO000081

3/8

CARFAX Glossary

Printed on 5/10/14

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  @CarfaxReports  CARFAX on Google+

CARFAX DEPENDS ON ITS SOURCES FOR THE ACCURACY AND RELIABILITY OF ITS INFORMATION. THEREFORE, NO RESPONSIBILITY IS ASSUMED BY CARFAX OR ITS AGENTS FOR ERRORS OR OMISSIONS IN THIS REPORT. CARFAX FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CARFAX®

© 2014 CARFAX, Inc., an R.L. Polk & Co. company. All rights reserved.

Covered by United States Patent Nos. 7,113,853; 7,778,841; 7,596,512; 8,600,823; 8,595,079; 8,606,646; 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.saharachryslerdodgejeep.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

5/10/2014

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 on 1C6RR6GT8DS558275

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 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

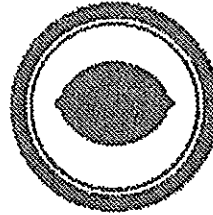
you find that any of these severe problems were reported by a
Department of Motor Vehicles and were not included in this report.



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 “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 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

APPEARANCES:

For the Plaintiffs:

GEORGE O. WEST, III, ESQ.

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

For the Defendants:

STEPHANIE J. SMITH, ESQ.

Moran Brandon Bendavid Moran
630 South 4th Street
Las Vegas, NV 89101

INDEX OF EXAMINATIONS

EXAMINATIONS	PAGE
BY MR. WEST	4
BY MS. SMITH	91
BY MR. WEST	93

INDEX OF EXHIBITS

(Exhibits attached as PDF bookmark.)

NO.	DESCRIPTION	PAGE
Exhibit 1.	Allstate Fire and Casualty Insurance Company Estimate of Record, NVAUTO0000017-24	47
Exhibit 2.	CarFax 5/10/14, Pages 1/8-4/8	47
Exhibit 3.	CarFax 5/10/14, Pages 5/8-8/8 NVAUTO0000083-86	47
Exhibit 4.	Certified Pre-Owned Vehicle Inspection Checklist, NVAUTO0000075-76	47
Exhibit 5.	Plaintiff's Seventh Supplement, 074-085	82

INFORMATION TO BE PROVIDED

None

1 your best and most accurate testimony here today.

2 As you sit here today, is there any
3 reason why you can't give your best and most
4 accurate testimony here today?

5 A. Not at all.

6 Q. No issues of medications or lack of
7 sleep or any other issues that might prevent you
8 from giving your best testimony here today?

9 A. No, sir.

10 Q. So far, you are doing very good in
11 audiblizing your answers. It is human nature for
12 us to communicate with nonverbal signs. And
13 while I might be able to interpret a nod of the
14 head in the affirmative in the up and down, the
15 reporter needs to hear everything that is heard.

16 A. Okay.

17 Q. It is perfectly acceptable for us when
18 we are speaking face to face, we can interpret
19 nonverbal body language. We also have a tendency
20 as human beings that when we are talking face to
21 face, we sometimes fall into the habit of saying
22 yeah or uh-huh or those types of things.
23 Nonverbal communications and yeah or uh-huh and
24 those type of responses don't translate well on
25 the record. So if I do hear you say yeah or

1 answer, et cetera, et cetera. You will have an
2 opportunity to review your transcript if you
3 would like to do so and sign under penalty of
4 perjury.

5 However, I must caution you that if you
6 reserve your right to review your testimony and
7 make changes to it, you are giving testimony here
8 today. So when you review your deposition
9 testimony, if you choose to make what we call a
10 material change to your answer, that could be
11 damaging or not reflect well on your credibility
12 or believability at trial. The theory is that if
13 you say one thing today and you make a totally
14 different answer later on, you are less
15 believable. And we are talking about material
16 changes such as changing a no answer to a yes,
17 changing your answers or modifying them to the
18 extent that it changes the entire nature of your
19 response. I am not talking about typos or
20 something like that. So just be aware. And
21 that's the reason why it is best for you to give
22 your best and most accurate testimony here today.

23 You are not nailed to that chair. If
24 you need a break to go to the restroom, cup of
25 coffee, drink of water, just to take a break, I

1 Q. What did that entail?

2 A. What comes with the certified
3 warranties and, you know, what a certified CPOV
4 is.

5 Q. What based on your vast experience does
6 a certified pre-owned vehicle mean?

7 A. Just that it has got -- it comes with
8 extras, put it that way. Like a 125-point
9 inspection, it has got better warranties with it,
10 5 years -- sorry, 7 years/100,000 mile powertrain
11 warranty, 3 year/36 -- this is wonderful. I
12 can't get that out. Either way. You get the
13 additional, what is it, 3 months/3,000 miles.

14 Q. I'm sorry. 3 months --

15 A. -- 3,000 miles along with those, you
16 know, car rental allowances.

17 Q. And are you instructed and trained to
18 point these other additional advantages out to
19 consumers within the community who might be
20 considering buying a certified pre-owned vehicle?

21 A. Yes.

22 Q. Yes?

23 A. Yes.

24 Q. Given your four years at Sahara
25 Chrysler and having been involved in the auto

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

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 --

Exhibit “1 1”

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Email : gowesq@cox.net
www.nevadasautofraudattorney.com
www.americasautofraudattorney.com
(702) 318-6570
(702) 664-0459 [fax]

Attorney for Plaintiffs
DERRICK POOLE

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

V

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

Defendants,

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

PLAINTIFF'S INITIAL EXPERT DESIGNATION

1 Plaintiff, pursuant to Rule 16.1 and the written stipulation of the parties
2 extending the initial and rebuttal disclosure deadlines, hereby makes his initial expert
3 disclosures as follows :

4 1. Attached as Exhibit "A" is Mr. Avillini's Vehicle Condition Report, and at
5 Exhibit "B" Mr. Avillini's Diminished Value Report. Mr. Avellini's hourly
6 rate for deposition and trial is \$ 350.00 per hour. He has billed \$ 1,350.00
currently for both reports.

7 2. Raymond Gongora
8 Address information known to Defendant
Technician for Defendant SAHARA CHRYSLER, JEEP DODGE

9 This witness has been a trained mechanic for approximately 30 years. He
10 will offer testimony about various matters, including but not limited to his
11 CPO inspection on the vehicle at issue, as well as on other CPO Dodge
12 vehicles he has inspected in the past, his training and experience on
13 undertaking CPO inspections on Dodge Vehicles, his filling out of CPO
14 reports, information he would like to know prior to conducting these
inspections if it is available, his opinion as to why he certified this vehicle
15 as a Dodge CPO vehicle, given his training and experience, and the CPO
standards in effect at the time, along with his observations, findings and
conclusions from his inspection, among other opinions.

16 Dated this 12th day of June, 2017
17
18

19 /s/ George O. West III
20 George O. West III
21 *Consumer Attorneys Against Auto Fraud*
Attorney for Plaintiff
22 **DERRICK POOLE**
23
24
25
26
27
28

EXHIBIT A



A CONSUMER PROTECTION COMPANY

**#1 IN THE DETECTION OF IMPROPER COLLISION AND MECHANICAL REPAIRS AND
THE LEADER IN THE EVALUATION OF DIMINISHED VALUE !**

VEHICLE CONDITION ASSESSMENT

Prepared For

Derrick Poole



Due to condition the vehicle illustrated in this
photograph may not be the subject vehicle

**2013 Dodge Ram 1500
Quad Cab Blue**

Nevada Office & **Mailing Address**
5258 S. Eastern Ave. Ste. 207
Las Vegas, NV 89119

Phone: 800 762-2671 • Fax: 310 241-0337
wreckcheckcarscan.com
rocco@wreckcheckcarscan.com

California Office
217 N. Irena St. Ste. A
Redondo Beach, CA 90277

REPORT EXHIBIT INDEX

<i>Exhibit</i>	<i>Report Description</i> The Items Listed Below Will Appear In Order In The Report.	<i># of Pgs</i>
1	Vehicle Condition Report	7
2	22 Photographs of the 110 Photograph Subject Vehicle	4
3	Allstate Fire & Casualty Ins. Estimate Dated March 31 2014 [Prior Collision]	6
4	WCCSC Paint-Structural Information	8
5	Poor Quality Collision Repairs Alters Timing Of Air Bag Deployment	3
6	Current Curriculum Vitae for Rocco J. Avellini.	8

VCR	Vehicle Condition Report.
OEM	Original Equipment Manufacturers.
DVA	Diminished value Assessment.
TSB	Technical Service Bulletins.
R&I	Remove & Install parts needed to complete subject repairs.
R&R	Remove & Replace parts needed to complete subject repairs.
S.U.M.	Set Up & Measurement of the frame/unibody to determine Sway, Sag, Mash and/or Diamond conditions.
PTR	Product Thickness Reading which measures the Mils of product such as bondo/body filler, corrosion protection, primers and top coat. The gauge measures from 0 – 40 mils of product and the gauge will read - - - - means the product exceeds 40 mils. Any reading above 4 – 6 Mils of product is evidence that repairs were completed to the body panel.
Sway	Uni – body/Frame condition occurs when the structure of a vehicle is moved to the right and/or left.
Sag	Uni – body/Frame condition occurs when the structure of a vehicle is moved up and/or down.
Mash	Uni – body/Frame condition occurs when the structure of a vehicle is moved forward and/or backward.
Diamond	Uni – body/Frame condition occurs when either the right or left side of the structure of the vehicle is moved forward or backward and the opposite side remains stationary.