

JEFFERY A. BENDAVID, ESQ.

Nevada Bar No. 6220

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IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK POOLE, an individual,

Appellant,

vs.

NEVADA AUTO DEALERSHIP
INVESTMENTS, COREPOINT
INSURANCE CO.,

Respondent.

Supreme Court Case No.: 74808

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

**RESPONDENTS, NEVADA AUTO DEALERSHIP INVESTMENTS LLC
AND COREPOINTE INSURANCE COMPANY'S APPENDIX**

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

12 DERRICK POOLE,

13 Plaintiff,

14 v.

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

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

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

Date: November 9, 2017
Time: 10:30 a.m.

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



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1 to its Motion for Summary Judgment against Plaintiff, DERRICK POOLE ("Poole" and/or
2 "Plaintiff"), an individual.

3 This Reply is made and based upon the Memorandum of Points and Authorities
4 submitted herewith, together with the papers and pleadings on file herein, exhibits attached
5 hereto, and oral arguments at the time of Hearing.
6

7 DATED this 3rd day of November, 2017

8 MORAN BRANDON BENDAVID MORAN

9
10 /s/ Jeffery A. Bendavid

11 **JEFFERY A. BENDAVID, ESQ.**

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION.

3 Plaintiff filed 89 pages of briefing in an attempt to obscure the very simple issues in
4 this litigation. By attempting to distract the Court into thinking that there are "material
5 issues of fact in dispute", Plaintiff reveals the blatant weakness and lack of actual authority
6 that requires the "disclosure" to which Plaintiff insists he was entitled. Plaintiff's theory
7 that Defendant nefariously concealed information from Plaintiff in order to deceive him and
8 perpetrate a fraud is absurd. The simple facts are that Plaintiff happily drove his car for
9 multiple years and thousands of miles. Plaintiff's "facts" regarding improper repairs or
10 some kind of "safety" issue are belied by the simple fact that Plaintiff did no repairs on the
11 subject Vehicle, and that Plaintiff continued to drive the Vehicle for approximately a year
12 after his "expert", Rocco, inspected it. Plaintiff attempts to create a material fact regarding
13 the details of the accident the Vehicle was in prior to his purchase, but the fact remains, any
14 stigma related to the accident is related to the fact that it had been in any accident, not
15 whether some small parts were replaced or repaired. Plaintiff cannot make something
16 material by generating disingenuous concerns or issues through his expert, when the
17 evidence does not support such findings, and when Plaintiff drove it for multiple years and
18 thousands of miles. Accordingly, Defendants are entitled to judgment as a matter of law, as
19 there are no material facts in dispute.

20 II. FACTS

21 Plaintiff attempts to generate additional material on which to rely by attaching an
22 affidavit from Rocco Avellini¹ and Plaintiff himself. *See Opposition.*² However, Mr.

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¹ Defendants have moved to strike the declaration of Rocco Avellini based on its untimeliness and irrelevance.

² Plaintiff filed another 27 page document of his facts, which Defendants are moving to strike. Defendants neither admit either the veracity, or material nature of Plaintiff's purported "facts" and objects the



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1 Avellini is a paid expert hired specifically by Plaintiff's counsel, and who serves primarily
2 as a Plaintiff's expert. Plaintiff is attempting, with his 89 pages of briefing, to create the
3 illusion of disputed "material" facts, however, Plaintiff's verbose briefing does not change
4 the actual true facts of this matter, which are simple, and undisputed.
5

6 It is undisputed that on May 8, 2014, the Vehicle underwent a detailed inspection by
7 a certified mechanic, Ray Gongora, to determine whether it could be a Certified Pre-Owned
8 ("CPO") Vehicle. *See Exhibit 4 to Motion for Summary Judgment.*

9 It is undisputed that the certified mechanic conducting the CPO inspection would
10 have had a CarFax, as Ray Gongora testified that he would look at the CarFax, prior or
11 contemporaneous to performing the inspection, as such here, the mechanic would have been
12 aware of a previous accident on the subject Vehicle. *Exhibit 1, Excerpts of Deposition of*
13 *Ray Gongora ("Gongora Depo."), 40:17-41:7.* Indeed, Plaintiff does not dispute that Ray
14 Gongora was made aware that the Vehicle had been in a previous accident. *See Response*
15 *filed by Plaintiff.* There is no dispute that the Vehicle passed the CPO 125-point inspection,
16 performed by Ray Gongora and accordingly was designated as a CPO vehicle in
17 Defendant's inventory. *See Id.* Plaintiff contends, through his "expert" that the Vehicle
18 should not have been sold as a CPO vehicle, and was otherwise improperly certified. *See*
19 *generally, Plaintiff's Separate Statement.* Defendant disputes these assertions. Again, it is
20 undisputed that Plaintiff purchased the car in May 2014, and signed the CarFax
21 acknowledging that the Vehicle had been in a previous accident. *See First Amended*
22 *Complaint.*
23
24
25

26 Crucially, it is undisputed that Defendant presented a CarFax to Plaintiff, dated May
27 10, 2014, (the "CarFax") pursuant to the CPO Delivery Check Sheet. *Exhibit 9 to MSJ.*
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mischaracterization of the testimony cited to of Travis Spruell, Noah Grant, and Joshua Grant. Defendants further object to the facts set forth by Plaintiff as being material.



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1 It is more importantly, undisputed that when Plaintiff purchased the subject Vehicle
2 he signed the CarFax, acknowledging it had been in a previous accident. *Id.*

3 It is undisputed that despite being informed of the accident on the Vehicle, Plaintiff
4 did not ask any questions regarding any specifics about accident. *See Exhibit 2, Excerpts of*
5 *Deposition of Derrick Poole ("Poole Depo."), 19:2-20:6.* Plaintiff, even after allegedly
6 being informed the accident was "minor" did not even bother to ask how the salesperson
7 knew such information or how any such information would have been obtained. *Id., 84:4-*
8 *13.*

9
10 Additionally, it is undisputed that Plaintiff drove the car for thousands of miles over
11 the course of approximately, three (3) years, which is directly relevant as Defendant clearly
12 did not cause Plaintiff to incur any damages. *See Response filed by Plaintiff.*

13
14 It is undisputed that Plaintiff has not personally experienced any safety issues with
15 his Vehicle. *Poole Depo., 39:7-24, 60:11-13.* Plaintiff is now attempting to generate a
16 "safety" concern regarding a "reconditioned" wheel that may have been on the Vehicle at
17 the time of the sale. *See Response filed by Plaintiff, see also, Opposition.* However, Plaintiff
18 drove the car for a year after his "expert" inspected the Vehicle with this alleged "safety"
19 issue, and was only purportedly made aware of it on August 13, 2017. *Poole Depo., 37:3-8,*
20 *see also Expert Report of Rocco Avellini.*

21
22 By Plaintiff's own "facts", his expert reviewed the Allstate collision estimate, and
23 conducted a subsequent inspection of the Vehicle. *See Expert Report of R. Avellini, and*
24 *Declaration of R. Avellini to Opposition, ¶10.³* As such, Plaintiff's expert then purportedly
25 inspected a safety issue that allegedly could have resulted in "serious injury or death" in
26 May 2016, yet, permitted Plaintiff to drive the Vehicle for another year, and indeed, did not
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28

³ Defendant is moving to strike this superfluous and declaration, however, is choosing to cite to Mr. Avellini's sworn declaratory testimony regarding the order in which he reviewed items.



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1 inform him of any "safety" issue until magically the day prior to Plaintiff's deposition. *Id.*
2 This fact alone is illustrative of Plaintiff's factually deficient claims, and his attempt to
3 create "material facts" to preclude summary judgment.

4 The undisputed facts are clear. Plaintiff purchased a Vehicle that he knew had been
5 in a previous accident where it sustained damage, and was towed. Defendant performed a
6 good faith inspection of the Vehicle, and certified it pursuant to its 125-point inspection
7 checklist, via its certified mechanic, Ray Gongora. Plaintiff, aside from his "expert's" own
8 self-serving testimony⁴, provides no evidence that the car was not suitable to be a CPO in
9 2014, or that the price Plaintiff paid for it did not take into account the previous accident.
10

11 **III. LEGAL ARGUMENT**

12 **A. Plaintiff Mischaracterizes the Arguments of Defendants as Defendants Do Not** 13 **Argue to Impose a Higher Burden of Proof on Plaintiff.**

14 Plaintiff expends significant effort in explaining that his claims are solely statutory
15 in nature by citing to *Betsinger v. D.R. Horton*, 232 P.3d 433 (2010). *See Opposition*, 6-10.
16 However, Defendants cited to cases regarding fraudulent conduct in order to illustrate the
17 lack of such conduct in the present circumstances, and the fact that Plaintiff still needs to
18 prove that fraudulent conduct actually occurred. Indeed, Plaintiff largely asserts his base
19 allegations that any statement whatsoever that does not fully disclose each and every facts is
20 somehow "fraudulent" and a "deceptive trade practice". *See generally, Opposition*. Plaintiff
21 references the decision in *Betsinger*, however, the *Betsinger* Court did not delve into an
22 analysis of what constituted a deceptive trade practice in the sale of consumer goods, but
23 instead instructed that a plaintiff need only meet a "preponderance of the evidence" standard
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28 ⁴ Plaintiff's "expert" is not qualified to make such a statement as he has never conducted a Certified Pre-
Owned inspection, did not perform one on the Vehicle, and did not inspect it for another two years after
Plaintiff drove the Vehicle. *See MSJ*. Also, Defendant has a pending Motion to Strike all of Rocco Avellini's
testimony, report, and opinions.



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1 in proving claims for deceptive trade practices. Defendants do not argue that Plaintiff had to
2 prove deceptive consumer practices by any other standard, only that Plaintiff must prove
3 punitive damages claims by a "clear and convincing" evidence standard. As such, Plaintiff
4 wastes this Court's time by explaining a standard which is not at issue. *See generally,*
5 *Opposition*. Plaintiff fails to meet any of the requisites for any fraudulent claim, statutory or
6 otherwise.
7

8 Indeed, as explained within Defendants' Motion for Summary Judgment, Plaintiff
9 failed to demonstrate with actual admissible evidence that Defendants engaged in any
10 statutory deceptive trade practice, in particular Plaintiff fails to demonstrate that Defendants
11 knowingly engaged in any conduct prohibited by NRS 598.0915 et seq. Plaintiff also fails to
12 show how Defendants' conduct caused him any damages, or that he relied upon those to his
13 detriment. *See Picus v. Wal-Mart*, 256 F.R.D. 651, 658 (D. Nev. 2009). Plaintiff fails to
14 evidence how he actually suffered damages by accepting and purchasing a Vehicle which he
15 knew had been in an accident. Plaintiff, as in his First Amended Complaint, is still trying to
16 concoct a story of some master scheme to defraud him by knowingly and maliciously hiding
17 facts which Defendants were somehow required to disclose, but Plaintiff cannot meet the
18 elements of these claims. Accordingly, Plaintiff's claims should be summarily dismissed as
19 a matter of law.
20
21

22 **B. This Court is the Appropriate Entity and it is Within its Discretion to**
23 **Determine the Materiality of Facts, as a matter of law.**

24 Plaintiff cites to various other jurisdictions to support his contention that only a jury
25 can decide whether the fact that some parts were repaired or replaced prior to Defendants'
26 possession of the subject Vehicle was material. *See Opposition, 11, fn. 5*. However, the
27 substantive law controls which factual disputes are material. *See Wood v. Safeway, 121*
28



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1 Nev. 724, 731 (2005). Notably, Plaintiff does not cite to applicable cases within Nevada,
2 because Nevada's standards are different than those of other states, and it has its own unique
3 consumer fraud/deceptive trade practices standards. *See generally, Opposition*. The cases
4 cited to by Plaintiff from a variety of other jurisdictions each with their own statutory acts
5 regarding consumer fraud and varying standards address extremely different facts. For
6 example, Plaintiff's first cited case dealt with significant unrepaired damage, and a
7 representation that the car purchased was in "perfect condition" with no mention of any
8 accident, and the plaintiffs in that case made their discovery within a day of purchasing the
9 vehicle. *See Totz v. Cont'l v. Du Page Acura*, 236 Ill. App. 3d 891, 899 (1992)⁵. Further,
10 again, the nonmoving party may not defeat a motion for summary judgment on the
11 "gossamer threads of whimsy, speculation, and conjecture." *See Wood*, 121 Nev. at 732.
12 Plaintiff's claims are premised largely on conjecture, that he would not have purchased the
13 Vehicle had more detailed information regarding parts being repaired or replaced had been
14 given to him. *See First Amended Complaint*. However, this is pure, self-serving conjecture,
15 not evidence of a disputed material fact.
16

17
18
19 Plaintiff cites to only two related Nevada cases that address the provenance of this
20 Court to assess what facts are material, *Powers v. United Services Augo. Ass'n.*, to
21 substantiate his contention that materiality is an objective standard to be submitted to a jury.
22 *See Opposition 10:19-11:7*. In *Powers I*, as Plaintiff refers to it, the Court states, "...the
23 issue whether there is a material 'variance between the representation and the existing
24 facts'" (internal citation omitted), 114 Nev. 690, 698 (1998), *Opposition, 10:19-21*.
25 However, there is no such determination to be made here, and thus the Court is the
26 appropriate "fact finder". Indeed, in *Powers II*, as Plaintiff identifies it, the Court is careful
27
28

⁵ Plaintiff's other cases cite to a host of significantly factually different cases, including proposed class actions, and cases with evidence of uniform fraudulent practices, which is not present here.



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1 to state that, "...every case must be considered on its own facts." 115 Nev. 38, 45, 979 P.2d
2 1286, 1289 (1999).

3 Plaintiff was told that the Vehicle was in an accident previously, and knew that the
4 Vehicle was not a brand new Vehicle, at the time he purchased it, and he did so anyhow. *See*
5 *Id.* Plaintiff attempts to frame the fact that some parts on the Vehicle had been repaired
6 and/or replaced as a "material" fact which should have been disclosed to Plaintiff, because
7 vehicles that have been in an accident have a "stigma." *See First Amended Complaint, and*
8 *generally, Opposition.* Plaintiff admits he knew of the previous accident, therefore, he
9 already accepted the "stigma" and/or any possible issues which may be associated with a
10 pre-owned vehicle, including price, value and other factors.
11

12
13 **C. The Only "Material Fact" about the Vehicle was that it was in an**
14 **Accident Prior to Plaintiff's Purchase, which Plaintiff admits was Disclosed to**
15 **Plaintiff Prior to Purchase.**

16 Plaintiff is trying to generate issues of "material" fact that simply do not exist, and
17 do not need to be in the provenance of a jury. Indeed the standard is that where, "reasonable
18 minds cannot differ" then summary judgment may be granted as a matter of law. Here, it is
19 disingenuous for Plaintiff to argue that had he known of each and every part that was
20 repaired or replaced that he would not have purchased the Vehicle. Plaintiff specifically
21 testified, "I'm not really a mechanic or a car guy. So I don't really know when it comes to
22 what I'm looking at as far as details and stuff." *Deposition of Derrick Poole, 13:14-18.* As
23 such, whether or not Mr. Poole was given information that a specific part being repaired or
24 replaced is irrelevant, and not material. In *Powers v. United Servs. Auto Ass'n*, which does
25 have markedly different facts and involves different obligations placed particularly upon an
26 insurance company, the Nevada Supreme Court still stated that, "[T]o be deemed a material
27 misrepresentation, it must be shown that an insurer's 'investigation would have proceeded
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1 differently had' the insured told the truth." (internal citation omitted), 114 Nev. 690, 699,
2 962 P.2d 596 (1998).

3 Similarly, by Plaintiff's own argument Plaintiff should demonstrate the materiality
4 of the additional information that his investigation or course of action would have been
5 different had he been informed specific parts had been repaired or replaced. *Id.* However,
6 aside from Plaintiff's self-serving testimony, there is no actual evidence that Plaintiff would
7 have proceeded any differently including otherwise not purchasing the Vehicle.
8

9 He was informed that the car had been in an accident, and signed a CarFax that
10 reflected damage had been reported, and that the Vehicle had been towed. *See Exhibit 9 to*
11 *MSJ-CarFax*. Plaintiff also testified that he was satisfied with the knowledge that the
12 Vehicle had undergone and passed the CPO inspection by a certified mechanic, which
13 Plaintiff admitted he is not. *Poole Depo., 42:1-10*. Plaintiff attempts to argue that being
14 informed the Vehicle had sustained \$4,088.70 in previous damage would have been
15 "material" or "important" to disclose, however, even Plaintiff's own expert testified as
16 follows:
17

18
19 Q: Based on your extensive experience in performing car repairs and as a repair
20 shop owner, if someone told you their vehicle had \$4,088.77 of repairs,
21 would that signify anything to you?

22 A. Not at all.

23 *Exhibit 3, Excerpts of Deposition of Rocco Avellini ("Avellini Depo."), 142:12-17.*

24 As such, it is clear that such a disclosure is immaterial, as it does not actually signify
25 anything, even to an "expert." After Plaintiff was informed that the Vehicle had been in a
26 wreck, he felt completely assuaged at The Vehicle was still a CPO pursuant to Defendant's
27 inspection, and Plaintiff continually drove the Vehicle without any actual problems for three
28 (3) years with the Vehicle. *See MSJ, UFs 16-18*. Plaintiff cannot prevail on his claims,



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1 based on the conjecture that someone may want to know some information.

2 Indeed, the citations that Plaintiff sets forth deal in hypotheticals and pure
3 speculation. *See Opposition, 12:22-13:16*. Defendant made the requisite disclosure that the
4 Vehicle was in an accident, Plaintiff, no matter how many times he claims, details of the
5 previous accident were "material," cannot seek to impose extra duties on Defendant with
6 zero legal basis. It is undisputed that the Vehicle had been in a previous accident and
7 undisputed that such a fact was disclosed to Plaintiff, in writing, via the CarFax.
8

9 Any reasonable person would surmise that if a vehicle was in an accident from
10 which it had to be towed, some of the parts would have been repaired and/or replaced. For
11 Plaintiff to now allege that he would have not purchased any vehicle from Defendant is
12 entirely disingenuous, particularly because he personally experienced no issues with it
13 (aside from being in his own accident), and he continued to drive the Vehicle for three years
14 and even after filing his Complaint in this matter, and after his "expert's" inspection.
15

16 **1. Defendant Disclosed All Material Facts Which it was Legally Required to**
17 **Disclose, and therefore Did Not Commit a Deceptive Trade Practice Pursuant**
18 **to NRS 598.0923(2) et seq.**

19 NRS 598.0923 (2) does not provide that any and all known facts about a transaction
20 must be affirmatively disclosed to a consumer. It provides only a "material fact in
21 connection with the sale" should be disclosed. *See NRS 598.0923(2)*. Despite Plaintiff's
22 self-serving testimony and "expert" testimony, there is no actual evidence that disclosure of
23 any or all of the repaired or replaced parts or the cost to repair and/or replace those parts was
24 "material" at the time of the sale. *See generally Opposition, and Exhibits thereto*. There is
25 no dispute that Plaintiff was specifically informed of the material fact that the Vehicle had
26 been in a previous accident. *See* Plaintiff claims that any information about a repaired or
27 replaced part would have been "material." *See generally, Opposition*. However, during
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1 deposition, Plaintiff testified he had no idea what the various parts even were or what it
2 meant that they were repaired and/or replaced. For instance, Plaintiff testified:

3 Q. Do you know what -- I believe you keep referring to a frame
4 bracket; is that right?

5 A. Yeah. I believe that's what I read on the estimate.

6 Q. Do you know what that is?

7 A. I have no idea what that is.

8 Q. Do you know what it does?

9 A. I have no idea what it does. *Poole Depo.*, 73:21-74:3.

10
11 Accordingly, the evidence points to the fact that Plaintiff would have proceeded
12 along the exact same course as he actually did, and still purchased the Vehicle after
13 receiving "the information" that the Vehicle had been put through the CPO process. The
14 information contained within the Allstate report could not have been material to Plaintiff
15 because he did not even know what it meant, or what specific parts were used for or did. In
16 truth, Plaintiff would have utilized the same information, the CPO inspection, that was
17 provided to him when he was originally informed that the Vehicle had been in an accident.

18
19 Additionally, Plaintiff also neglects to consider is the fact that the repairs were
20 performed not by Defendant, but by an independent third-party automotive repair shop, and
21 authorized by an insurance company. *See MSJ, Exhibit 3- Allstate documents.* As such,
22 Plaintiff's claims that repairs were improperly performed has even less credibility. Here,
23 Defendant did not knowingly conceal any "material" information, nor did it fail to disclose
24 any "material" information, because in this set of circumstances, the details of the accident
25 were not material, and the condition of the Vehicle at the time of purchase was not
26 otherwise misrepresented.
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1 Only the omission of a "material fact" which may constitute a false representation.
2 *See Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (2007). Plaintiffs have not actually
3 provided evidence or legal authority which declares the details of a previously repaired
4 automotive accident are "material" to the purchase of a vehicle when it has been disclosed
5 that there was an accident, and that the vehicle sustained damage. Plaintiff cites to cases
6 regarding "common law" fraud and disclosure, however, in one of them the court recognizes
7 that there was a special relationship beyond that of buyer and seller, and the other, case
8 included facts wherein, the person making representations had no knowledge or actual basis
9 on which to base some of her representations. *See Opposition, fn. 9*. Defendant did not
10 notice defects, safety issues, or other issues which caused it concern, prior to, during or after
11 the sale of the Vehicle. *See generally, MSJ, UFs*.

14 The nature and extent of the accident previously sustained by the Vehicle is not
15 material, because the Vehicle had been fully repaired prior to Defendant's acquisition of it,
16 and then was put through a comprehensive multi-point inspection. *See MSJ, UFs 4-7*. It is
17 purely speculative that Plaintiff would not have purchased the Vehicle if he had obtained
18 any other additional information about specific parts that had been replaced/repaired on the
19 Vehicle, or the amount of money which was spent on repairs or replacements. Plaintiff
20 purchased the car knowing it had sustained damage from a previous accident. *See MSJ, UFs*
21 *10-13*.

23 Defendant fulfilled their affirmative duty to disclose that the Vehicle had been in an
24 accident and had sustained previous damage, Defendant did not otherwise perceive or
25 discovery any latent defects or other problems for which it may have had an additional duty
26 of disclosure. *See MSJ*. Therefore, Defendant did not violate NRS 598.023(2). Plaintiff's
27 claim should be summarily dismissed, as a matter of law.
28



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1 **2. Defendant Did Not Make Any False Oral or Written Misrepresentations**
2 **that Constitute Any Violation of 16 C.F.R. § 455 (A)(1) or of NRS**
3 **598.023(3).**

4 Plaintiff for the first time asserts that Defendant made an oral misrepresentation that
5 the previous accident on the Vehicle was "minor" and that it otherwise made a written
6 misrepresentation regarding the condition of the Vehicle. See Opposition, 17:17-19:17. The
7 evidence is clear, the Allstate estimate and the subsequent repair and inspection of the
8 Vehicle, paired with its performance as a vehicle that was in good working condition (save
9 for Plaintiff's own accident) conclusively demonstrates that the previous accident was
10 "minor". There was no indication either from the Allstate documents or the subsequent
11 inspection that the Vehicle was considered a total loss, or that it had sustained frame
12 damage. *See Exhibit 3 to MSJ.* Indeed, the CarFax did not indicate any significant or
13 "major" damage. *See Exhibit 9 to MSJ.* Therefore, there was no oral misrepresentation.

14 Further, Ray Gongora testified that he only would notate on the CPO checklist if he
15 discovered an improper or subpar repair. *Gongora Depo., 38:18-39:2.* As such, Mr.
16 Gongora did not find an improper or subpar repair, and accordingly did not mark any down
17 on the CPO checklist. *Id.* There is no evidence that Defendant failed to perform an
18 inspection of the Vehicle, and no actual evidence that there was any policy and practice to
19 hide information regarding previous accidents. *See generally, Opposition.* Thus, it is
20 unclear how any affirmative written misrepresentation was made. Any reasonable consumer
21 who was informed that a vehicle they purchased was in an accident and sustained damages
22 would affirmatively know that some part(s) would have been repaired and/or replaced.
23 Perhaps if Defendant had specifically notated that all parts were original, or that the vehicle
24 had not had any repairs done, they could have made an affirmative misrepresentation,
25 however, no such facts exist.



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1 Plaintiff keeps reiterating that his expert purportedly saw issues two years after he
2 had purchased and driven the Vehicle, however, the only certified mechanic that inspected
3 the Vehicle at the time of the sale was Ray Gongora. *See Opposition. Plaintiff, or his expert,*
4 never performed their own CPO inspection, and in fact Plaintiff's expert did not actually
5 take measurements of the Vehicle to compare with all of the Chrysler standards listed on the
6 CPO checklist. *Avellini Depo., 104:7-11, 202:10:12.* In fact, Plaintiff's expert has never
7 performed any CPO inspection for any dealership. *Avellini Depo., 21:23-25.* Thus, there is
8 no evidence that Defendant made any misrepresentations about the condition of the Vehicle,
9 mechanical or otherwise. Further, there is no evidence that Defendant "knowingly" made
10 any misrepresentations of any kind regarding the vehicle. As such, Defendant did not
11 engage in any deceptive trade practices pursuant to NRS 598.0923(c) or any other federal
12 regulation relating to the sale of goods.

15 **3. There are No Disputed Issues of Material Fact about Representations as**
16 **to the Source, Sponsorship, Approval or Certification of Goods for Sale**
17 **therefore Defendant did not violate NRS 598.0915(2).**

18 Plaintiff asserts that Defendant's advertisement states "only the finest late model
19 vehicles get certified" and because the Vehicle had previously sustained damage which had
20 been repaired, it could not possibly be one of the "finest late model vehicles." *See*
21 *Opposition, 19:26-20:8.* Firstly, an advertising phrase, such as "finest late model vehicles"
22 is non-actionable puffery. *See generally, Henderson v. Gruma Corp., 2011 U.S. Dist.*
23 *LEXIS 41077, see also, Summit Tech., Inc. v. High-Line Medical Instruments, Co., 933 F.*
24 *Supp. 918, 931 (C.D. Cal 1996) (finding a statement that is "incapable of objective*
25 *verification" cannot be expected to induce reasonable consumer reliance).* Here, there is no
26 objective verification of the term "finest." The advertisement does not say that each and
27 every certified vehicle will be free from accidents or previous damage of any kind. And,
28



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1 indeed, a used car is very plainly not a new car and not subject to the same expectations that
2 any consumer may have for a new car. As to the extent that, such a phrase imparts fact by
3 stating "late model vehicles", there is no dispute that Plaintiff purchased a late model (at the
4 time) vehicle, with fewer than 7,000 miles, that had undergone Defendant's CPO process
5 and had been certified accordingly.
6

7 Plaintiff argues that Joshua Grant the "director of used car sales...could have easily
8 avoided selecting a vehicle for CPO certification that he knew had an known accident
9 history." (emphasis omitted). *Opposition*, 20:20-23. Again, there was no assertion that any
10 CPO late model vehicle would be pristine, or have had no repairs or accidents. Plaintiff was
11 informed at the time of purchase that his "fine late model vehicle" had in fact, been in an
12 accident. *See Exhibit 9 to MSJ*. Furthermore, Mr. Grant did not "select the vehicle" as a
13 CPO vehicle he submitted it for an inspection to determine whether it could be a CPO, and
14 performed all requisite steps to do so. *See MSJ*. Accordingly, based on the inspection by Mr.
15 Grant of the Allstate records, and the subsequent physical inspection by Ray Gongora, the
16 mechanic that performed the CPO inspection and reviewed the CarFax, the Vehicle was
17 then determined, in good faith, to be eligible as a CPO Vehicle. Plaintiff has provided no
18 actual evidence that these steps were not taken, or that the Vehicle was otherwise
19 uncertifiable for any other reason at the time of the sale in 2014.
20
21

22 Plaintiff is attempting to put forth a red herring, as Defendant did concede that
23 informing a consumer that a vehicle had been in a previous accident would be important for
24 a variety of reasons. However, Plaintiff is attempting to make specific details about precise
25 parts, which Plaintiff admittedly has no knowledge of, some type of material issue. Indeed,
26 Plaintiff's own First Amended Complaint, which was filed after Plaintiff had taken
27 depositions and discovery in this matter still provided no specific facts that would
28



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1 demonstrate Defendant had engaged in deceptive trade practices.

2 Although not within his initial Complaint, or First Amended Complaint, and not
3 specifically referenced as a safety issue in Plaintiff's expert report, Plaintiff is now fixated
4 on an alleged "safety" issue with a possible "reconditioned" wheel. *See Opposition, 21:2-*
5 *22:15.* Plaintiff hinges this on a "position statement" regarding reconditioned wheels found
6 on the internet. *Id.* However, the document on which Plaintiff relies is a position statement,
7 not an actual requirement and it specifically states a reconditioned wheel is "not
8 recommended" not that it is impermissible for another body shop to use or that the presence
9 of such a wheel bars certification as a CPO vehicle. *See Exhibit 8 to Plaintiff's Opposition.*
10 It is not Defendant that performed any of the repairs on the Vehicle. Further, if the Court
11 were to rely upon this assertion then Plaintiff is alleging that both Allstate insurance
12 company and Universal Motorcars authorized and performed repairs which presented an
13 imminent safety threat or hazard. Ironically, even Plaintiff's own "expert" admitted he
14 would put "reconditioned" wheels on to vehicles that he repaired. *Avellini Depo., 213:21-*
15 *14:4.* Plaintiff is attempting to generate issues of material fact, when there are none.

16 Plaintiff has yet to produce any conclusive admissible evidence that the Vehicle had
17 been in a condition that precluded it from being properly certified as a CPO. Indeed,
18 Plaintiff's own expert said he did not conduct any tests on the allegedly "unsafe" wheel, he
19 did not even remove the wheel to examine it, additionally, he never put it on a frame rack or
20 took any measurements to determine whether there were actually frame issues in 2016 or
21 whether distances he observed were otherwise within acceptable manufacturing tolerances.
22 *Avellini Depo., 93:17-25, 202:10-12, 17-23.* Defendant did not make any misrepresentations
23 about the Approval or Certification of the Vehicle and as such, did not engage in a deceptive
24 trade practice. As such, Defendant is entitled to a judgment as a matter of law as to
25
26
27
28



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1 Plaintiff's claim that Defendant violated NRS § 598.0915(2).

2 **4. Plaintiff Fails to Specifically Address How Defendant Engaged in Violations**
3 **of 598.0915 (7), or How Defendant Violated NRS 598.0915(15).**

4 Plaintiff's First Amended Complaint contends that Defendant somehow engaged in
5 statutory consumer fraud/deceptive trade practices pursuant to NRS §41.600(2)(e) and NRS
6 598.0915(7) by allegedly knowingly representing falsely that the Vehicle for sale to Plaintiff
7 was of a particular standard, quality or grade, style or model. See First Amended Complaint
8 at 13. Defendant informed Plaintiff that he was purchasing a used vehicle that had
9 experienced an accident in which damage was reported and from which it was towed. *See*
10 *Exhibit 9 to MSJ*. This is exactly the vehicle that Plaintiff signed for, purchased, and drove
11 for three years. *See generally MSJ*. Plaintiff's First Amended Complaint actually does not
12 identify the allegedly false representation knowingly made to Plaintiff by Defendant that
13 constitutes a deceptive trade practice under NRS 598.0915(7). *See Id. at 10-12*.

14
15
16 Regardless, no evidence exists in this matter that establishes that the standard,
17 quality, or grade of the Vehicle was anything other than CPO at the time Plaintiff purchased
18 the Vehicle from Defendant. *Cf. supra*. Plaintiff does not allege and no evidence exists that
19 Defendant did not perform the required 125-point inspection of the Vehicle before certifying
20 the Vehicle as a CPO. Plaintiff does not allege and no evidence exists that demonstrates the
21 Vehicle failed its 125-point inspection and Defendant certified the Vehicle as CPO
22 regardless of this failure. *See Id.*

23
24 The only admissible evidence that exists demonstrates that the Vehicle was
25 inspected and accordingly certified as a CPO vehicle at the time Plaintiff purchased it. *See*
26 *infra*. Defendant's representative, Josh Grant, testified that he thoroughly reviewed all
27 information he received to determine whether the Vehicle was suitable to be considered as a
28



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1 CPO before it was sold to Plaintiff. *See MSJ UF 2*. Based upon his inspection, mechanic
2 Ray Gongora, signed a CPO inspection checklist, certifying the Vehicle as a CPO. *Id.*,
3 *MSJ- Exhibit 5, 38:18-39:2*. Defendant could not, and did not knowingly make a false
4 representation about the certification of the Vehicle, or otherwise falsely certified it, prior to
5 it being sold to Plaintiff. Defendant had a sufficient basis for making the representation that
6 the Vehicle was suitable for CPO. *See supra. Blanchard*. Accordingly, Defendant had a
7 reasonable basis for representing that the Vehicle met CPO standards.

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

15 Plaintiff thoroughly fails to identify any misrepresentations that would fall into his
16 allegations that Defendant violated NRS 598.0915(15), which is the catchall for any other
17 misrepresentations which were not necessarily encompassed by the other specified
18 misrepresentations of NRS 598. Clearly by neglecting this portion of the statute within his
19 Opposition, Plaintiff is conceding any allegations made by Plaintiff regarding purported
20 misrepresentations by Defendant are encompassed wholly in the other specifically defined
21 "deceptive trade practice" definitions in the other sections of NRS 598.0915 as alleged in
22 the First Amended Complaint. *Id.* Therefore, Plaintiff does not have a claim that Defendant
23 engaged in "deceptive trade practice" pursuant to 598.015(15).

26 **D. Plaintiff's Cause of Action for Rescission Fails as a Matter of Law, Because He**
27 **Fails to Meet the Elements of that Claim, and Fails to Establish Any Disputed**
28 **Material Facts that Preclude Summary Judgment on this Claim.**

Plaintiff entirely ignores the main case cited by Plaintiff, of *Scaffidi v. Nissan*, which



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1 similarly to Plaintiff's claims also alleged a claim under the NDTPA, and one for Deceit.
2 Plaintiff is not entitled to Rescission because Defendant did not engage in any "deceptive
3 trade practices" therefore, he is not permitted a return of all of his payments. "Rescission is
4 an equitable remedy which totally abrogates a contract and which seeks to place the parties
5 in the position they occupied prior to executing the contract." *Scaffidi v. United Nissan*, 425
6 F. Supp. 2d 1172, 1183 (2005) citing *Bergstrom v. Estate of DeVoe*, 109 Nev. 575, 854 P.2d
7 860, 861 (Nev. 1993). Where a contract between two parties has been partially performed,
8 and one party does not fully perform, the other has a choice of remedies. *Id.* Here, Plaintiff
9 and Defendant cannot be put in the same position they occupied prior to executing the
10 contract. Furthermore, as in *Scaffidi*, "[T]here is no evidence Defendants made a false
11 representation...with the intention to induce" Plaintiff to purchase a "defective car." See
12 *Scaffidi, supra*. There is no evidence that Defendants knew or even should have known that
13 there were defects in the Vehicle, or that there were any problems which should have been
14 disclosed to Plaintiff, aside from the simple fact that the Vehicle had been in an accident.
15 See *Opposition and Exhibits*. Additional support for this fact is that the Vehicle had no
16 actual adverse issues, did not require repairs, and Plaintiff made no warranty claims during
17 the three years he drove it. See *MSJ-UFs 16-18*.

21 "The law is clear that damages and restitution are alternative remedies and an
22 election to pursue one is a bar to invoking the other in a suit for breach of contract. *Mullinix*
23 *v. Morse*, 81 Nev. 451, 454, 406 P.2d 298, 300 (1965). Plaintiff must, "rescind or affirm the
24 contract, but he cannot do both. If he would rescind it, he must immediately return whatever
25 of value he has received under it, and then he may defend against an action for specific
26 performance . . . and he may recover back whatever he has paid..." *Scaffidi v. United*
27 *Nissan*, 425 F. Supp. 2d 1172, 1183 (2005)(internal citation omitted)(emphasis added).
28



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1 Here, despite any "notice" of rescission per the Complaint, Plaintiff continued to utilize the
2 Vehicle for three years and put thousands of miles on the Vehicle, and got into an accident.
3 *UFs 23-25.*

4 Plaintiff is not entitled to Rescission, because the parties can never be put back into
5 their original position. *See generally, Id. In Scaffidi*, the Court found that summary
6 judgment was appropriate for that defendant dealership because the plaintiff did not provide
7 evidence that the defendant failed to perform, and the vehicle at issue in that case was
8 totaled. *Id.* Furthermore, there are no triable issues of material fact regarding Plaintiff's
9 entry into the contract, as there was no fraud in the inducement, and Plaintiff has not
10 adequately plead or introduced evidence of either. Plaintiff entered into the contract
11 knowing that the Vehicle had been in an accident. There is no evidence that the introduction
12 of additional information regarding specific parts or monetary amounts spent on repair in an
13 insurance estimate would have put Plaintiff on any other course.

14
15
16 Summary judgment is appropriate, because Plaintiff has not produced any
17 admissible evidence that Defendant actually engaged in any "deceptive trade practice" and
18 the Vehicle has had an additional accident, repair work, and three additional years of use. As
19 such, Plaintiff has failed to meet the requisites for a claim for rescission (sounding in either
20 tort or contract), and as there are no material facts in dispute as to this claim, summary
21 judgment for Defendant is appropriate, as a matter of law.

22
23 **E. Plaintiff Fails to Satisfy the Requisites of Equitable Estoppel, therefore his**
24 **Claim Fails as a Matter of Law.**

25 As Plaintiff acknowledges, "equitable estoppel operates to prevent a party from
26 asserting legal rights that, in equity and good conscience, they should not be allowed to
27 assert because of their conduct." *Nevada State Bank v. Jamison Partnership*, 106 Nev. 792,
28



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1 799, 801 P.2d 1377, 1382 (1990). The elements of estoppel are as follows:

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

8 *NGA #2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1160 (1997)(internal citation
9 omitted). There are no material facts in dispute regarding Defendant's actual conduct, with
10 respect to estoppel. Defendant admitted that it had no recollection of whether it disclosed
11 details regarding which specific parts may have been repaired or replaced on the Vehicle to
12 the mechanic who performed the inspection or to the Plaintiff. However, all parties agree
13 that Defendant did affirmatively disclose to both the inspecting mechanic and the Plaintiff,
14 that the Vehicle had been in a wreck, from which it was towed, and that it had sustained
15 damage. *See Exhibit 9 to MSJ, see also Plaintiff's Response.*

16 Regardless of Plaintiff's self-serving allegations about whether the details of
17 specific parts were "material" to his decision to purchase the Vehicle, he has still failed to
18 provide evidence that Defendant conducted itself in a way that precludes it from asserting its
19 all of its legal rights and defenses. *See generally FAC.* Plaintiff was informed that the
20 Vehicle was in a previous accident and made no investigation into the nature and extent of
21 the accident at the time of purchase. *See Exhibit 7 to MSJ.* Josh Grant testified to reviewing
22 the Allstate documents and not seeing anything that would preclude the Vehicle from being
23 submitted for a CPO inspection. *See MSJ- UF 3.* Accordingly, there is no evidence that
24 Defendant intended to fraudulently, either by affirmative representation or silence, induce
25 Plaintiff to act in a way that would be detrimental to him. Again, there is no evidence of
26 intentional and knowing misconduct.
27
28



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1 Plaintiff still has produced no evidence, aside from his own self-serving testimony
2 that he relied on Defendant's representations to his "detriment." *See Opposition and*
3 *Exhibits thereto*. However, Plaintiff continuously drove his car for 3 years without any
4 incident or repair attributable to any of Defendant's conduct affirmative or otherwise.

5 Accordingly, summary judgment is appropriate with respect to this claim.
6

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

10 Plaintiff's only claim of damages for his unjust enrichment/restitution is the return of
11 his payments on the Vehicle. However, Plaintiff continuously neglects to take into account
12 that he has been utilizing the Vehicle for over 3 years, and thousands of miles, since he
13 purchased it. As such, there is no equitable relief he is entitled to recover. He already
14 received the benefit of the bargain.

15 Plaintiff's First Amended Complaint alleges both a statutory and common law claim
16 for Restitution and Unjust Enrichment and as discussed in Defendants' MSJ fails to meet the
17 basic requisites for a claim for unjust enrichment and thus it fails as a matter of law.
18 Regardless of Plaintiff's argument that he is seeking the amount Defendants have been
19 "unjustly" enriched, such relief still must be equitable. "[U]njust enrichment occurs
20 whenever a person has and retains a benefit which in equity and good conscience belongs to
21 another." *In re Amaro Derivative Litig.*, 252 P.3d 681 (Nev. 2011)(internal citation omitted).
22

23 Here, Plaintiff paid monthly payments on the Vehicle, which he used and/or had the
24 ability to use, from the time of his purchase through the time of filing his Complaint, and
25 past that date. *See generally, FAC, Exhibit 7 to MSJ, 20:24-21:3*. Plaintiff neither ceased
26 using the Vehicle (aside from the collision he was in), nor sold it or attempted to sell it. *Id.*,
27 *Exhibit 7, 83:8-21*. Plaintiff's claim for unjust enrichment fails, on its face, because he has a
28



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1 full and adequate remedy at law, which would include his damages, which are the same as
2 what he is claiming would be the “unjustly” retained amount by Defendants. Plaintiff had a
3 purchase agreement for the Vehicle with Defendant, and Plaintiff obtained and utilized the
4 Vehicle for two (2) years prior to filing his Complaint and continued to use the Vehicle after
5 he filed his Complaint for another year. *See MSJ, UFs 22-24.*

6
7 Plaintiff was not injured by the Vehicle, and did not sustain other “damages” aside
8 from what he paid for the Vehicle that he has been using actively for 3 years. As such,
9 Defendant has not been unjustly enriched, as it has only been paid for Plaintiff’s usage and
10 ownership for the car to-date, and is not inequitably retaining any “benefit” that belongs to
11 Plaintiff. There is no evidence that Defendant did not take into account the Vehicle’s history
12 prior to pricing the Vehicle for sale, and pursuant to the CPO certification. *See Opposition.*
13 And, Plaintiff’s “expert” opined the untenable opinion that no matter what price was
14 assigned to the Vehicle on the day Mr. Poole purchased it, it was “inherently worth \$8,000
15 less that day.” *Avellini Depo. 182:18-22.* As such, Plaintiff, in essence arbitrarily assigned a
16 value, “no matter what he paid for the Vehicle”, for his damages. Plaintiff did not actually
17 “suffer” these damages nor were they imposed on him. It is contrary to equitable relief to
18 attempt to compensate Plaintiff on that basis for more than he actually can prove as
19 damages.
20
21

22 Nevada still maintains the long-standing general rule that a plaintiff may not recover
23 equitable remedies where a plaintiff has a full and adequate remedy at law. *See State v.*
24 *Second Judicial Dist. Court in & for Washoe County*, 49 Nev. 145, 159, 241 P. 317, 322
25 (1925). Since Plaintiff has an express agreement with Defendant regarding the purchase of
26 the Vehicle, his claims in equity fail, as a matter of law. *See MSJ, UF 8.* Therefore, entry of
27 summary judgment is appropriate for Defendant.
28



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1 **G. Plaintiff's Claim for Declaratory Judgment is Duplicative, Thus**
2 **Summary Judgment is Appropriate.**

3 Plaintiff alleges that he entered into the RISC contract with Defendant and Wells
4 Fargo, and further alleges that he is entitled to Rescission and/or Restitution because the
5 RISC is void ab initio or voidable, due to "fraud". Defendant maintains that the RISC is
6 valid and binding contract, from which Plaintiff benefitted and abided by, and that Plaintiff
7 accepted and utilized the full value for which he agreed, including up until the present.
8

9 Here, the "justifiable controversy" stems from Plaintiff's First Cause of Action for
10 Fraud/Deceptive Trade Practices only, the actual RISC itself and the Parties' respective
11 positions are not what is actually at issue. Plaintiff's claim for Declaratory Judgment
12 therefore completely encompasses claims and defenses of both, Plaintiff and Defendant,
13 which would be resolvable ultimately at the time of trial (or pursuant to summary
14 judgment). *See FAC*. Plaintiff has already alleged a claim for Rescission, and thus his claim
15 for declaratory judgment claim is redundant and rendered moot by adjudication of the main
16 action. *See FAC*. The main premise of Declaratory Relief cause of action is solely related to
17 the other claims, upon which the voiding of the RISC is dependent. As such, a determination
18 on the RISC is inappropriate at this juncture and summary judgment is properly entered in
19 favor of Defendant.
20
21

22 **H. Plaintiff is Not Entitled to Punitive Damages, as a Matter of Law.**

23 Plaintiff cannot prevail on his punitive damages claim under Nevada law, pursuant to
24 the undisputed material facts, and it must be summarily dismissed. Unlike the standard for
25 some of Plaintiff's other supposed claims, in order to prevail on a claim for punitive
26 damages, a plaintiff must prove "by clear and convincing evidence" the defendant "has been
27 guilty of oppression, fraud or malice, express or implied." *Nev. Rev. Stat.* 42.005(1). To
28



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1 reiterate, "a plaintiff is never entitled to punitive damages as a matter of right." *Dillard*
2 *Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887 (1999). Nevada
3 corporations cannot be held liable for punitive damages, save for specific circumstances
4 with a high burden of proof. *See N.R.S. 42.007*. The employer is not liable for the exemplary
5 or punitive damages unless:
6

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

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

12 (c) The employer is personally guilty of oppression, fraud or malice,
13 express or implied.
14

15 If the employer is a corporation, the employer is not liable for exemplary or
16 punitive damages unless the elements of paragraph (a), (b) or (c) are met by an
17 officer, director or managing agent of the corporation who was expressly
18 authorized to direct or ratify the employee's conduct on behalf of the
19 corporation.
20

21 *See also Countrywide Homes Loans, Inc. v. Thitchener*, 124 Nev. 725, 747, 192 P.3d 243,
22 257-258. Notably in Plaintiff's Opposition is the first time he tries to impute "personal"
23 allegations against Joshua Grant. Further, NRS 42.001 defines, and provides clear guidance
24 in defining the conduct that meets the level of egregiousness requisite to impose punitive
25 damages. Specifically,
26

- 27 1. "Conscious disregard" means the knowledge of the probable harmful
28 consequences of a wrongful act and a willful and deliberate failure to act
to avoid those consequences.
2. "Fraud" means an intentional misrepresentation, deception or concealment
of a material fact known to the person with the intent to deprive
another person of his or her rights or property or to otherwise injure
another person.
3. "Malice, express or implied" means conduct which is intended to
injure a person or despicable conduct which is engaged in with a
conscious disregard of the rights or safety of others.
4. "Oppression" means despicable conduct that subjects a person to cruel
and unjust hardship with conscious disregard of the rights of the
person. *NRS 42.001*.



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1 The Supreme Court of Nevada has clarified recklessness or even gross negligence is
2 insufficient to impose punitive damages, and there must be more than a "theoretical" risk of
3 harm to a particular person. *See Thitchener*, 192 P.3d at 255. Plaintiff has plainly failed to
4 plead allegations to impose punitive damages on Defendant as a company, or to provide any
5 evidence that imposes any personal liability on Joshua Grant. *See generally, FAC*. Plaintiff
6 has not provided evidence of any of the categories delineated in 42.007(a)-(c). There was no
7 unfitness by any employee alleged. Plaintiff does not allege that the employer "expressly
8 authorized or ratified" any legally wrongful act. Plaintiff does not provide any actual
9 admissible evidence that Defendant, via Joshua Grant, engaged in any "deceptive trade
10 practice", or that there was some underlying scheme to otherwise misrepresent information
11 or defraud persons by following the CPO guidelines. Therefore there is no evidence that
12 demonstrates any of the requisite conduct to impose punitive damages on the Defendant.

15 Plaintiff's testimony and "evidence" is purely speculative, and unsubstantiated
16 testimony that he would not had purchased the Vehicle if he had been provided more
17 information years after purchasing it, is merely speculation and conjecture, which is
18 insufficient to defeat summary judgment. *See Wood*, 121 Nev. at 732. Any testimony by his
19 expert based on an inspection two years after Plaintiff drove it, is equally conjecture, as he
20 provided no actual measurements or comparisons, or other proof regarding any frame
21 damage nor is he otherwise qualified to opine on whether the Vehicle should have qualified
22 as a CPO vehicle. *See generally, MSJ, Exhibit 11*. There is no evidence that Defendant itself
23 is guilty of conduct meriting punitive damages, as by all accounts, Defendant abided by
24 CPO standards of submitting the Vehicle for inspection to its qualified mechanic, and then
25 certifying the Vehicle which was reasonably based on that inspection. *See MSJ, UFs 4-7*.

28 Plaintiff is now attempting to argue that Joshua Grant was the implementer and



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1 creator of policies and practices that are somehow per se representative of Fraud and/or
2 implied malice. However, aside from Plaintiff's lacking First Amended Complaint, Plaintiff
3 fails to provide any actual evidence of conduct by Joshua Grant that meets the requisites for
4 an award of punitive damages. Plaintiff highlights "concealment of a material fact" and
5 tries to de-emphasize that such concealment must occur with the "intent to deprive another
6 person of his or her rights or proper or to otherwise injure a person." *See Opposition 36:11-*
7 *13; see also, NRS 41.001(2).*

9 Here, Plaintiff has provided no evidence of intent by Joshua Grant to deprive
10 anyone of their rights or to otherwise injure someone, in particular, not Plaintiff. *See*
11 *generally, Opposition.* Indeed, Plaintiff continuously neglects to account for the extra
12 warranties and assurances that also accompany a CPO vehicle, and which accompanied the
13 subject Vehicle. *See MSJ, UF 15.* In fact, Joshua Grant testified he did not disclose any
14 additional details because such a disclosure was not required pursuant to CPO guidelines
15 and he did not see any issues that would preclude the Vehicle from being submitted to a
16 CPO inspection. *See MSJ, UFs 3-4, see also Exhibit 4- Excerpt of Joshua Grant Deposition,*
17 *30:2-10, 142:5-23.* Further, there was an inspection of the Vehicle by Ray Gongora that also
18 revealed no safety issues or other serious issues which would require an additional
19 disclosure beyond the fact that the Vehicle was in an accident. *See generally, MSJ.*

22 Plaintiff argues that there needs to be no "actual knowledge" if there is a reasonable
23 inference of implied malice. *Opposition, 39:20-22.* However, as the Nevada Supreme Court
24 has held, the statutory "language plainly requires evidence that a defendant acted with a
25 culpable state of mind, we conclude that NRS 42.001(1) denotes conduct that, at a
26 minimum, must exceed mere recklessness or gross negligence. *Countrywide Home Loans,*
27 *Inc. v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243, 255, 2008 Nev. LEXIS 79, *33, 124
28



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1 Nev. Adv. Rep. 64.

2 Here, there is no evidence of a "culpable state of mind", and Defendant, even
3 through Joshua Grant, did not have any indicators that there was any imminent safety
4 matter, as Plaintiff would have this Court believe. The Allstate documents do not on their
5 face indicate any risk or harm or injury, and in fact, these were authorized repairs performed
6 by a presumably licensed repair shop and authorized by an insurance company.
7 Accordingly, there is no indication that Joshua Grant acted with any conscious disregard or
8 implied malice. All of the allegations, if taken as true, would, at the very most amount to
9 reckless or grossly negligent behavior, which fails to meet the level of egregiousness
10 necessary to impose punitive damages. *Id.* Plaintiff has failed to make the requisite showing
11 for punitive damages, and any such any claim should be summarily dismissed.
12

14 **I. Plaintiff's Claim for Recovery Under the Auto Dealership Bond, does Not**
15 **Satisfy the Requisites of that Claim, and therefore Fails as a Matter of Law.**

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

17 If a consumer has a claim for relief against a dealer, distributor, rebuilder,
18 manufacturer, representative or salesperson, the consumer may:

19 (a) Bring and maintain an action in any court of competent
20 jurisdiction. If the court enters:
21

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

24 Here, this claim should be summarily dismissed, because the Court has not entered a
25 judgment on the merits against any "dealer, distributor, rebuilder, manufacturer,
26 representative or salesperson." Plaintiff did not bring a claim for contribution and indemnity
27 against Corepointe. Plaintiff has definitively not obtained a judgment on the merits or a
28 judgment in any other capacity with respect to Defendant Corepointe, and his claims against



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1 Corepointe hinge on findings specifically with respect to the dealership. Therefore,
2 Corepointe should be entitled to summary dismissal on this claim, as it is premature, and
3 subject only to the entry of a judgment.

4
5 **VI. CONCLUSION**

6 Based on the underlying Motion for Summary Judgment, and the foregoing, Plaintiff
7 has failed to meet the requisites for any of his causes of action, therefore they each fail. The
8 simple undisputed material facts, merit summary judgment in favor of both Defendants, as a
9 matter of law, and as such, Defendants respectfully request that judgment be entered for
10 Defendants with respect to each of Plaintiff's claims.

11 DATED this 3rd day of November, 2017

12
13 **MORAN BRANDON BENDAVID MORAN**

14
15 /s/Jeffery A. Bendavid

16 **JEFFERY A. BENDAVID, ESQ.**

17 Nevada Bar No. 6220

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

28 *Chrysler and Corepointe Insurance Co.*



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Exhibit “1”

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 **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

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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

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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.**

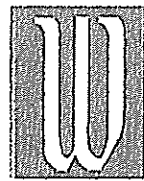
HUEBNER COURT REPORTING, INC. (702) 374-2319

Exhibit “2”

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

Deposition of:
Derrick Poole

August 14, 2017



WESTERN REPORTING
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1

3

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
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

1 EXHIBITS
2 Number Description Page
3 Ex. 1 Carfax 17
4 Ex. 2 Certified Pre-owned Vehicle Inspection
5 Checklist 41
6 Ex. 3 Certified Pre-owned Vehicle Delivery
7 Check Sheet 46
8 Ex. 4 Disbursement Request Form 65
9 Ex. 5 Complaint for Damages and Equitable
10 and Declaratory Relief and Demand
11 for Jury Trial 71
12 Ex. 6 Plaintiff's Sixth Supplement [Corrected] 79
13 Ex. 7 Arbitration Agreement 80
14 Ex. 8 Buyers Guide 81
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1 APPEARANCES
2
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WITNESS	EXAMINATION
DERRICK POOLE	
(BY MS. SMITH)	4, 91
(BY MR. WEST)	90

1 (Upon inquiry by the reporter prior to the
2 commencement of the proceedings, Counsel present
3 agreed to waive the reporter requirements as set
4 forth in NRCP 30(b)(4) or FRCP (b)(5), as
5 applicable.)
6 DERRICK POOLE,
7 having been first duly sworn, was
8 examined and testified as follows:
9 EXAMINATION
10 BY MS. SMITH:
11 Q. Hi, Mr. Poole.
12 A. Hi.
13 Q. We met previously, but my name is Stephanie
14 Smith. I'm here on behalf of Nevada Auto Dealership
15 Investments, LLC. I think you would more commonly
16 know them as Sahara Chrysler, Jeep, Dodge, Ram.
17 A. Yes, ma'am.
18 Q. When I say "defendant," I'll be referring to
19 that entity. Does that make sense?
20 A. Yes, ma'am.
21 Q. I may also refer to them as Nevada Auto or
22 Sahara Chrysler. Is that all right?
23 A. Yes, ma'am.
24 Q. Okay. I'm also representing Corepointe
25 Insurance, and I likely will not be referring to them,

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?

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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

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

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.

73

1 Q. You are referring to the checklist as a
2 report?

3 A. Yes, ma'am. There's an additional
4 information comment box right here that they could
5 have wrote in anything that was repaired or replaced.
6 That would have been pertinent information for me to
7 buy the vehicle.

8 Q. If something -- why do you believe that
9 would have been pertinent information for you?

10 A. Because that would have been all the
11 information regarding the accident that was -- for me
12 to believe that it was a minor accident. I don't
13 believe that that accident was a minor accident. That
14 was a major accident. And the fact that there was a
15 repaired frame bracket or something of that nature and
16 a damaged wheel, things of that nature should have
17 been divulged to me in that report. It takes away my
18 choice to walk away from the vehicle with all the
19 information, because I wasn't given all the
20 information as I should have been.

21 Q. Do you know what -- I believe you keep
22 referring to a frame bracket; is that right?

23 A. Yeah. I believe that's what I read on the
24 estimate.

25 Q. Do you know what that is?

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1 wouldn't make any difference if I asked somebody what
2 it is or not. I wasn't given the information when I
3 bought the vehicle. So it took away my choice, my
4 informed choice, of being able to buy the vehicle.
5 All the information wasn't given to me.

6 Q. Are you aware of any legal requirements that
7 state a dealership has to tell you if any individual
8 part was repaired or replaced?

9 MR. WEST: Objection. Asked and answered
10 for the third time. Asks for expert testimony.

11 Actually, excuse me. Calls for a legal opinion. Pure
12 legal opinion.

13 THE WITNESS: I'm not aware of the legal.
14 Is it the right thing to do? That's a different
15 question.

16 Q. (BY MS. SMITH) Do you want to further
17 explain that statement?

18 A. Well, I mean, it is a moral thing if you
19 have all the information on something before you sell
20 it to somebody that you should divulge all that
21 information before you sell it to somebody. If you
22 are telling them that it's a CPO'd, top-of-the-line,
23 best-of-the-best car, quality and safety, but you
24 leave out the fact that you have pictures and a report
25 from an accident that it was in before that you led me

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1 A. I have no idea what that is.

2 Q. Do you know what it does?

3 A. I have no idea what it does.

4 Q. You've just testified to wheel -- the wheel
5 being repaired or replaced.

6 A. Uh-huh.

7 Q. Can you expand on what you are referring to?

8 A. Just that I would have -- as far as the
9 repair?

10 Q. Yes.

11 A. I don't know what they did, to be honest
12 with you. I just know it says repaired.

13 Q. But you don't know what the repair was to
14 the wheel?

15 A. I do not.

16 Q. When you reviewed the Allstate documents,
17 did you know what any of those parts were?

18 A. I know what a headlight is. I know bumpers,
19 things like that. I really don't know what a lot of
20 this stuff is, no.

21 Q. Did you ask anyone about parts that you were
22 unfamiliar with?

23 A. No, I have not.

24 Q. How come?

25 A. It's not really pertinent at this time. It

76

1 to believe was minor, just not a very good human thing
2 to do.

3 Q. Do you know the cost of a comparable new
4 truck had you purchased a new truck that day in May?

5 A. I do not.

6 Q. Don't recall any estimates of price?

7 A. We never got that far.

8 Q. You didn't look up any trucks prior to going
9 down there?

10 A. I just looked at vehicles online. I didn't
11 look at anything specific as far as what the price was
12 going to be.

13 Q. The time you spent I believe looking at --
14 briefly at the new trucks before making contact with
15 the salesperson, you don't recall the pricing on any
16 of those?

17 A. I don't recall, no. I'm sure I was looking
18 at the coolest, nicest vehicle on the lot that was
19 probably -- probably would have been quite a bit more
20 than I could afford. No, I don't recall the prices.

21 Q. Do you have any estimate if they were more
22 expensive or less expensive than the vehicle you ended
23 up purchasing?

24 A. I don't. No, I don't.

25 Q. Is it your belief that your vehicle is worth

Exhibit “3”

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

Deposition of:
Rocco J. Avellini

September 22, 2017



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

www.westernreportingservices.com

9/22/2017

Deposition of Rocco J. Avellini
Poole v. Nevada Auto Dealership Investments, LLC, et al.

1

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

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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

)

14

15

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

21

22

23

24

25

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

1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFF:

4 GEORGE O. WEST III, ESQ.

ATTORNEY AT LAW

5 10161 Park Run Drive

Suite 150

6 Las Vegas, Nevada 89145

7

8 FOR DEFENDANT NEVADA AUTO DEALERSHIP INVESTMENTS, LLC,

DOING BUSINESS AS SAHARA CHRYSLER, JEEP, DODGE, RAM,

9 AND COREPOINTE INSURANCE COMPANY:

10 STEPHANIE J. SMITH, ESQ.

MORAN BRANDON BENDAVID MORAN

11 630 South Fourth Street

Las Vegas, Nevada 89101

12

13

14

15

I N D E X

16 WITNESS

EXAMINATION

17 ROCCO J. AVELLINI:

18 (BY MS. SMITH)

4, 195, 217

19 (BY MR. WEST)

162, 214

20

21

22

23

24

25

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 certified pre-owned vehicle seller knew or -- sorry.

2 That was a terrible question. Never mind.

3 A. All you have to look at is their
4 certification program.

5 Q. Okay.

6 A. I guess that's what you're looking for.

7 Q. Have you ever -- when you inspected the
8 subject vehicle in May of 2016, did you go down the
9 CPO checklist that was provided to you in relation to
10 the subject vehicle?

11 A. At that time I did not.

12 Q. You make another statement on page 3 that
13 says when Mr. Poole discloses the prior collision
14 damage to any potential buyer, he will never be able
15 to recover financially to be made whole as the car has
16 also sustained diminished value. What do you mean by
17 that?

18 A. That the -- well, when he tells a potential
19 buyer that his vehicle was involved in an accident,
20 it's common knowledge and industry knowledge that the
21 vehicle's worth less. I believe Mr. Grant said that,
22 that if a vehicle was involved in an accident it would
23 be worth less. The vehicle would be worth less.
24 Inherent diminished value. I mean, that's what Carfax
25 spends millions and millions of dollars on a year, to

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 Q. With respect to the diminished value
2 opinions that you made here, do you have an opinion as
3 to what -- how much less the vehicle was worth on
4 May 26th, 2014?

5 A. Correct.

6 Q. Hang on. Do you have an opinion?

7 A. I do.

8 Q. How much less was the vehicle worth at the
9 date of sale based upon the Diminished Value
10 Assessment that you made, based upon the nature and
11 extent of the previous collision?

12 A. In total, with the inherent diminished value
13 and the improper repairs on -- I'm sorry, yes, the
14 repair related diminished value, what we call, is
15 thirty-two ninety-seven. So the total would be the
16 sum of them both, which would be fifty-one zero two
17 and 32 is 83, 84.

18 Q. So is it your opinion that whatever the
19 vehicle was sold for by Sahara Chrysler to Mr. Poole
20 on May 26th, 2014, that car was inherently worth
21 \$8,000 less that day?

22 A. Yes. At least.

23 Q. Do you have any evidence or indication --
24 strike that.

25 You've heard a lot of terms thrown around

1 Q. Is that -- the questions I just asked you,
2 is that true for every single one of the remaining
3 points, 9 through 22? That's that same methodology?

4 A. Of snapping the picture with the camera?

5 Q. And then basing your statements off of your
6 personal observations?

7 A. And experience in the industry. My
8 background, inspecting vehicles for 25, 30 years.
9 More than that.

10 Q. Okay. But I'm just verifying. No specific
11 measurements for Items 8 through 22?

12 A. Correct.

13 Q. When you performed the inspection of the
14 vehicle on May 2016, do you know if any of those
15 wheels were reconditioned?

16 A. According to the estimate, they were.

17 Q. Just the one wheel?

18 A. The left front wheel as it's shown on the
19 estimate.

20 Q. Did you do any testing of that wheel?

21 A. I did not.

22 Q. Did you remove that wheel?

23 A. Second time. I did not.

24 Q. Just verifying.

25 Is it possible it was a different wheel?

1 insurance policy. I didn't get into the accident.
2 Our only duty is to put the car back together with the
3 monies we have. If the consumer doesn't want it, we
4 can't force them. What we would do is tell them what
5 the hazards would be, have them sign a liability
6 release, supply them with as much information as we
7 could for them to make an educated decision, and if
8 they decided to continue with the process, that would
9 be an issue they'd have to deal with, not me.

10 Q. But you were comfortable putting on a wheel
11 that you knew could create a public safety or hazard
12 issue?

13 MR. WEST: Objection. Argumentative.

14 THE WITNESS: Ma'am -- exactly. I just told
15 you my answer. You want me to repeat it again?

16 Q. (BY MS. SMITH) I just want a yes or no.

17 A. Listen what happens.

18 Q. I don't need your answer again. I would
19 just like a yes or no.

20 A. You asked me for the --

21 Q. Okay. So you would put the reconditioned
22 wheel on; is that correct?

23 A. I would put the reconditioned wheel on if
24 the consumer supplied and signed the release of
25 liability, was aware of what the repercussions might

1 be safetywise. And if they made that decision, I
2 can't force them to do anything else. I'm a collision
3 shop owner, not a gangster. Or was a collision shop
4 owner. No more.

5 MS. SMITH: Okay.

6 THE WITNESS: Pack it in.

7 MR. WEST: I have a couple follow-ups.

8 Sorry.

9 THE WITNESS: Boy, can you get me a check so
10 I can go home?

11 MR. WEST: She'll get it to you later.

12 THE WITNESS: Later?

13 MR. WEST: Yep.

14 THE WITNESS: What do you mean later?

15 MR. WEST: Stop arguing and just listen.

16 THE WITNESS: I don't do laters.

17 MR. WEST: Well, that's the way the rules
18 work.

19 FURTHER EXAMINATION

20 BY MR. WEST:

21 Q. Mr. Avellini --

22 A. Later.

23 Q. -- counsel said in your experience as a body
24 shop collision repair owner if the insurance company
25 would deny a claim to repair a wheel as opposed to

Exhibit “4”

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
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3 For the Plaintiff, Derrick Poole:
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6 Law Offices of George O. West, III
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8 Suite 150
9 Las Vegas, NV 89145
10
11 For the Defendants, Nevada Auto Dealership
12 Investments, LLC:
13
14 BRIAN TERRY, ESQ.
15 Thondale Armstrong
16 1100 East Bridger Avenue
17 Las Vegas, NV 89101
18
19 For the Defendant, Wells Fargo Dealer Services, Inc.:
20
21 NATHAN KANUTE, ESQ.
22 Snell & Wilmer
23 3883 Howard Hughes Parkway
24 Suite 1100
25 Las Vegas, NV 89169
HUEBNER COURT REPORTING, INC. (702) 374-2319

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23	INFORMATION TO BE PROVIDED		
24	None		
25			
HUEBNER COURT REPORTING, INC. (702) 374-2319			

1 (Court reporter's opening statement was waived.) 4
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
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1 of the State of Nevada to give you an oath to 5
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
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1 **provided, yeah.**

2 **Q.** I just want to make sure, just for
3 clarity, that there is no policy, handbook, or
4 anything written down on paper or anything that
5 you generated or anybody in the dealership
6 generated that said this is how we are going to
7 make the decision to CPO cars, this is what has
8 to happen. Nothing like that?

9 **A. No. We follow the manufacturer's**
10 **guidelines to a T.**

11 **Q.** Item Number 2 to Exhibit 1 asks for
12 documents, any written policies, practices, or
13 procedures that were in effect at the time you,
14 Sahara Dodge, acquired the Plaintiff's vehicle
15 into Sahara Dodge's inventory that refer,
16 reflect, or relate to any requirement, process,
17 method, manner in which you are required to
18 undertake any inspection of the vehicle in which
19 you intend to display or sell as a certified
20 pre-owned identified in Exhibit 1.

21 With respect to the vehicle at issue
22 here again, there was nothing written with
23 respect at the time that the vehicle at issue
24 came into acquisition into your inventory, I
25 think it was in May of 2015, nothing written with

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1 respect to the decision to CPO that car, correct,
2 other than the manufacturer's recommendations,
3 correct?

4 **A. Correct.**

5 **Q.** Thank you.

6 Number 3 asks for any and all documents
7 generated by you, Sahara Dodge, that refer,
8 reflect, or relate to the CPO sale, CPO
9 inspection, CPO eligibility involving the
10 vehicle.

11 Your lawyer has given me a whole host
12 of documents relating to that. We are going to
13 go over those.

14 **A. Okay.**

15 **Q.** As you sit here today, do you believe
16 all responsive documents in Number 3 have been
17 provided?

18 **A. I believe so.**

19 **Q.** Before you came here to the deposition
20 today, other than talking with Mr. Terry, what
21 have you done to prepare for your deposition here
22 today? Have you talked to anybody other than
23 Mr. Terry, reviewed any documents, anything like
24 that?

25 **A. Met with the paralegal.**

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1 **Q.** I don't want to know what was said. I
2 just want to know --

3 **A. Yeah. There was a meeting with the**
4 **paralegal. They gathered documents and whatnot**
5 **that were going to relate to the trial, yes.**

6 **Q.** Before you came to the deposition here
7 today, did you review the deal file with respect
8 to Mr. Poole?

9 **A. Yes.**

10 **Q.** Did you review the deal file with
11 respect to Mr. Hinton who was the person who
12 traded in the car that was ultimately resold to
13 Mr. Poole?

14 **A. Yes.**

15 **Q.** Did you talk to anybody in service or
16 in sales regarding this particular case in
17 preparation for your deposition here today?

18 **A. No.**

19 **Q.** As you sit here today, do you have a
20 pretty good understanding based upon your review
21 of the documents as to the type of transaction
22 that occurred, how the vehicle at issue was
23 acquired into Sahara Dodge's inventory, how it
24 was CPO'd, that type of thing?

25 **A. Yes.**

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1 **Q.** And that testimony would be based on
2 both your review of those documents and your
3 personal familiarity and experience with that
4 process, correct?

5 **A. Yes.**

6 **Q.** Number 4 asks for all CarFax,
7 AutoChecks, or other similar report obtained by
8 you, Sahara Dodge, prior to certifying the
9 vehicle as CPO and given -- and presented to the
10 Plaintiff.

11 Are you aware that there were some
12 CarFax reports that were generated on the vehicle
13 that were given to Mr. Poole?

14 **A. Yes.**

15 **Q.** Have you reviewed those?

16 **A. Yes.**

17 **Q.** Based upon you being a used car manager
18 within the dealership industry for over ten
19 years, how many vehicles would you say,
20 estimating, that you have been responsible for
21 selling to the community throughout your tenure
22 in the industry?

23 **MR. TERRY:** Just any vehicle or CPO?

24 **MR. WEST:** Used vehicles. It is a big
25 number.

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1 Q. I'm sure they exist. But on the other
2 side, there are customers that might find those
3 things important, true?

4 A. Maybe.

5 Q. You as the used car manager, would you
6 deem those things important and require those
7 types of disclosures if those things existed on a
8 CPO vehicle prior to sale?

9 A. **Would I require them, no.**

10 Q. No?

11 A. No.

12 Q. Why not?

13 A. **It is not a requirement of the program.**

14 Q. Other than it not being a requirement
15 of the program as designated by the manufacturer,
16 would it be prudent business practice to make
17 full disclosure, as you testified previously, to
18 the consumer about things that might affect the
19 vehicle's value or safety? If it affects a
20 vehicle's value or safety it should be disclosed,
21 right?

22 A. **If it affected a vehicle's safety, it
23 would be listed here.**

24 Q. My question is: If it affects safety
25 or value, you previously testified that it is

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1 common practice and the custom and practice to
2 make full disclosure to the consumer about things
3 that might affect a vehicle's safety and value,
4 true?

5 A. **I don't know if I testified to that.**

6 Q. Let me ask the question again then.

7 A. Okay.

8 Q. Does Sahara Dodge, at the time this
9 vehicle was sold to a consumer within the
10 community, did they have a policy of making full
11 disclosure to the car buyer who is about to buy a
12 CPO vehicle about any information they may have
13 known about that might have affected a vehicle's
14 safety or value?

15 A. **Safety, yes. Value, no.**

16 Q. Well, isn't part of the entire reason
17 or underlying major reason why consumers are
18 drawn to CPO vehicles is because they have a
19 better value than non-CPO comparable vehicles?

20 A. **Because of certification, you mean?**

21 Q. Just in general, because they are
22 better quality cars. Value is part of the core
23 principle in the sales process for a CPO, true?

24 A. Yes.

25 Q. So if value is a core principle that is

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

1 communicated to the community with respect to a
2 CPO vehicle inducing them to buy a CPO vehicle
3 because it is of a better value, if something
4 affects a vehicle's value, wouldn't that be
5 something important to disclose to a CPO consumer
6 before they sign their name to the contract?

7 A. **There was no policy for that, no.**

8 Q. My question wasn't whether there was a
9 policy. My question was: Did you as the person
10 here in the dealership to testify about these
11 things, did the dealership deem that important to
12 disclose to a car buyer within the community
13 prior to signing their name on the contract?

14 A. No.

15 Q. So your testimony here today is, just
16 so we have clarity, that items affecting a
17 vehicle's value involving a CPO vehicle is not
18 part of the full disclosure requirement that
19 Sahara Dodge had at the time when they sold the
20 vehicle to Mr. Poole?

21 A. **That's correct.**

22 Q. If all of these things that I just
23 listed, the frame bracket, et cetera, et cetera,
24 went through a 125 comprehensive, thorough CPO
25 inspection, would you have expected the service

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

1 department to have discovered all of those
2 things?

3 A. **If they were damaged, yes.**

4 MR. TERRY: Let me just object. The
5 question is vague and ambiguous.

6 THE WITNESS: If they were damaged at
7 the time of inspection.

8 BY MR. WEST:

9 Q. Yes. My question would -- obviously if
10 they weren't damaged at the time of the
11 inspection, there wouldn't be any reason to
12 disclose them, correct?

13 A. **Correct.**

14 Q. So my question presupposes and assumes
15 that if these things existed that I just
16 listed --

17 MR. TERRY: And had been repaired.

18 MR. WEST: Whether they were repaired
19 or not.

20 BY MR. WEST:

21 Q. My question is: Had those things
22 existed, and I did say whether they were repaired
23 or replaced. I went repaired, replaced,
24 repaired, replaced. So all of those items I
25 talked about, the repaired front frame end

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