IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO.: 82475

WESTERN NATIONAL MUTUAL INSURANCE COMPANY, A MINNESOTA CORPORATION

Appellant

v.

WILLIAM HARRY RESH, AN INDIVIDUAL

Respondent

Appeal from Eighth Judicial District Court of Clark County Nevada
(The Honorable Judge Eric Johnson)

JOINT APPENDIX – VOLUME II

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Attorney for Respondent

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTERN NATIONAL MUTUAL INSURANCE COMPANY, A Minnesota Corporation Appellant, v. WILLIAM HARRY RESH, an individual, Respondent.	**Supreme Court Case No. 82475** District Court Case No. A775815 **JOINT APPENDIX** **Volume II**

Appellant, Western National Mutual Insurance Company ("WNMIC"), by and through its counsel, Kurt C. Faux, Esq. and Jordan F. Faux, Esq. of The Faux Law Group, and Respondent, William Harry Resh, by and through his counsel, Frederic I. Berkley, Esq. of Sklar Williams PLLC, hereby submit their Joint Appendix.

DATED this 15th day of September, 2021.

By: /s/ Jordan F. Faux

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By: /s/ Frederic I. Berkley

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JOINT APPENDIX

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EXHIBIT 22

EXHIBIT 22

MSJD
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Attorneys for Plaintiff
William Harry Resh

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM HARRY RESH, an individual, Plaintiff, v. MONEY MACHINE, LLC, a Nevada limited liability company dba COMPADRES AUTO SALES; ROBERT LEGASPI, an individual, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a Minnesota corporation; DOES I through X; and ROE CORPORATIONS I THROUGH X. Defendants.	Case No.: A-18-775815-C Dept. No.: XX **HEARING REQUESTED** **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** **Date of Hearing: September 16, 2020** **Time of Hearing: 8:30 a.m.**

COMES NOW, Plaintiff, WILLIAM HARRY RESH, by and through his attorney, FREDERIC I. BERKLEY, ESQ., of the law firm Sklar Williams PLLC and hereby moves the Court TOENTER Summary Judgment against Defendant Western National Mutual Insurance Company under Rule 56 of the Nevada Rules of Civil Procedure. This Motion is based on the Affidavits of William Harry Resh and Robert Larson attached hereto, the Points and Authorities

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and all of the papers and pleadings on file herein. The grounds for this Motion are that there are no genuine issues of fact remaining for trial and Plaintiff is entitled to Judgment as a matter of law.

DATED this 11 day of August, 2020.

SKLAR WILLIAMS PLLC

By: _____
FREDERIC I. BERKLEY, ESQ.
Nevada Bar No. 1798
410 South Rampart Blvd Ste. 350
Las Vegas, NV 89145
Attorneys for Plaintiff
William Harry Resh

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

Plaintiff WILLIAM HARRY RESH (hereinafter referred to as "Dr. Resh") is a board-certified cardiologist with Nevada Heart and Vascular Center and was the owner of a 2017 Audi R8 automobile, VIN No. WUAKBAFX0H7903087. In February and March 2018, Dr. Resh attempted to sell his vehicle through auction with the assistance of Robert Larson. Dr. Resh was told that in order to effectuate the sale of his vehicle, he would be required to furnish title to said vehicle to the auction house known as Manheim.

Dr. Resh was informed that his vehicle had sold for one hundred forty thousand five hundred dollars ($140,500)[1] and that a check in that amount was prepared by Manheim made payable to Compadres Auto Sales. Robert Larson brought the title to Dr. Resh's vehicle and the keys to the auction house known as Manheim. Manheim prepared a check for one hundred forty-three thousand eight hundred ninety-five dollars ($143,895) made payable to Compadres and that check was given to Robert Larson. Mr. Larson personally delivered that check in approximately mid-March 2018 to Ryan Najarro, the General Manager of Compadres, who

[1] The check from Manheim was actually for $143,895 made payable to Compadres Auto Sales.

Robert Larson had worked with before.

Robert Larson was told by Ryan Najario that as soon as the check cleared, Compadres would prepare a check for Dr. Resh in the amount of one hundred forty-three thousand eight hundred ninety-five dollars ($143,895). Despite repeated evasions, excuses, and lies, Compadres has not paid any of the proceeds of sale to Dr. Resh.

During the course of discovery in this matter, Dr. Resh discovered that Defendant Western National Mutual Insurance Company (hereinafter referred to as "Western National") furnished a Vehicle Industry License Bond in the penal sum of $100,000. Western National has admitted that it is surety on Vehicle Industry Business License Bond number 37029 with Money Machine, LLC d/b/a Compadres Auto Sales as principal and the State of Nevada as obligee. See Western National's Answer to Amended Complaint filed on November 20, 2019 at paragraph 4. A true and correct copy of said Vehicle Industry Business License Bond is attached hereto as Plaintiff's **Exhibit 1**.

During the course of discovery in this matter, a Subpoena Duces Tecum was served upon Manheim requiring that entity to produce the following documents:

1. Any and all checks, correspondence, memorandum or other documents evidencing payment to Compadres Auto Sales or Money Machine, LLC in 2018 for the sale of a 2017 Audi R8 Automobile, VIN #: WUAKBAFX0H7903087.
2. Any and all other documents, correspondence, or writings which reference or are in any way related to the sale of a 2017 Audi R8 Automobile VIN #: WUAKBAFX0H7903087.

In response to said Subpoena, Manheim produced the documents which are attached hereto as Plaintiff's **Exhibit 2**. Among the documents produced is a check from Manheim Nevada to Compadres Auto Sales dated March 16, 2018 in the amount of $143,895 for the sale of Dr. Resh's 2017 Audi automobile. Said document is bates stamped MI_000026. The documents produced are supported by the Affidavit of Custodian of Records for Manheim

attached thereto as Exhibit C. Said check clearly establishes that Compadres received $143,895 for the sale of Dr. Resh's automobile and deposited said check in its account.

The foregoing facts are all set forth and sworn to in the Affidavits of William Harry Resh and Robert Larson attached hereto. These Affidavits were prepared and signed over two years ago but since that time, none of the Defendants have produced any evidence to contradict or contest any of these facts.

II.

ARGUMENT

I. Summary Judgment Standard.

As this Court is aware, Nevada Rule of Civil Procedure 56 provides the standard for summary judgment in Nevada. Under the rule, a party may move for summary judgment on any claim or defense, or on any part of a claim or defense. NRCP 56(a). "The Court shall grant summary judgment if the [moving party] shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." *See id.*

The initial burden on a motion for summary judgment rests with the moving party. *See Cuzze v. Univ. and Cmty. Coll. Sys. Of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). The moving party bears the burden of showing the absence of a genuine issue of material fact, which would entitle it to judgment on the claims at issue. *Id.* If such a showing is made, the burden shifts to the party opposing summary judgment, to show the existence of a material fact which negates an essential element of the moving party's claim, or to point out that there is an absence of evidence to support the claim at issue. *Id.* A party may not defeat a motion for summary judgment by simply relying on "gossamer threads of whimsy, speculation and conjecture," but reather, must introduce specific facts, by affidavit or other admissible evidence, which show that a genuine issue of material fact exists. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1030 (2005); *Cuzze*, 123 Nev. At 602, 172 P.3d at 143. If the non-moving party fails to do so, the Court must grant summary judgment. See NRCP 56(a).

II. There are no issues of fact remaining for trial.

As this court is aware, Western National admits that it is a surety for Defendant Money

Machine, LLC d/b/a Compadres Auto Sales under license bond number 37029. Dr. Resh has clearly set forth undisputed facts which clearly demonstrate that Compadres wrongfully converted the proceeds of sale of his 2017 Audi R8 Automobile which sold at auction for $143,895. As such, the burden now shifts to Western National to show the existence of a material fact which negates an essential element of Dr. Resh's claim. Western National can point to not a single issue of fact which would preclude summary judgment.

All during the course of these proceedings, the only defense relied upon by Western National has to do with an issue of law. In Western National's Trial Brief for Western National Mutual Insurance Company filed on June 15, 2020, it candidly admits at page 5, line 14: "There is no question that an employee of Money Machine stole Dr. Resh's money."

That admission by Western National absolutely establishes that there is no question of fact remaining for trial. This litigation, which is now beginning its third year, contains no issues of fact which requires a trial. On the contrary, the only issue that Western National brings to this litigation is an issue of law. It is a dubious, if not frivolous, issue which this Court has already ruled upon.

Western National takes the position that Dr. Resh, a Board-certified cardiologist with Nevada Heart and Vascular Center Center, is not a "consumer." Western National takes the bizarre position that since Dr. Resh was attempting to sell his vehicle at auction he somehow did not come into possession of the vehicle as the final user. NRS 482.345(10). Western National would have this Court treat Dr. Resh the same as an auto dealership or finance company which are the types of entities the Nevada Legislature did not seek to protect in changing the law to only protect consumers as a class.

This one issue of law has been thoroughly briefed by the parties and argued as part of Western National's Motion to Dismiss and Motion for Attorney's Fee and Costs filed on August 30, 2019. This Court heard the Motion to Dismiss on October 16, 2019 and made the following findings: "Plaintiff falls with the definition of consumer as set forth in NRS 482.345 and, Plaintiff intended to be the final user of the vehicle at issue."

As a result of the Court's ruling, the Motion to Dismiss and for Attorney's Fees and

Costs was denied and this legal issue adjudicated. Western National's entire Trial Brief filed on June 15, 2020 is devoted to attempting to get this Court to reverse itself and find Dr. Resh not to be a consumer who may take advantage of the bonding requirements set forth in NRS 482.345.

On September 16, 2019, Dr. Resh filed his Opposition to Defendant Western National Mutual Insurance Company's Motion to Dismiss and Motion for Attorney's Fees and Costs. In said Opposition, Dr. Resh went through the legislative history of the statutes in question and demonstrated the Nevada Legislature's intent to include him in the class of consumers entitled to move against Western National's surety bond. Rather than reproduce the Points and Authorities in support of said Opposition, Dr. Resh refers this Court to said Opposition and incorporates them herein.

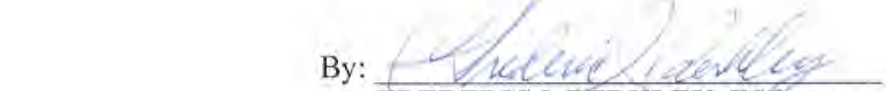
III.

CONCLUSION

There simply are no issues of fact in this lawsuit. Even Western National has admitted that there is "no question that an employee of Money Machine stole Dr. Resh's money." There is absolutely no reason for further delay in granting Dr. Resh a judgment, at least against Western National under the surety bond it furnished. Dr. Resh is entitled to summary judgment under NRCP 56 in the amount of $100,000, plus attorney's fees and costs.

DATED this 11 day of August, 2020.

Respectfully submitted,

By: 

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410 South Rampart Blvd., Ste. 350
Las Vegas, NV 89145
Attorneys for
William Harry Resh

AFFIDAVIT OF WILLIAM HARRY RESH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

WILLIAM HARRY RESH, being duly sworn, deposes and says:

1. I am the Plaintiff in the above referenced matter.

2. I am a Board-certified Cardiologist and at all times herein relevant, a resident of Clark County, Nevada.

3. I have read the Complaint on file in this matter and can verify that all of the allegations contained therein are true and correct to the best of my knowledge.

4. I was the owner of a 2017 Audi R8 automobile, VIN No. WUAKBAFX0H7903087.

5. In February and March 2018, I attempted to sell the aforementioned vehicle through auction with the assistance of Robert Larson, who has assisted me in selling vehicles in the past.

6. I was told that in order to effectuate the sale of my vehicle, I would be required to furnish the title to said vehicle to the auction house known as Manheim.

7. I was informed that my vehicle sold for $140,500 and that a check in that amount was prepared by Manheim made payable to Compadres Auto Sales.

8. I am advised that a check in that amount was personally delivered by Robert Larson to a duly authorized representative at Compadres Auto Sales.

9. I was advised that as soon as the aforementioned check cleared, a check for $140,500 would immediately be prepared and delivered to me through my agent for the sale, Robert Larson.

10. Despite the efforts of both Robert Larson and my attorney, Compadres Auto Sales has refused to make payment to me and in fact will not even respond to our requests for payment.

11. I can only conclude that Compadres has wrongfully converted the monies it

received for the sale of my vehicle in the amount of $140,500 without any legal justification whatsoever.

12. I have been required to retain the services of Frederic I. Berkley of Sklar Williams PLLC to prosecute this action and request recovery of my attorney's fees and costs of suit.

13. Further affiant sayeth naught.

DATED this 20 day of July, 2018.

WILLIAM HARRY RESH

SUBSCRIBED AND SWORN to before me this 20 day of July 2018.

NOTARY PUBLIC, in and for Said County and State (seal)

ROGER KIM
NOTARY PUBLIC - STATE OF NEVADA
My Commission Expires: 09-11-2018
Certificate No: 06-109188-1

AFFIDAVIT OF ROBERT LARSON

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

ROBERT LARSON, being duly sworn, deposes and says:

1. I am a resident of Clark County, Nevada.

2. I am in the business of assisting individuals in selling their vehicles at auction and have been over the past five years.

3. I have sold cars for William Harry Resh ("Bill") in the past.

4. I assisted Bill in selling his 2017 Audi R8 automobile, VIN No. WUAKBAFX0H7903087.

5. In order to sell a car at auction, I must register the vehicle under a dealership.

6. I registered Bill's Audi under a dealership called Compadres Auto Sales, a dealership I have worked with in the past.

7. Bill's vehicle sold at auction for the sum of $143,895.

8. In order to sell a vehicle through auction, the seller (Bill) must provide title and surrender the keys to the auction house before payment is made.

9. I took the title to Bill's vehicle and the keys to the auction house know as Manheim.

10. Manheim prepared a check for $143,895 made payable to Compadres Auto Sales and I was given that check.

11. I personally delivered that check in approximately mid-March, 2018 to Ryan Najarro (General Manager), a duly authorized agent of Compadres, who I have worked with before.

12. I was told by Compadres duly authorized agent that as soon as the check cleared, Compadres would prepare a check for Bill in the amount of $140,500.

13. Following my giving a check to Compadres, I contacted Compadres numerous times to see when Bill's check would be ready for pick-up.

14. I was continuously given excuses by Compadres why the check was not yet ready, and eventually Compadres refused to speak with me.

15. Despite repeated assurances that Bill's check would be ready, I was never given a check for Bill and I could not get any explanation from Compadres as to their reason for withholding Bill's funds.

16. Further affiant sayeth naught.

DATED this 1 day of August, 2018.

ROBERT LARSON

SUBSCRIBED AND SWORN to before me this 1st day of August, 2018.

NOTARY PUBLIC, in and for
Said County and State (seal)

EMILY KAPOLNAI
Notary Public, State of Nevada
Appointment No. 11-4983-1
My Appt. Expires July 18, 2019

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11TH day of August, 2020, a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR SUIMMARY JUDGMENT** was submitted electronically for filing and service with the Eighth Judicial District Court. Electronic Service of the foregoing document shall be made to all parties listed on the **MASTER SERVICE LIST** in accordance with the Electronic Service and Filing Order.

An employee of SKLAR WILLIAMS PLLC

EXHIBIT 1

Occupational and Business Licensing
555 Wright Way
Carson City, Nevada 89711
(775) 684-4690
www.dmvnv.com

VEHICLE INDUSTRY BUSINESS LICENSE BOND

Bond Number 37029

License Type:

- ☐ Broker
- ☒ Dealer/Rebuilder/Lessor
- ☐ Distributor
- ☐ Manufacturer
- ☐ Off-Highway Vehicle

KNOW ALL MEN BY THESE PRESENTS:

That Money Machine LLC dba: Compadres Auto Sales, as principal,
(Individual or Corporate Name and Name Doing Business as)

located in the County of Clark, State of Nevada, obligee, and

Western National Mutual Insurance Company, a corporation organized and existing under and by virtue of the
(Name of Surety)

laws of the State of MN, and authorized to transact a surety business in the State of Nevada, as surety, are held and firmly bound unto the State of Nevada in the penal sum of 100,000.00 THOUSAND DOLLARS for the payment of which well and truly to be made we hereby bind ourselves, our respective heirs, administrators, executors, successors and assigns jointly and severally, firmly by these presents:

To be effective on the 8th day of March, 20 17

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above-named principal has been licensed to carry on or conduct in this State the business of buying, selling, transporting, manufacturing, distributing, brokering or dealing in new or used vehicles, trailers, motorcycles or semitrailers; and

WHEREAS, the above-named surety herein agrees that any consumer, as defined in NRS 482.345, injured by the action or actions of the principal and/or his salesmen involved in any fraud or fraudulent representation or in violation of any of the provisions of Chapter 482 or Chapter 490 of the Nevada Revised Statutes or Nevada Administrative Codes may bring action in said injured person's own name against the said surety. This bond is continuous in form and the total aggregate liability of the bond is limited to the payment of the total amount of the bond. In the event of a dispute of a claim by the surety company, application may be made to the Director, Department of Motor Vehicles for good cause shown. After notice and hearing, the director may authorize payment of funds from here said surety coverage.

Bond Number 37029

This bond may be canceled by the surety at any time by giving written notice by registered mail of its desire and intention so to do. Said cancellation shall be effective thirty (30) days after the receipt of said notice by the State of Nevada Department of Motor Vehicles, Occupational and Business Licensing Section.

Signed, sealed and dated this 8th day of March, 20 201

X _____
(Principal's Signature)

_____
(Principal's Printed Name)

Western National Mutual Insurance Company
(Surety)

Telephone Number of Surety: (800) 862 -6070

5350 W 78th Street
(Mailing Address of Surety Company, Street)

Edina MN 55439
(City, State and Zip Code)

By _____
(Signature, Attorney-In-Fact for Surety)

_____
(Printed Name, Attorney-In-Fact)

(Surety Seal)

Countersigned on behalf of:

Western National Mutual Insurance Company
(Surety)

this _____ day of _____, 20___

_____
(Signature, Agent)

Ryan Dye
(Printed Name, Agent)

SAFEGUARD INSURANCE LLC
(Business Name, Agent)

5225 S DURANGO DR LAS VEGAS, NV 89113
(Business Address, Agent)

WESTERN NATIONAL
INSURANCE
The relationship company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Western National Mutual Insurance Company, a Minnesota mutual insurance company, does make, constitute and appoint: Ryan Dye SAFEGUARD INSURANCE LLC

Its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto (if a seal is required) bond, undertakings recognizances or other written obligations in the nature thereof, **(other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, hazardous waste remediation bonds or black lung bonds)**, as follows:

All written instruments in an amount not to exceed an aggregate of One Hundred Thousand Dollars ($100,000.00) for any single obligation, regardless of the number of instruments issued for the obligation.

and to bind Western National Mutual Insurance Company thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a meeting held on September 28, 2010. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of Western National Mutual Insurance Company on September 28, 2010:

RESOLVED that the president, any vice president, or assistant vice president in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds, and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

(i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or

(ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or

(iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the Company to such person or persons.

RESOLVED FURTHER that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, Western National Mutual Insurance Company has caused these presents to be signed by its proper officer and its corporate seal to be affixed this 16th day of December, 2015.

Jon R. Hebeisen, Secretary

SEAL

Larry A. Byers, Sr. Vice President

STATE OF MINNESOTA, COUNTY OF DAKOTA

On this 16th day of December, 2015, personally came before me, Jon R. Hebeisen and Larry A. Byers and to me known to be the individuals and officers of the Western National Mutual Insurance Company who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally dispose and say; that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.

JENNIFER A YOUNG
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES 01/31/2021

Jennifer A. Young, Notary Public
My commission expires January 31, 2021

CERTIFICATE

I, the undersigned, assistant secretary of the Western National Mutual Insurance Company, a Minnesota corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

SEAL

Signed and sealed at the City of Edina, MN on 03/08/2017

Jennifer A. Young, Assistant Secretary

EXHIBIT 2

March 19, 2020

Via email: FBerkley@Sklar-law.com
Federic I. Berkley, Esq.
Sklar Williams PLLC
410 South Rampart Blvd, Suite 350
Las Vegas, Nevada 89145

RE: Resh v. Money Machine, et al.

Dear Mr. Berkley:

On behalf of Manheim Investments, Inc. d/b/a Manheim Nevada ("Manheim"), incorrectly identified as Greater Nevada Auto Auctions, LLC d/b/a Manheim Nevada, we write in response to the Subpoena Duces Tecum ("Subpoena") issued February 26, 2020 in the above-referenced matter.

Please be advised that the Subpoena was issued to an incorrect entity, Greater Nevada Auto Auctions, LLC d/b/a Manheim Nevada, instead of Manheim Investments, Inc. Therefore, Manheim objects to the Subpoena on the grounds of improper service. Manheim also objects to the Subpoena to the extent it seeks to impose an obligation on Manheim beyond those required by the Nevada Rules of Civil Procedure or any other applicable law. Manheim further objects that the Subpoena is overbroad, and imposes an undue burden on Manheim, a non-party.

Subject to and without waiving any of the foregoing objections or other potential objections that Manheim may have to the scope of the Subpoena, Manheim hereby produces records Bates-labeled MI_000001 through MI_000027. These records contain the electronic copies of the bill of sale, notes, arbitration file, condition report and a copy of the check to Compadres Auto Sales.

Attached is a signed Affidavit and an invoice for $0.00 to cover our research and retrieval costs associated with gathering the responsive information. It is our understanding that with this production, Manheim has fulfilled its obligations under the Subpoena.

Sincerely,

Shannon L. Shaw
Paralegal

CC: Adwoa Ghartey-Tagoe Seymour, Esq.

6205-A Peachtree Dunwoody Road • Atlanta, Georgia 30328 • (678) 645-0083 •Shannon.Shaw@coxinc.com

COX AUTOMOTIVE™

6205-A Peachtree Dunwoody Rd., Atlanta, Ga 30328

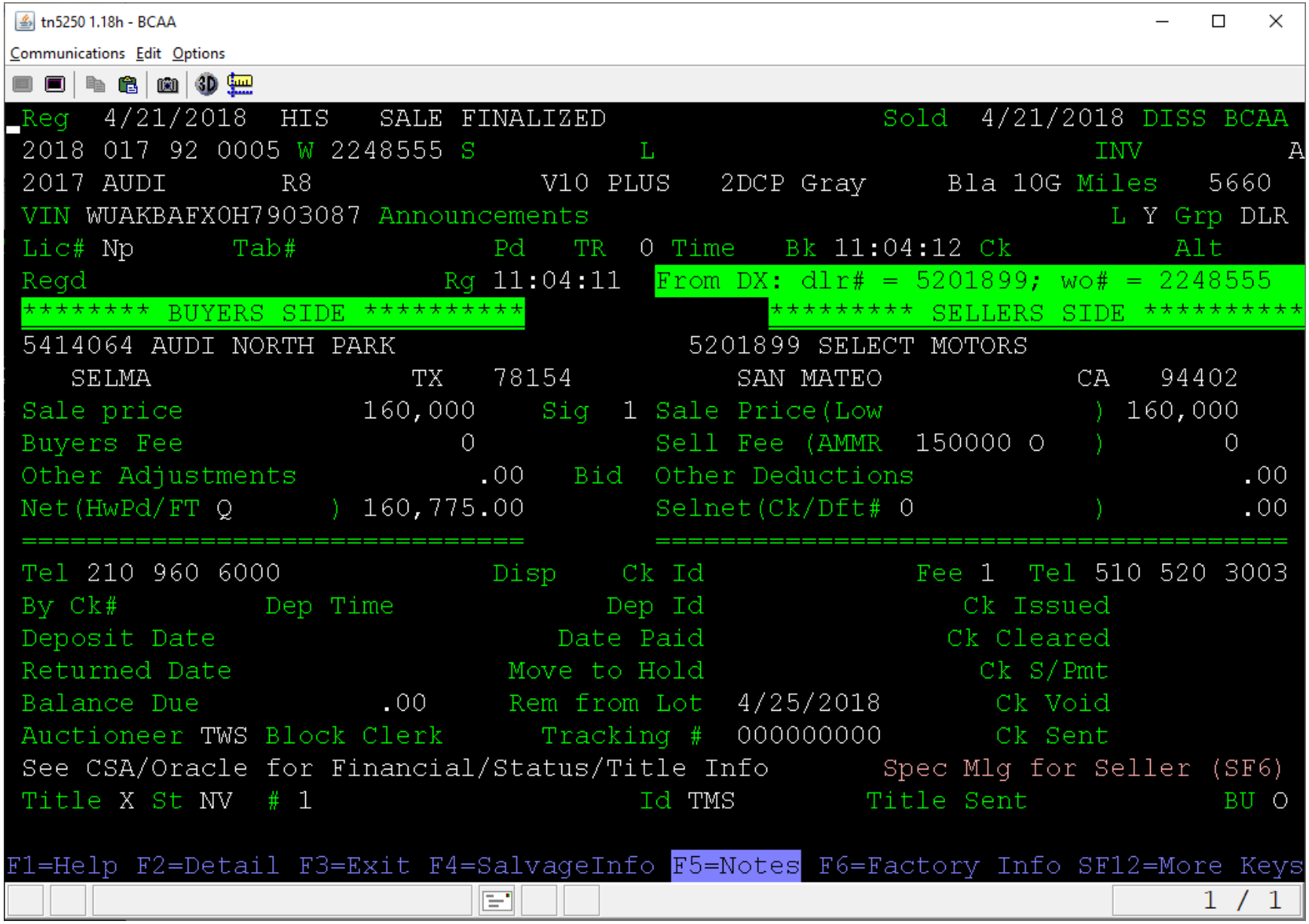
March 19, 2020
Payment due upon receipt. Thank you.

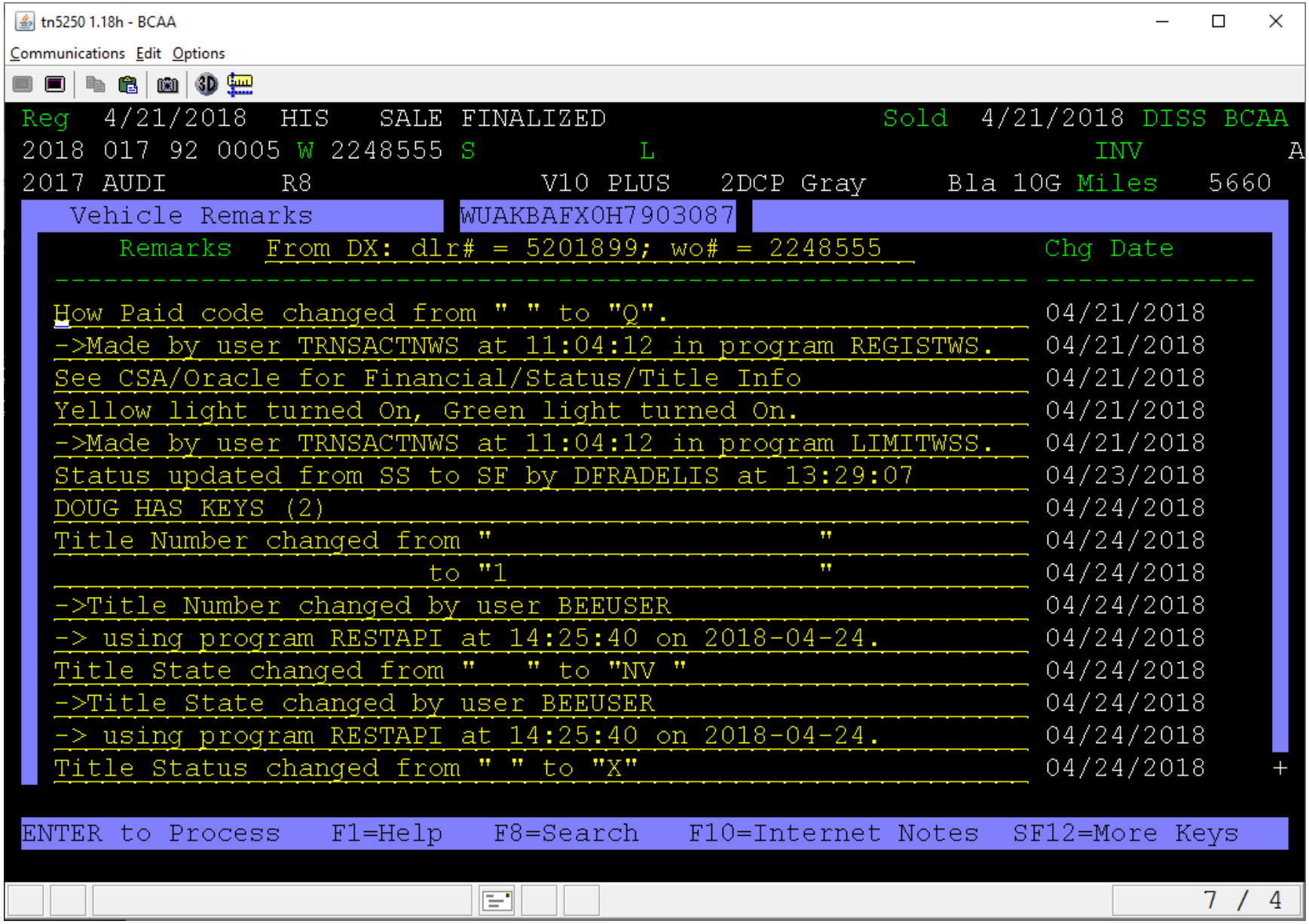
Billed Account Name and Address	Date
Via email: FBerkley@Sklar-law.com Federic I. Berkley, Esq. Sklar Williams PLLC 410 South Rampart Blvd, Suite 350 Las Vegas, Nevada 89145	March 19, 2020

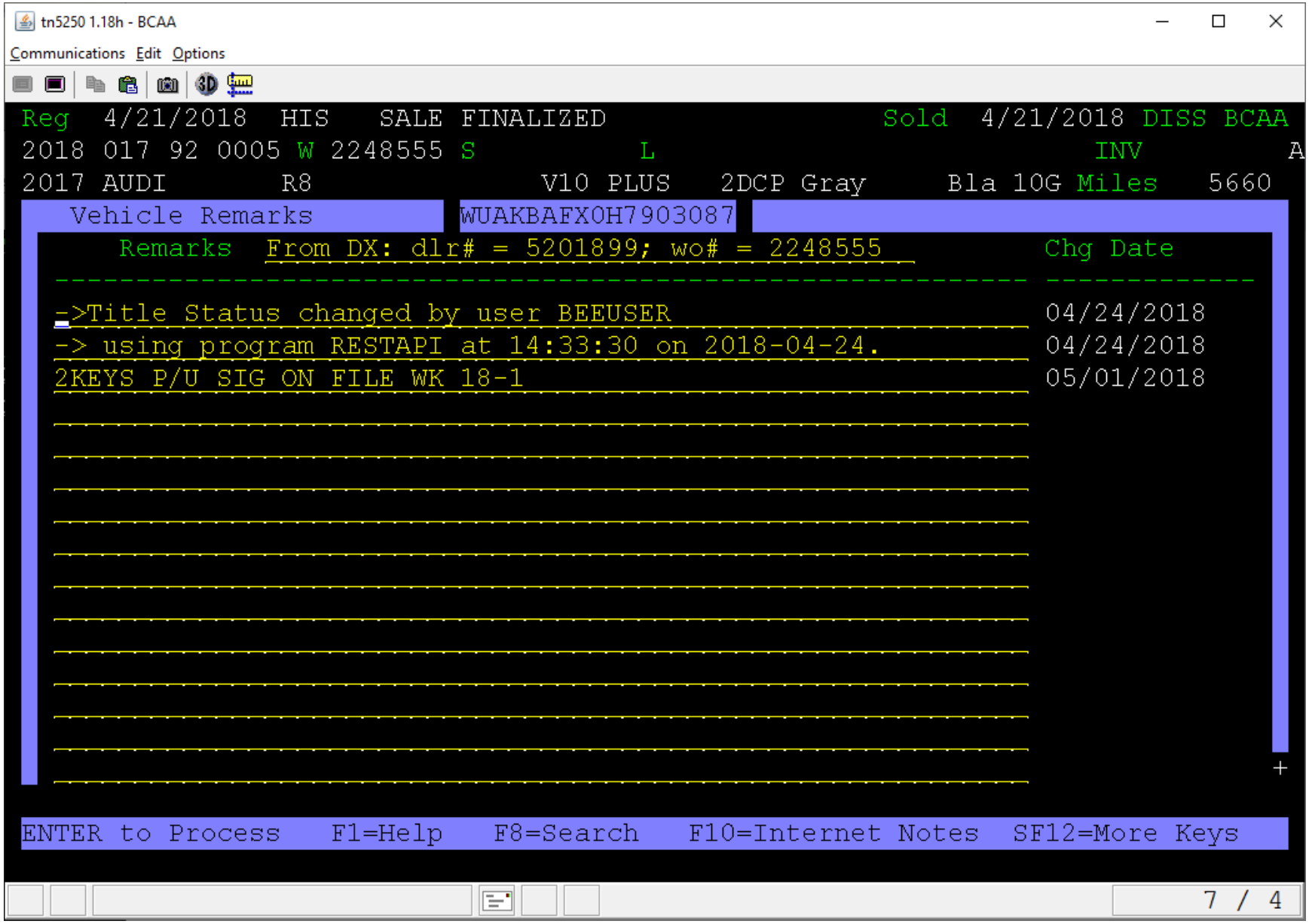
In re: Resh v. Money Machine, et al.

Description	Nevada	Qty	Rate	Sub-Total
Research/Retrieval	Per hour	2	$40.00	$ 80.00
Pages Copied	Per page	0	$0.25	$ 0.00
Certification Fee				$0.00
Postage				$0.00
Payment Received				-$49.50
TOTAL DUE:	**THANK YOU FOR YOUR PAYMENT**			**$0.00**

Remittance Details
CHECK PAYABLE TO: **Manheim Investments, Inc.** ATTN: Shannon L. Shaw, CEI Legal Dept. 6205-A Peachtree Dunwoody Rd., 16th Floor Atlanta, GA 30328 **Tax ID# 58-1620001**


tn5250 1.18h - BCAA
Communications Edit Options
Reg 4/21/2018 HIS SALE FINALIZED Sold 4/21/2018 DISS BCAA
2018 017 92 0005 W 2248555 S L INV A
2017 AUDI R8 V10 PLUS 2DCP Gray Bla 10G Miles 5660
VIN WUAKBAFX0H7903087 Announcements L Y Grp DLR
Lic# Np Tab# Pd TR 0 Time Bk 11:04:12 Ck Alt
Regd Rg 11:04:11 From DX: dlr# = 5201899; wo# = 2248555
******** BUYERS SIDE ********** ********** SELLERS SIDE **********
5414064 AUDI NORTH PARK 5201899 SELECT MOTORS
SELMA TX 78154 SAN MATEO CA 94402
Sale price 160,000 Sig 1 Sale Price(Low) 160,000
Buyers Fee 0 Sell Fee (AMMR 150000 O) 0
Other Adjustments .00 Bid Other Deductions .00
Net(HwPd/FT Q) 160,775.00 Selnet(Ck/Dft# 0) .00
Tel 210 960 6000 Disp Ck Id Fee 1 Tel 510 520 3003
By Ck# Dep Time Dep Id Ck Issued
Deposit Date Date Paid Ck Cleared
Returned Date Move to Hold Ck S/Pmt
Balance Due .00 Rem from Lot 4/25/2018 Ck Void
Auctioneer TWS Block Clerk Tracking # 000000000 Ck Sent
See CSA/Oracle for Financial/Status/Title Info Spec Mlg for Seller (SF6)
Title X St NV # 1 Id TMS Title Sent BU O
F1=Help F2=Detail F3=Exit F4=SalvageInfo F5=Notes F6=Factory Info SF12=More Keys
1 / 1


tn5250 1.18h - BCAA
Communications Edit Options
Reg 4/21/2018 HIS SALE FINALIZED Sold 4/21/2018 DISS BCAA
2018 017 92 0005 W 2248555 S L INV A
2017 AUDI R8 V10 PLUS 2DCP Gray Bla 10G Miles 5660
Vehicle Remarks WUAKBAFX0H7903087
Remarks From DX: dlr# = 5201899; wo# = 2248555 Chg Date
How Paid code changed from " " to "Q". 04/21/2018
->Made by user TRNSACTNWS at 11:04:12 in program REGISTWS. 04/21/2018
See CSA/Oracle for Financial/Status/Title Info 04/21/2018
Yellow light turned On, Green light turned On. 04/21/2018
->Made by user TRNSACTNWS at 11:04:12 in program LIMITWSS. 04/21/2018
Status updated from SS to SF by DFRADELIS at 13:29:07 04/23/2018
DOUG HAS KEYS (2) 04/24/2018
Title Number changed from " " 04/24/2018
to "1 " 04/24/2018
->Title Number changed by user BEEUSER 04/24/2018
-> using program RESTAPI at 14:25:40 on 2018-04-24. 04/24/2018
Title State changed from " " to "NV " 04/24/2018
->Title State changed by user BEEUSER 04/24/2018
-> using program RESTAPI at 14:25:40 on 2018-04-24. 04/24/2018
Title Status changed from " " to "X" 04/24/2018
ENTER to Process F1=Help F8=Search F10=Internet Notes SF12=More Keys
7 / 4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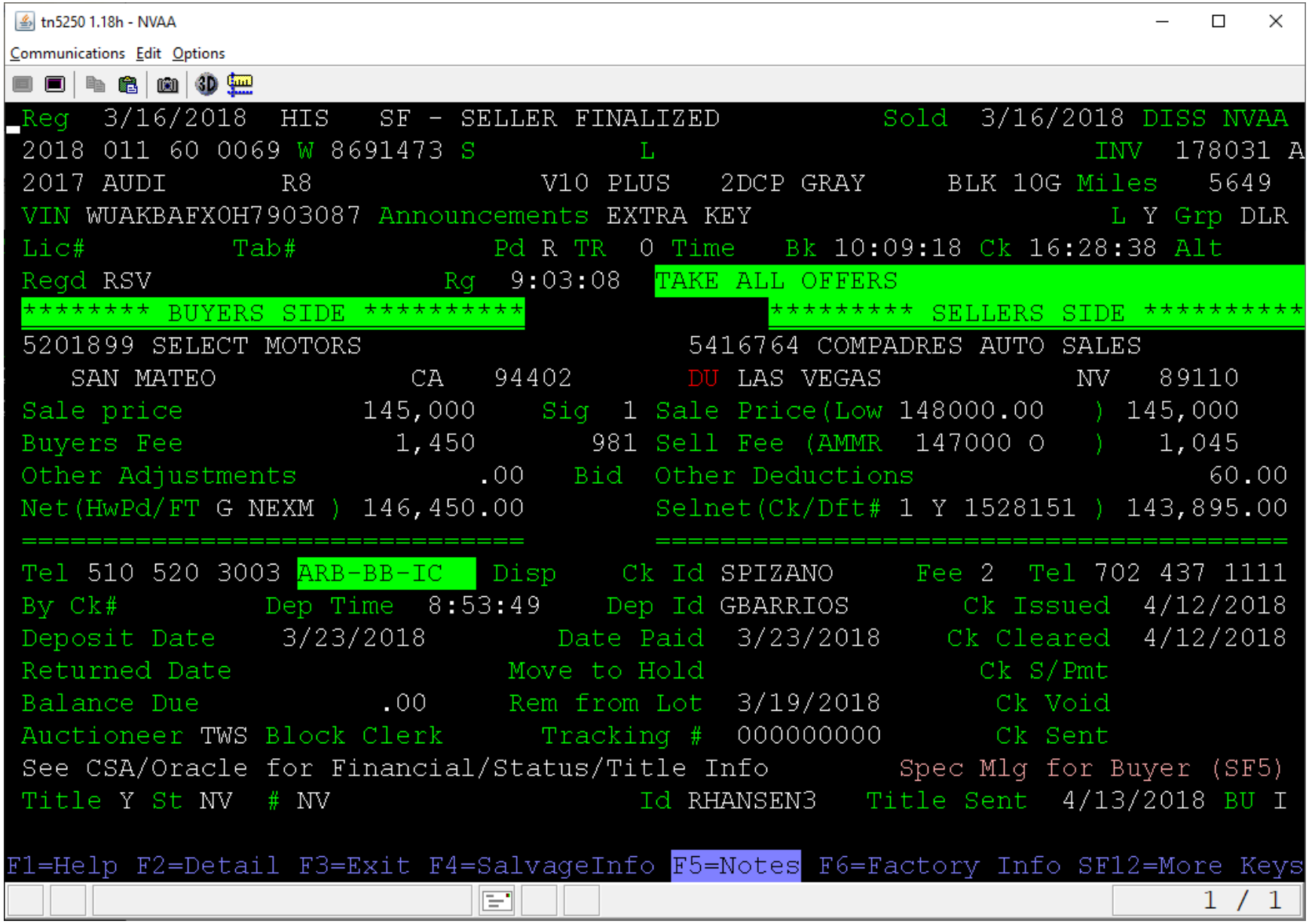
Communications Edit Options
Reg 4/21/2018 HIS SALE FINALIZED Sold 4/21/2018 DISS BCAA
2018 017 92 0005 W 2248555 S L INV A
2017 AUDI R8 V10 PLUS 2DCP Gray Bla 10G Miles 5660
Vehicle Remarks WUAKBAFX0H7903087
Remarks From DX: dlr# = 5201899; wo# = 2248555 Chg Date
->Title Status changed by user BEEUSER 04/24/2018
-> using program RESTAPI at 14:33:30 on 2018-04-24. 04/24/2018
2KEYS P/U SIG ON FILE WK 18-1 05/01/2018
ENTER to Process F1=Help F8=Search F10=Internet Notes SF12=More Keys
7 / 4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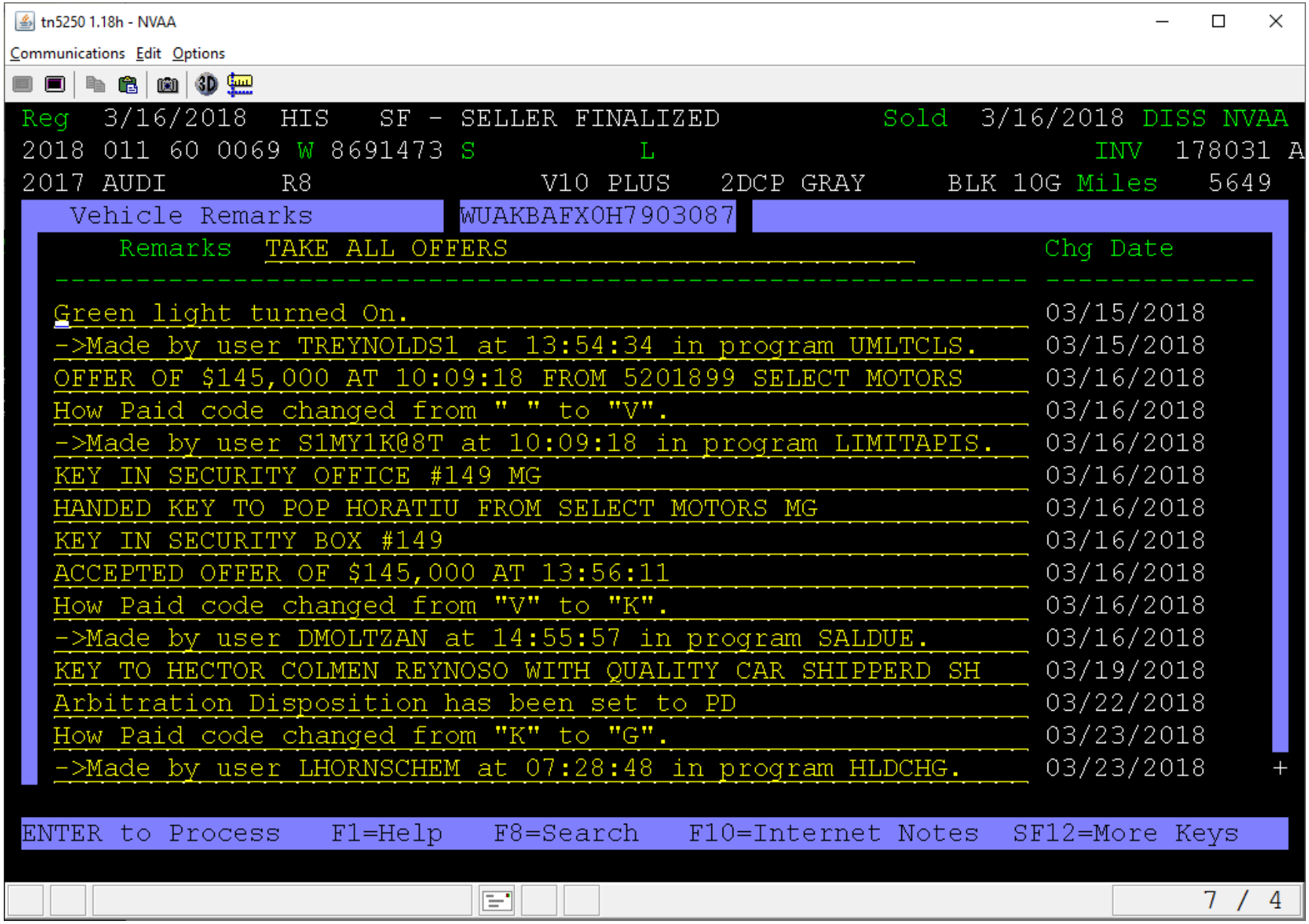
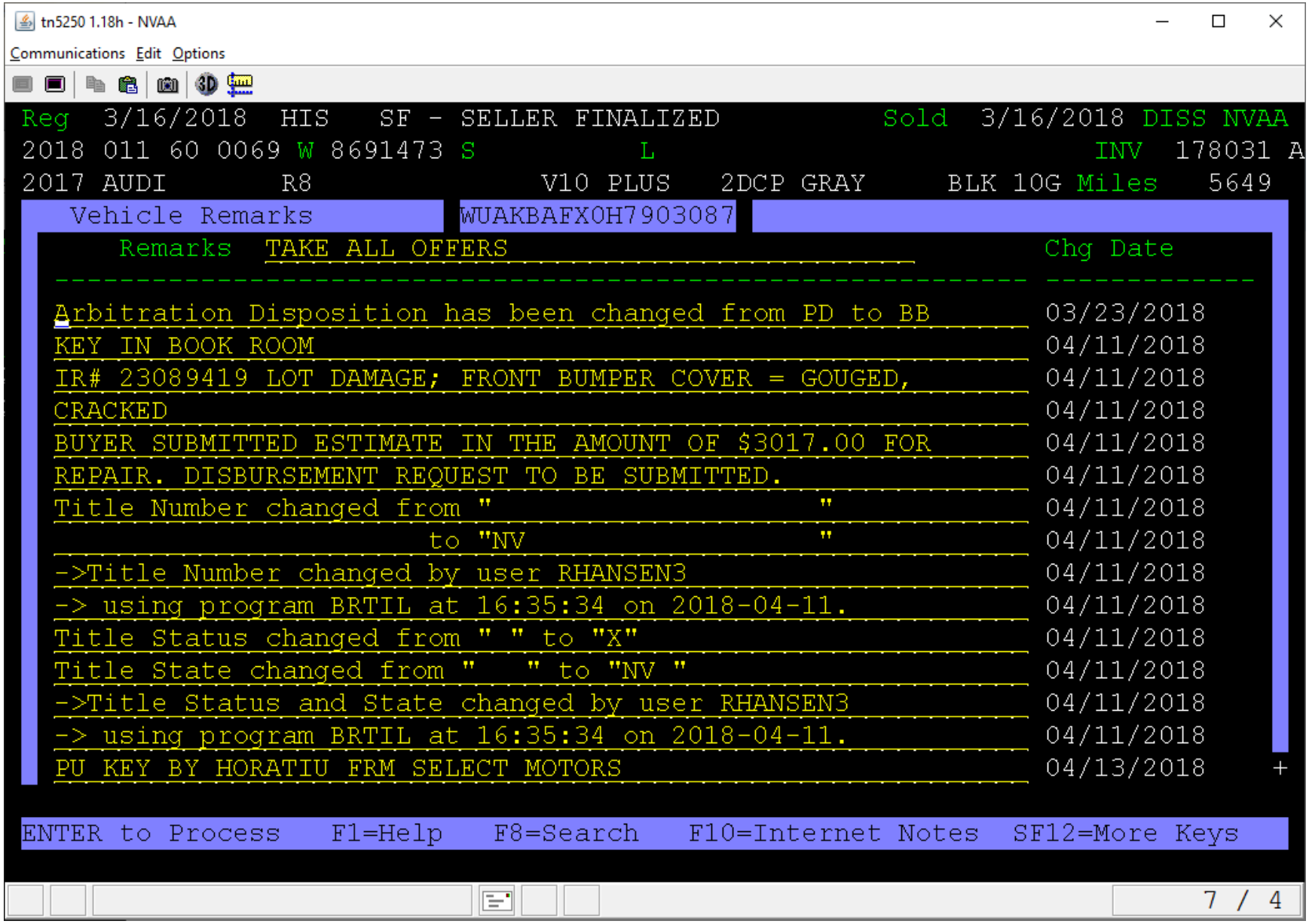
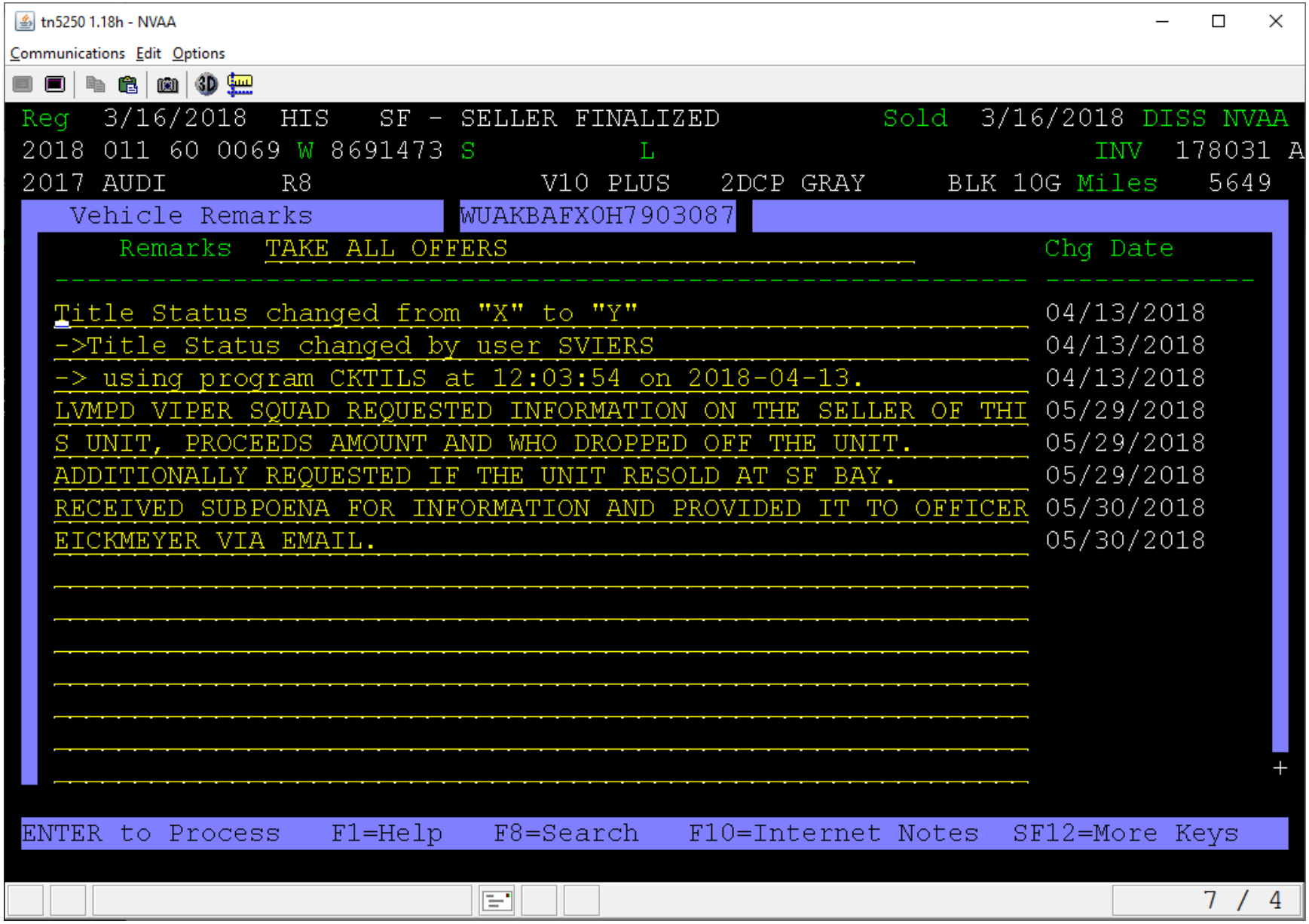
Communications Edit Options
Reg 3/16/2018 HIS SF - SELLER FINALIZED Sold 3/16/2018 DISS NVAA
2018 011 60 0069 W 8691473 S L INV 178031 A
2017 AUDI R8 V10 PLUS 2DCP GRAY BLK 10G Miles 5649
VIN WUAKBAFX0H7903087 Announcements EXTRA KEY L Y Grp DLR
Lic# Tab# Pd R TR 0 Time Bk 10:09:18 Ck 16:28:38 Alt
Regd RSV Rg 9:03:08 TAKE ALL OFFERS
******** BUYERS SIDE ********** ********* SELLERS SIDE **********
5201899 SELECT MOTORS 5416764 COMPADRES AUTO SALES
SAN MATEO CA 94402 DU LAS VEGAS NV 89110
Sale price 145,000 Sig 1 Sale Price(Low 148000.00) 145,000
Buyers Fee 1,450 981 Sell Fee (AMMR 147000 O) 1,045
Other Adjustments .00 Bid Other Deductions 60.00
Net(HwPd/FT G NEXM) 146,450.00 Selnet(Ck/Dft# 1 Y 1528151) 143,895.00
Tel 510 520 3003 ARB-BB-IC Disp Ck Id SPIZANO Fee 2 Tel 702 437 1111
By Ck# Dep Time 8:53:49 Dep Id GBARRIOS Ck Issued 4/12/2018
Deposit Date 3/23/2018 Date Paid 3/23/2018 Ck Cleared 4/12/2018
Returned Date Move to Hold Ck S/Pmt
Balance Due .00 Rem from Lot 3/19/2018 Ck Void
Auctioneer TWS Block Clerk Tracking # 000000000 Ck Sent
See CSA/Oracle for Financial/Status/Title Info Spec Mlg for Buyer (SF5)
Title Y St NV # NV Id RHANSEN3 Title Sent 4/13/2018 BU I
F1=Help F2=Detail F3=Exit F4=SalvageInfo F5=Notes F6=Factory Info SF12=More Keys
1 / 1


tn5250 1.18h - NVAA
Communications Edit Options
Reg 3/16/2018 HIS SF - SELLER FINALIZED Sold 3/16/2018 DISS NVAA
2018 011 60 0069 W 8691473 S L INV 178031 A
2017 AUDI R8 V10 PLUS 2DCP GRAY BLK 10G Miles 5649
Vehicle Remarks WUAKBAFX0H7903087
Remarks TAKE ALL OFFERS Chg Date
Green light turned On. 03/15/2018
->Made by user TREYNOLDS1 at 13:54:34 in program UMLTCLS. 03/15/2018
OFFER OF $145,000 AT 10:09:18 FROM 5201899 SELECT MOTORS 03/16/2018
How Paid code changed from " " to "V". 03/16/2018
->Made by user S1MY1K@8T at 10:09:18 in program LIMITAPIS. 03/16/2018
KEY IN SECURITY OFFICE #149 MG 03/16/2018
HANDED KEY TO POP HORATIU FROM SELECT MOTORS MG 03/16/2018
KEY IN SECURITY BOX #149 03/16/2018
ACCEPTED OFFER OF $145,000 AT 13:56:11 03/16/2018
How Paid code changed from "V" to "K". 03/16/2018
->Made by user DMOLTZAN at 14:55:57 in program SALDUE. 03/16/2018
KEY TO HECTOR COLMEN REYNOSO WITH QUALITY CAR SHIPPERD SH 03/19/2018
Arbitration Disposition has been set to PD 03/22/2018
How Paid code changed from "K" to "G". 03/23/2018
->Made by user LHORNSCHEM at 07:28:48 in program HLDCHG. 03/23/2018
ENTER to Process F1=Help F8=Search F10=Internet Notes SF12=More Keys
7 / 4


tn5250 1.18h - NVAA
Communications Edit Options
Reg 3/16/2018 HIS SF - SELLER FINALIZED Sold 3/16/2018 DISS NVAA
2018 011 60 0069 W 8691473 S L INV 178031 A
2017 AUDI R8 V10 PLUS 2DCP GRAY BLK 10G Miles 5649
Vehicle Remarks WUAKBAFX0H7903087
Remarks TAKE ALL OFFERS Chg Date
Arbitration Disposition has been changed from PD to BB 03/23/2018
KEY IN BOOK ROOM 04/11/2018
IR# 23089419 LOT DAMAGE; FRONT BUMPER COVER = GOUGED, 04/11/2018
CRACKED 04/11/2018
BUYER SUBMITTED ESTIMATE IN THE AMOUNT OF $3017.00 FOR 04/11/2018
REPAIR. DISBURSEMENT REQUEST TO BE SUBMITTED. 04/11/2018
Title Number changed from " " 04/11/2018
to "NV " 04/11/2018
->Title Number changed by user RHANSEN3 04/11/2018
-> using program BRTIL at 16:35:34 on 2018-04-11. 04/11/2018
Title Status changed from " " to "X" 04/11/2018
Title State changed from " " to "NV " 04/11/2018
->Title Status and State changed by user RHANSEN3 04/11/2018
-> using program BRTIL at 16:35:34 on 2018-04-11. 04/11/2018
PU KEY BY HORATIU FRM SELECT MOTORS 04/13/2018 +
ENTER to Process F1=Help F8=Search F10=Internet Notes SF12=More Keys
7 / 4


tn5250 1.18h - NVAA
Communications Edit Options
Reg 3/16/2018 HIS SF - SELLER FINALIZED Sold 3/16/2018 DISS NVAA
2018 011 60 0069 W 8691473 S L INV 178031 A
2017 AUDI R8 V10 PLUS 2DCP GRAY BLK 10G Miles 5649
Vehicle Remarks WUAKBAFX0H7903087
Remarks TAKE ALL OFFERS Chg Date
Title Status changed from "X" to "Y" 04/13/2018
->Title Status changed by user SVIERS 04/13/2018
-> using program CKTILS at 12:03:54 on 2018-04-13. 04/13/2018
LVMPD VIPER SQUAD REQUESTED INFORMATION ON THE SELLER OF THI 05/29/2018
S UNIT, PROCEEDS AMOUNT AND WHO DROPPED OFF THE UNIT. 05/29/2018
ADDITIONALLY REQUESTED IF THE UNIT RESOLD AT SF BAY. 05/29/2018
RECEIVED SUBPOENA FOR INFORMATION AND PROVIDED IT TO OFFICER 05/30/2018
EICKMEYER VIA EMAIL. 05/30/2018
ENTER to Process F1=Help F8=Search F10=Internet Notes SF12=More Keys
7 / 4

powered by Manheim

Learn More

MANHEIM NEVADA
6600 AUCTION LANE
NORTH LAS VEGAS, NV 89165
(702)730-1400

VEHICLE DETAILS - 2017 AUDI R8 V10 PLUS

VIN:	WUAKBAFX0H7903087	Body Style:	2DCP	Top Type:	Hard Top
Ext Color:	GRAY	Int Color:	BLK	Odometer:	5,649
Work Order:	8691473	Seller:	COMPADRES AUTO SALES	Received Date:	03/13/2018
Sale Number:	11	Lane Number:	60	Run Number:	69
Inspector:	AFERRANTE 03/13/2018	InService Date:	N/A		

GRADING

AutoGrade

Grade 4.6 Clean

- **MSRP**-Not Available
- **Engine Starts**-Yes
- **Drivable**-Yes

*Process protected under U.S. Patent No. 8,230,362

VALUE ADDED OPTIONS

- Back-Up Camera
- Heated Exterior Driver Mirror
- Heated Exterior Passenger Mirr
- Heated Seats-Front(s)
- Leather Seats
- Navigation System

VEHICLE INFORMATION

OPTIONS

- 50 State Emissions
- A/C
- AM Radio
- Automatic Headlights
- Auxiliary Pwr Outlet
- Cruise Control
- Dual Air Bags
- Fog Lamps
- Front Floor Mats
- Front Reading Lamps
- Intermittent Wipers
- Keyless Start
- Leather Steering Wheel
- Owner's Manual
- Paddle Shifter
- Power Folding Mirrors
- Power Locks
- Power Mirrors
- Power Trunk Release
- Power Windows
- Pwr Seats - Both
- Pwr Steering
- Rear Defrost
- Security System
- Side Air Bags
- Steering Wheel Audio Control
- Telescopic Steering Wheel
- Tilt Steering
- Tilt Steering Wheel
- Tire Pressure Monitor System
- Traction Control
- Trip Computer
- Trip Counter
- Turn Signal Mirrors
- US EPA Label

MECHANICAL

- 10 Cylinder Gas
- Automatic
- AWD
- Automatic Transmission
- Anti-lock Brakes
- 5.2 L

INTERIOR

- Odometer - Digits Digital -Operable
- Regular Dash
- Leather
- Int Odor: OK

TIRES AND WHEELS

Tire Condition: **Wheels:** Alloy

Tire	Tread Depth	Brand	Size
Left Front:	5/32"	PIRELLI	245/30ZR20

KEYS

- Proximity Key - 1

OTHER

Left Rear:	6/32"	PIRELLI	305/30ZR20
Right Front:	5/32"	PIRELLI	245/30ZR20
Right Rear:	6/32"	PIRELLI	305/30ZR20
Spare:	N/A	(Mini)	N/A

- Title State: NV
- Title Received Date: 04/11/2018
- Org Mfg Basic Warranty: 4 Years/50,000 Miles
- Org Mfg Powertrain Warranty: 4 Years/50,000 Miles

*Manheim is not responsible for voided warranties

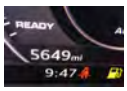
ADDITIONAL INFORMATION

EXTRA KEY,, TAKE ALL OFFERS

CHARGEABLES

HIDE PIC	HIDE LINE	ITEM	DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED
☐	☐	0020	Front Bumper	Chipped	9	Paint Chip Repair	.00	$25.00	☐
☐	☐	0532	Gas	Low Fluid	Unacceptable	Replace	.00	$14.00	☐
						TOTALS	.00	$39.00	

NON-CHARGEABLES AND ADDITIONAL IMAGES

HIDE PIC	HIDE LINE		ITEM	DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED
☐	☐		0000	Overall Picture-FRONT/LFT FRNT	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Left	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Right	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture-REAR/RGT REAR	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Wheel	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Interior	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Dash	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Engine	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Odometer	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture VIN/ID Sticker	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Cargo Area	Overall Picture			.00	$.00	☐
☐	☐		0000	Picture #1	Overall Picture REAR CAM			.00	$.00	☐
☐	☐		0000	Picture #2	Overall Picture NAV			.00	$.00	☐
☐	☐		0010	Windshield	Chipped	< 1/8"	No Action Required	.00	$.00	☐
							TOTALS	.00	$.00	

REPAIRED

HIDE PIC	HIDE LINE	ITEM	DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED
						TOTALS	.00	$.00	

RECON CHARGES

DATE	QTY	PART	DESCRIPTION	RETAIL
03/13/2018			INSPECTION FEE	$35.00
03/16/2018			Seller Registration Fee	$25.00

TOTAL CHARGES

Chargeables	$39.00
Non-Chargeables	$.00
Repaired	$.00
Deductibles	$.00
Recon Charges	$60.00
Total Charges	$99.00

MANUFACTURER PACKAGE INFORMATION

INFORMATION SET FORTH HEREIN IS BASED SOLELY ON INFORMATION PROVIDED BY THE VEHICLE MANUFACTURER AT THE TIME OF MANUFACTURE AND MAY NOT BE ACCURATE OR COMPLETE. MANHEIM HAS NOT UNDERTAKEN STEPS TO CONFIRM THE ACCURACY OF ANY SUCH INFORMATION, AND ANY INFORMATION DISCLOSED HEREIN IS PROVIDED "AS IS".

Open All Packages Close All Packages

20" Wheel Package - 45E

- Wheels: 20" 10-Spoke-Y-Design Forged Alloy
- Tires: 245/30R20 Fr & 305/30R20 Rr Summer Performance
- Titanium-Matte Finish

Diamond Stitch Leather Package w/Sport Seats - PL8

- 18-Way Power Seats
- Full Leather Package
- Door And Side Panels And Airbag Cap
- Pneumatic Side And Leg Bolsters
- Upper And Lower Dash
- Alcantara Headliner w/Diamond Stitching

OTHER OPTIONS

- USB Cables
- Delete Front License Plate Holder
- Engine: 5.2L FSI V10 DOHC Plus
- Transmission w/Driver Selectable Mode, Sequential Shift Control w/Steering Wheel Controls And Oil Cooler
- Electric Power-Assist Steering
- Mechanical Limited Slip Differential
- Tires: 245/35R19 Fr & 295/35R19 Rr Summer -inc: Performance
- Carbon Fiber Power Heated Auto Dimming Side Mirrors w/Power Folding And Turn Signal Indicator
- Speed Sensitive Rain Detecting Variable Intermittent Wipers
- Fully Automatic Projector Beam Led Low/High Beam Daytime Running Auto High-Beam Headlamps w/Delay-Off
- Radio: Audi MMI Navigation Plus -inc: Audi Music Interface w/2 USB Ports, Audi Sound System (5 Speakers, 140 watts)) Bluetooth Streaming Audio For Compatible Devices And
- Bang & OLUFSEN Sound System
- Dynamic Steering
- Transmission: 7-Speed Auto S Tronic
- Full-Time All-Wheel Drive
- 4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs, Brake Assist, Hill Hold Control, Ceramic Discs And Electric Parking Brake
- Wheels: 19" 5-Double-Spoke Design Forged -inc: Titanium Finish
- Wheels w/Locks
- Fixed Rear Window w/Defroster
- Wing Spoiler
- Front And Rear Fog Lamps
- Radio w/Seek-Scan, Console Mounted Single Remote CD, MP3 Player, Clock, Speed Compensated Volume Control, Steering Wheel Controls And Radio Data System

- Wireless Technology Preparation For Compatible Mobile Phones And SiriusXM Satellite Radio w/90-Day Trial Subscription
- Heated Front Racing Shell Sports Bucket -inc: 18-Way Power Seats w/Pneumatic Side And Leg Bolsters, 4-Way Lumbar And Power Seat Height Adjustment
- Gauges -inc: Speedometer, Odometer, Voltmeter, Engine Coolant Temp, Tachometer, Oil Temperature, Trip Odometer And Trip Computer
- Sport Leather/Aluminum Steering Wheel
- Remote Keyless Entry w/Integrated Key Transmitter, Illuminated Entry And Panic Button
- HomeLink Garage Door Transmitter
- Automatic Air Conditioning
- Day-Night Auto-Dimming Rearview Mirror
- Full Carpet Floor Covering -inc: Carpet Front Floor Mats
- Smart Device Integration
- Power Door Locks w/Autolock Feature
- Perimeter Alarm
- Electronic Stability Control (Esc)
- Dual Stage Driver And Passenger Seat-Mounted Side Airbags
- Tire Specific Low Tire Pressure Warning
- SIDEGUARD Curtain 1st Row Airbags
- Driver And Passenger Knee Airbag
- Manual Tilt/Telescoping Steering Column
- Mobile Hotspot Internet Access
- Proximity Key For Doors And Push Button Start
- Remote Releases -Inc: Power Cargo Access And Power Fuel
- Cruise Control
- Fine Nappa Leather Seat Trim
- Driver And Passenger Visor Vanity Mirrors w/Driver And Passenger Illumination
- Fob Controls -inc: Trunk/Hatch/Tailgate
- Power 1st Row Windows w/Driver And Passenger 1-Touch Up/Down
- Trip Computer
- Engine Immobilizer
- ABS And Driveline Traction Control
- Front And Rear Parking Sensors
- Dual Stage Driver And Passenger Front Airbags
- Airbag Occupancy Sensor
- Back-Up Camera

VIN: WUAKBAFX0H7903087, Work Order: 8691473


A/C
AUTO
OFF
P


READY
5649mi
9:47


MFD. BY quattro GmbH
10 16 GVWR LBS 4321 GAWR LBS FRONT 2006 /REAR 2458
THIS VEHICLE CONFORMS TO ALL APPLICABLE U S
FEDERAL MOTOR VEHICLE SAFETY, BUMPER AND THEFT
PREVENTION STANDARDS IN EFFECT ON THE DATE OF
MANUFACTURE SHOWN ABOVE
Audi
PASSENGER CAR
WUAKBAFX0H7903067
GERMANY


R8


35 mi
Not connec...
SE
Check surroundings!
9:50
61 °F


35 mi
Not connec...
SE
Image Landsat / Copernicus
N Hollywood Blvd
Speedway Blvd
15
MPH
Check surroundings!
9:50
61 °F

Manheim Search... Search Shannon Shaw Setup Help & Training Manheim Sales

Home Chatter Clients Contacts Opportunities Reports Dashboards Cases Referrals Videos License Management Projects Revenue Transactions

Case
02888686

Customize Page | Printable View | Help for this Page

Hide Feed

Post File New Task More

Write something... Share

Follow
Followers
No followers.

Show All Updates

James MacDonald to Manheim Only posted a comment.

Called, byr Horatio and requested pics of the damages. Already informed him this is NOT an arb matter.

Comment · Like · March 23, 2018 at 12:14 PM

James MacDonald changed Status from Pending to Buyer Bought.

Comment · Like · March 23, 2018 at 12:11 PM

James MacDonald closed this case as Closed.

Comment · Like · March 23, 2018 at 12:11 PM

James MacDonald changed Case Owner from Manheim Nevada Arb to James MacDonald.

Comment · Like · March 23, 2018 at 12:01 PM

Manheim Salesforce.com User changed Status from a blank value to Pending.

Comment · Like · March 22, 2018 at 9:23 PM

Manheim Salesforce.com User changed Case Owner from Manheim Salesforce.com User to Manheim Nevada Arb.

Comment · Like · March 22, 2018 at 9:23 PM

« Back to List: Cases

Case History [5+] | Open Activities [0] | Activity History [0] | Case Comments [1] | Attachments [0] | Approval History [0]

Case Detail

Edit Take Ownership Transaction Details

Custom Links
AutoCheck Link | CarFax Link | OVE Link
RepairPal Link | BATNA | Policies
Arb Reporting | NHTSA Recall Link

Discovery

Payment has been made on this transaction, contact front office to pull the check.

Operating Location	Manheim Nevada	Case Owner	James MacDonald [Change]
Purchase Market	West	Linked Real Time Transaction	WUAKBAFX0H7903087
Current Vehicle Location	Manheim Nevada	Case Origin	Online/M.com
Other Location		Case Number	02888686
Current Vehicle Mileage		Vehicle Status	SF
Sale Date	3/16/2018	National MMR (Time of Sale)	$147,000.00
Arbitration Date	3/22/2018	Sale Price	$145,000.00
Model Year	2017	Floor Type	
Make	Audi	Channel	In-Lane
Model	R8 Coupe	Red Light	0
Body	2dr Car	Green Light	1
Miles	5,649	Yellow Light	0
VIN	WUAKBAFX0H7903087	Blue Light	0

Sale #	11	Work Order	8691473
Lane #	60	CR Inspector Alias	
Run #	69	SD Link	
DealShield Product		Ready Auto Transportation Request Flag	
DealShield Status		Ready Auto Delivery Date	
Product Type		Ready Auto Arb Eligibility Expiration	
Frame Inspector		Status Summary	
Top Side Inspector		Remarks	
Test Drive Inspector		Notes	
Product Resolution			
Product Fail Reason			

Primary Claim Details

Buyer Claim Description	Hi Glen, I purchased this unit in person and I inspected it myself, the car HAD no damages. I received the car and the front bottom carbon fiber trim is cracked, so it either happened in the auction after I bought the car or transport damage. Please pull the gate pass and see if the damage is noted on it ASAP. Thank you.	Primary Estimated Amount	
		Primary Category Amount	$0.00
		Primary Within Time Limit Per NAAA	Y

Secondary Claim Details

Secondary Claim Category		Secondary Estimated Amount	
Secondary Claim Condition		Secondary Claim Valid Per NAAA	
		Secondary Within Time Limit per NAAA	

Manheim Express

ManEx Upload Type		Concierge	
ManEx Channel		CR Link	
Inspection Source			

Buyer/Seller Details

Buyer Universal	SELECT MOTORS	Seller Bill To Universal Id	
Buyer Universal Id	5201899	Seller Universal	COMPADRES AUTO SALES
Rolling 12 Month Purchases	160	Seller Universal Id	5416764
Rolling 12 Month Buyer Claims	34	Rolling 12 Month Sales	1
Rolling 12 Month Buyer Arbitration Rate	21.25%	Rolling 12 Month Seller Claims	0
		Rolling 12 Month Seller Arbitration Rate	0.00%
Buyer Rep	HORATIU POP		
Buyer Rep Id	100530662		
Email	selectmotors21@gmail.com		

Decision

Disposition	BB	Financial Adjustment Status	
Adjustment Type	Invalid Claim	Total Adjustment Amount	$0.00
Responsible Party	Buyer	Resolution Amount	$145,000.00
Primary Claim Condition			
Clear Line of Sight to Title	✓		

Inherited Vehicle Details

		Gain/Loss on Resale	$0.00

Additional Information

Contact Name	
Description	

System Information - Do Not Change

Created By	Manheim Salesforce.com User, 3/22/2018 9:23 PM	Last Modified By	Inventory Deploy, 3/27/2019 9:49 PM
Status	Closed	Subject	
Auto IMS Posted Date		Priority	
Transaction Id	a100Z00000JejcvQAB		

Edit | Take Ownership | Transaction Details

Case History

Date	User	Connection	Action
5/31/2018 6:21 PM	James MacDonald		Changed **Adjustment Type** from No Adjustment to **Invalid Claim**.

3/23/2018 12:11 PM	James MacDonald	Changed **Status** from Buyer Bought to **Closed**.
		Changed **Status** from Pending to **Buyer Bought**.
		Changed **Adjustment Type** to **No Adjustment**.
3/23/2018 12:01 PM	James MacDonald	Changed **Case Owner** from Manheim Nevada Arb to **James MacDonald**.
3/22/2018 9:23 PM	Manheim Salesforce.com User	Changed **Status** from New to **Pending**.
		Changed **Status** to **New**.
		Changed **Linked Real Time Transaction** to **WUAKBAFX0H7903087**.
		Changed **Purchase Location** to **Manheim Nevada**.
		Changed **Case Owner** from Manheim Salesforce.com User to **Manheim Nevada Arb**.

Show more » | Go to list »

Open Activities

New Task | New Event

No records to display

Activity History

Log a Call | Mail Merge | Send An Email

No records to display

Case Comments

New

Action	Public	Comment
Make Public	☐	**Created By: James MacDonald (3/23/2018 12:14 PM)** Called, byr Horatio and requested pics of the damages. Already informed him this is NOT an arb matter.

Attachments

No records to display

Approval History

Submit for Approval

No records to display

Back To Top

Always show me more records per related list

Amount: $143,895.00
Account: [redacted]
Bank Number: [redacted]

Sequence Number: 9092207933
Capture Date: 04/12/2018
Check Number: 1528151

MANHEIM NEVADA
6400 AUCTION LN NORTH LAS VEGAS, NV 89165 USA
(702) 730-1400
This CHECK must be deposited by payee and cleared through the payee's bank.

Bank of America
Atlanta, GA

64-1278 / 611
16:28:47 2018 - 011 - 60 - 0069
K ** CHECK ** NO C1528151 *****

NOT TO EXCEED $750000.00
NOT NEGOTIABLE AFTER 6 MONTHS
FROM DATE OF ISSUE

2017 AUDI WUAKBAFX0H7903087 3-16-2018 $143,895.00***

* ONE HUND FORTY-THREE THOUS EIGHT HUND NINETY-FIVE and 00/100 Dollars **

5416764
PAY TO: COMPADRES AUTO SALES**********
1546 N NELLIS BLVD

LAS VEGAS NV 89110

MANHEIM NEVADA

[redacted]

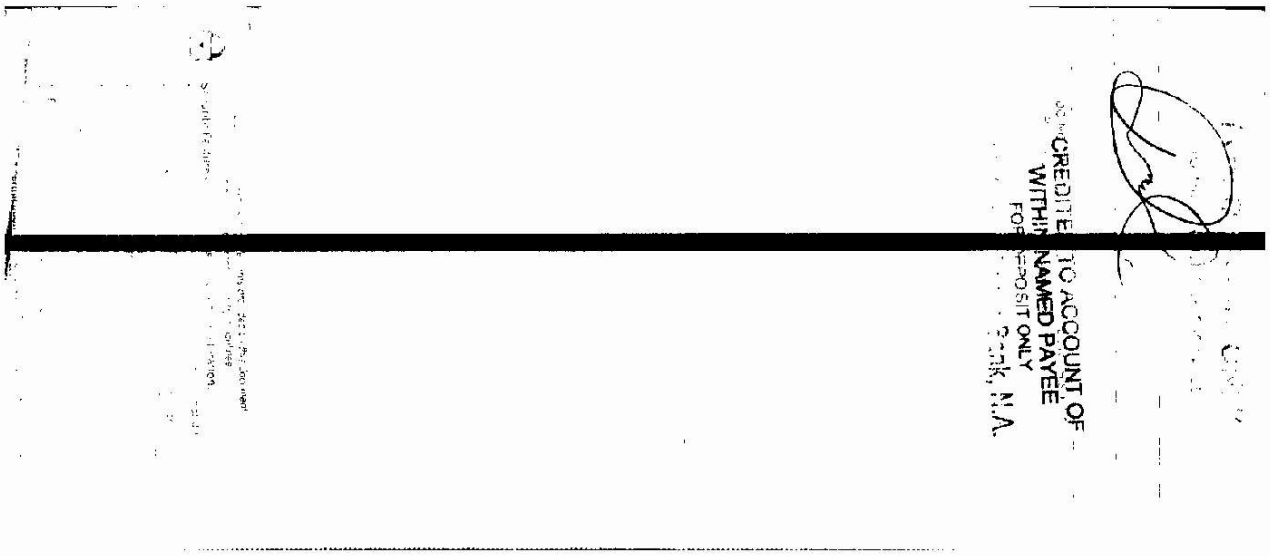
SECURITY FEATURES INCLUDED, DETAILS ON BACK

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
04/11/2018	5590947017	111900057	Rtn Loc/BOFD	Y		JPMORGAN CHASE BANK,
04/12/2018	009092207933	11300016	Pay Bank	N		

Amount: $143,895.00
Account: [redacted]
Bank Number: [redacted]

Sequence Number: 9092207933
Capture Date: 04/12/2018
Check Number: 1528151



Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
04/11/2018	5590947017	111900057	Rtn Loc/BOFD	Y		JPMORGAN CHASE BANK,
04/12/2018	009092207933	11300016	Pay Bank	N		

EXHIBIT "C"

AFFIDAVIT OF CUSTODIAN OF RECORDS- ~~GREATER NEVADA AUTO AUCTIONS, LLC~~ Manheim Investments, Inc. D/B/A MANHEIM NEVADA

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Case No.: A-18775815-C

COMES NOW, Shannon Shaw, (*name of custodian of records)* who after first being duly sworn deposes and says:

1. That the deponent is the Sr. Paralegal (*position or title*) of Cox Enterprises, Inc., and in his or her capacity as Sr. Paralegal (*position or title*) is a custodian of the records of Manheim Investments, Inc..

2. That Manheim Investments, Inc., is licensed to do business as a Auto Auction in the State of Nevada.

3. That on the 3 day of the month of March, 2020, the deponent was served with a subpoena in connection with the above-entitled case, calling for the production of records pertaining to 2017 Audi R8 VIN WUAKBAFX0H7903087

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

5. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or Manheim Investments, Inc..

Executed on: March 19, 2020

(*Signature of Custodian of Records*)

SUBSCRIBED AND SWORN to before me
This 19th day of March, 2020.

NOTARY PUBLIC
County of 06-26-2020
My Appointment Expires DEKALB

VERA T. CHEGE NOTARY PUBLIC DeKALB COUNTY, GEORGIA My Commission Expires 06-26-2022

EXHIBIT 23

EXHIBIT 23

OMSJ
KURT C. FAUX, ESQ.
Nevada Bar No. 03407
JORDAN F. FAUX, ESQ.
Nevada Bar No. 12205
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jfaux@fauxlaw.com
Attorneys for Western National Mutual Insurance Company

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM HARRY RESH, an individual,

Plaintiff,

v.

MONEY MACHINE, LLC, a Nevada limited liability company dba COMPADRES AUTO SALES; ROBERT LEGASPI, an individual, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a Minnesota corporation; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

Case No. A-18-775815-C
Dept. No.: 20

OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Hearing Date: October 16, 2019
Hearing Time: 8:30 A.M.

THE FAUX LAW GROUP
1540 W. Warm Springs Road, Suite 100
Henderson, Nevada 89014
Tel. (702) 458-5790

Defendant, Western National Mutual Insurance Company ("WNMIC"), by and through the Faux Law Group, submits it Opposition to the Motion for Summary Judgment filed by Plaintiff, WILLIAM HARRY RESH ("Resh").

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This Opposition is supported by the attached memorandum of points and authorities, the papers on file with the Court, and any oral argument held.

DATED this 25th day of August, 2020.

THE FAUX LAW GROUP

By: /s/ Jordan F. Faux
KURT C. FAUX, ESQ.
Nevada Bar No. 03407
JORDAN F. FAUX, ESQ.
Nevada Bar No. 12205
THE FAUX LAW GROUP
2625 N. Green Valley Pkwy., #100
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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT REGARDING THE BANKRUPTCY AUTOMATIC STAY

As the Court is aware, the filing of a bankruptcy imposes an automatic stay of all proceedings against the debtor as codified in 11 U.S. C. § 362(a)(1), (3), including judicial proceedings. "The scope of the stay is quite broad." *Hillis Motors, Inc. v. Haw. Auto. Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir. 1993). "The automatic stay imposes on non-debtor parties an affirmative duty of compliance," which includes alerting the court of potential conflicts between an order and the automatic stay. *Sternberg v. Johnston*, 595 F.3d 937, 943 (9th Cir. 2010) *overruled on other grounds by Am. Servicing Co. v. Schwartz–Tallard (In re Schwartz–Tallard)*, 803 F.3d 1095, 1100 (9th Cir. 2015) (en banc).

The instant motion has been filed per the Court's permission based on representations that summary judgment would be sought against the surety only. The motion is somewhat ambiguous in that regard. To the extent that the motion seeks summary judgment or findings that could be construed against debtor Robert Legaspi (whom Plaintiff has asserted is an alter ego of Compadres Auto Sales), WNMIC alerts the Court to a potential conflict between the motion and the automatic stay. As the Court will be required to make findings regarding Compadres Auto Sales (an alter ego of Legaspi

according to Plaintiff) in order to determine WNMIC's liability, WNMIC also raises this as a potential conflict as it is required to do under *Sternberg*.

II. RESPONSE TO STATEMENTS OF MATERIAL FACTS

In the interest of judicial economy, Western National Mutual Insurance Company ("WNMIC") will respond directly to the facts asserted in the affidavits of William Harry Resh and Robert Larson rather than attempting to respond to the narrative presented in the motion. The narrative misstates, adds, and recharacterizes certain material facts as alleged in the affidavits. As the affidavits constitute the actual evidence, that is where WNMIC will respond.

A. Response to Affidavit of William Henry Resh

1. I am the Plaintiff in the above referenced matter:

WNMIC Response: No Dispute.

2. I am a Board-certified Cardiologist and at all times herein relevant, a resident of Clark County, Nevada.

WNMIC Response: Not relevant or material.

3. I have read the Complaint on file in this matter and can verify that all of the allegations contained therein are true and correct to the best of my knowledge.

WNMIC Response: Summary. WNMIC will respond to the individual facts as presented.

4. I was the owner of a 2017 Audi R8 automobile, VIN No. WUAKBAFX0H7903087.

WNMIC Response: No documentary evidence has been provided, but not in dispute.

5. In February and March 2018, I attempted to sell the aforementioned vehicle through auction with the assistance of Robert Larson, who has assisted me in selling vehicles in the past.

WNMIC Response: No dispute.

6. I was told that in order to effectuate the sale of my vehicle, I would be required to furnish the title to said vehicle to the auction house known as Manheim.

WNMIC Response: Objection. Hearsay. This statement is inadmissible hearsay pursuant to NRS 51.035, 51.065.

7. I was informed that my vehicle sold for $140,500 and that a check in that amount was prepared by Manheim made payable to Compadres Auto Sales.

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WNMIC Response: Objection. Hearsay. This statement is inadmissible hearsay pursuant to NRS 51.035, 51.065. Misstates facts. According to auction records, the Vehicle sold for $145,000.00. After what appear to be auction fees of $1,045.00 and $60.00, the amount remaining and due to the seller was $143,895.00. *See* Manheim Documents MI_000004.

8. I am advised that a check in that amount was personally delivered by Robert Larson to a duly authorized representative at Compadres Auto Sales.

WNMIC Response: Objection. Hearsay. This statement is inadmissible hearsay pursuant to NRS 51.035, 51.065. Misstates facts. According to auction records, the Vehicle sold for $145,000.00. After what appear to be auction fees of $1,045.00 and $60.00, the amount remaining and due to the seller was $143,895.00. *See* Manheim Documents MI_000004; The check was in the amount of $143,895.00. *Id.* at 000026-27.

9. I was advised that as soon as the aforementioned check cleared, a check for $140,500 would immediately be prepared and delivered to me through my agent for the sale, Robert Larson.

WNMIC Response: Objection. Hearsay. This statement is inadmissible hearsay pursuant to NRS 51.035, 51.065.

10. Despite the efforts of both Robert Larson and my attorney, Compadres Auto Sales has refused to make payment to me and in fact will not even respond to our requests for payment.

WNMIC Response: Disputed in part. The court record shows that Compadres Auto Sales has responded to the request for payment during the course of the litigation by responding to the Complaint and Amended Complaint, but no dispute that payment has not been made.

11. I can only conclude that Compadres has wrongfully converted the monies it received for the sale of my vehicle in the amount of $140,500 without any legal justification whatsoever.

WNMIC Response: Speculative. Witness has no personal knowledge as to these facts. NRCP 56(c)(4).

Paragraphs 12 and 13 of Resh's affidavit do not contain assertions of fact and so no response is necessary.

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B. Response to Affidavit of Robert Larson

1. I am a resident of Clark County, Nevada.

WNMIC Response: Not material, no dispute.

2. I am in the business of assisting individuals in selling their vehicles at auction and have been over the past five years.

WNMIC Response: Larson's name does not appear on the list of licensed dealers or brokers available at the DMV's website.

3. I have sold cars for William Harry Resh ("Bill") in the past.

WNMIC Response: No dispute.

4. I assisted Bill in selling his 2017 Audi R8 automobile, VIN No. WUAKBAFXOH7903087.

WNMIC Response: No dispute.

5. In order to sell a car at auction, I must register the vehicle under a dealership.

WNMIC Response: No dispute.

6. I registered Bill's Audi under a dealership called Compadres Auto Sales, a dealership I have worked with in the past.

WNMIC Response: No dispute.

7. Bill's vehicle sold at auction for the sum of $143,895.

WNMIC Response: Misstates facts. According to auction records, the Vehicle sold for $145,000.00. After what appear to be auction fees of $1,045.00 and $60.00, the amount remaining and due to the seller was $143,895.00. *See* Manheim Documents MI_000004.

8. In order to sell a vehicle through auction, the seller (Bill) must provide title and surrender the keys to the auction house before payment is made.

WNMIC Response: No dispute.

9. I took the title to Bill's vehicle and the keys to the auction house know as Manheim.

WNMIC Response: No dispute.

10. Manheim prepared a check for $143,895 made payable to Compadres Auto Sales and I was given that check.

WNMIC Response: No dispute.

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11. I personally delivered that check in approximately mid-March, 2018 to Ryan Najarro (General Manager), a duly authorized agent of Compadres, who I have worked with before.

WNMIC Response: No dispute.

12. I was told by Compadres duly authorized agent that as soon as the check cleared, Compadres would prepare a check for Bill in the amount of$140,500.

WNMIC Response: Objection. Hearsay in regards to communications and representations from Compadres. This statement is inadmissible hearsay pursuant to NRS 51.035, 51.065.

13. Following my giving a check to Compadres, I contacted Compadres numerous times to see when Bill's check would be ready for pick-up.

WNMIC Response: No dispute.

14. I was continuously given excuses by Compadres why the check was not yet ready, and eventually Compadres refused to speak with me.

WNMIC Response: Objection. Hearsay in regards to communications from Compadres. This statement is inadmissible hearsay pursuant to NRS 51.035, 51.065.

15. Despite repeated assurances that Bill 's check would be ready, I was never given a check for Bill and I could not get any explanation from Compadres as to their reason for withholding Bill's funds.

WNMIC Response: Objection. Hearsay in regards to whether he was given assurances or explanations. No dispute regarding the other facts asserted. This statement is inadmissible hearsay pursuant to NRS 51.035, 51.065.

C. Response to Manheim Auto Auction Business Records

WNMIC does not dispute the authenticity of these documents nor their admissibility.

III. WNMIC STATEMENT OF ADDITIONAL MATERIAL FACTS

1. Robert Larson's name does not appear on the list of licensed dealers or brokers available on the Nevada DMV's website either at the time this opposition was filed or at the time WNMIC filed its Answer to the Amended Complaint. Declaration of Jordan F. Faux, Esq. attached hereto as Exhibit A.

///

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IV. LEGAL ARGUMENT

A. Summary Judgment Standard

The Court is familiar with the summary judgment standard WNMIC does not dispute the standard as set forth by Plaintiff. WNMIC wishes to emphasize that the facts asserted by the movant must be supported by admissible evidence. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1030 (2005).

B. Resh is Not A Consumer Under the Statute and Does Not Qualify as a Beneficiary of the Bond

"[W]hen the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it. *Employers Ins. Co. of Nev. v. Chandler*, 117 Nev. 421, 425, 23 P.3d 255, 258 (2001). In conducting a plain language reading, we avoid an "interpretation that renders language meaningless or superfluous." *In re George J.*, 128 Nev. 345, 348, 279 P.3d 187, 190 (2012) (internal quotations omitted)." *Nev. Dep't of Corrs. v. York Claims Servs.*, 131 Nev. 199, 203, 348 P.3d 1010, 1013 (2015). When a statute is ambiguous the Court "may look to [its] legislative history to ascertain the Legislature's intent." *Potter v. Potter*, 121 Nev. 613, 616, 119 P.3d 1246, 1248 (2005).

The Bond is statutorily required to obtain a license as a motor vehicle dealer in the State of Nevada. NRS 482.345. Its metes and bounds are determined by statute, specifically NRS 482.345. Per the statute, the bond is "for the use and benefit of the consumer…" NRS 482.345(5). The term "consumer" is defined as "any person who comes into possession of a vehicle as a final user for any purpose other than offering it for sale." NRS 482.345(10). Based on the plain language of the statute, the bond is for the benefit of consumers only and no other entities or persons.

Here, the facts show that Plaintiff does not meet the definition of a "consumer" under the bond statute because he did not intend to become the final user of the Vehicle. Plaintiff's intention was "to sell the aforementioned vehicle through auction with the assistance of Robert Larson." Resh Aff. at 5. Thus, by his own admission, Plaintiff's intention was not to come into possession of the vehicle as a final user for any purpose other than offering it for sale. Resh's purpose in his own words was "to sell" the vehicle. There is no accepted definition of "consumer" in any context where a seller is

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included. Resh is not a consumer under the bond statute and is not entitled to recover from the Bond as a matter of law.

Larson is "in the business of assisting individuals in selling their vehicles at auction…" Larson Afft. at ¶2. Resh states that he had used Larson's assistance "in selling vehicles in the past." These facts demonstrate that Resh had sold more than one car at auction through Larson in the past. It is not normal or customary for consumers to sell their vehicles at auction through third parties, nor does the Bond cover such transactions. These facts support the conclusion that Resh is not a consumer entitled to recover from the Bond.

Other consumer protection statutes in Nevada also define a consumer as essentially the purchaser in a transaction, as that is the generally accepted definition of a "consumer." Consumers are not defined as sellers or consignors. For example, Nevada's deceptive trade practice statute defines a consumer in the automotive context as "a retail buyer who purchases a motor vehicle" or "a long-term lessee who leases a motor vehicle" "primarily for personal, family, or household use." NRS 598.9702. Nevada's Uniform Commercial code defines a consumer as "a natural person who enters into a transaction primarily for personal, family or household purposes." NRS 104.1201(k). Nevada's laws regulating the sale of marijuana define a consumer as "a person who is 21 years of age or older who purchases marijuana or marijuana products for use by persons 21 years of age or older, but not for resale to others." NRS 453D.030(3). Nevada's internet privacy laws define consumer as "a person who seeks or acquires, by purchase or lease, any good, service, money or credit for personal, family or household purposes from the Internet website or online service of an operator." Black's Law Dictionary defines consumer as "Someone who buys goods or services for personal, family, or household use, with no intention of resale."

Non-legal definitions also limit the definition of consumer to purchasers, not sellers. Merriam Webster's Dictionary defines "consumer" as "one that utilizes economic goods." The Cambridge Dictionary defines consumer as "a person who buys goods or service for their own use." The Oxford English Dictionary defines consumer as "a person who purchases goods and services for personal use." There are no definitions of consumer that include sellers or consignors such as Resh.

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Resh argues that this Court has already determined that Resh qualifies as a consumer under the statute in the Court's order dismissing WNMIC's Motion to Dismiss. While the Court made this comment, it is not binding upon the Court nor was the statement based upon any findings of fact or conclusions of law. As the Court is aware, when deciding a motion to dismiss, the District Court is to take all the factual allegations in the Complaint as true and draw all inferences in favor of the Plaintiff; dismissing only if it appears beyond a reasonable doubt that Plaintiff could prove no set of facts that, if true, would entitle Plaintiff to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). The standard for summary judgment and at trial is a much different, higher standard. It is Resh's burden to prove his case with admissible evidence.

Further, the Court's statement regarding whether Resh is a consumer is dictum under a motion to dismiss standard because it was "unnecessary to a determination of the questions involved." *City of Oakland v. Desert Outdoor Advert., Inc.*, 127 Nev. 533, 539, 267 P.3d 48, 52 (2011). The question involved in a motion to dismiss is very different than the question involved here, at summary judgment. The question on the motion to dismiss was whether the Amended Complaint stated facts that when all taken as true and inferences taken in favor of Resh indicated there was some set of facts that if true, would entitle Resh to relief. The question on a motion for summary judgment is whether there are any issues of material fact and whether Resh is entitled to judgment as a matter of law. These are two very different questions. Dictum is not controlling. *City of Oakland v. Desert Outdoor Advert., Inc.*, 127 Nev. 533, 539, 267 P.3d 48, 51 (2011).

C. Resh Has Failed to Prove Compadres Auto Sales Committed Any Acts Covered by the Bond Statute and Is Not Entitled to Recover From the Bond

The Bond is for the "use and benefit of the consumer and includes any breach of a consumer contract, deceptive trade practice, fraud, fraudulent representation or violation of any of the provisions of this chapter or chapter 41, 97, 104, 104A or 598 of NRS by the representative of any licensed distributor or the salesperson of any licensed dealer, manufacturer or rebuilder who acts for the dealer, distributor, manufacturer or rebuilder on his or her behalf and within the scope of the employment of the representative or salesperson."

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Here, Resh has failed to prove breach of a consumer contract, deceptive trade practice, fraud, fraudulent representation, or violation of any of the aforementioned chapters of the NRS. First, no admissible evidence of any consumer contract has been provided. In fact, Resh has not alleged that he had any contract with Compadres Auto Sales at all. In fact, the record presented does not provide any explanation whatsoever for why Compadres Auto Sales would agree to allow Larson to sell vehicles at auction under its name. There is no evidence of any consideration exchanged between Resh/Larson and Compadres Auto Sales in order for a contract to be formed. There is no admissible evidence that Compadres Auto Sales agreed to be a fiduciary for Resh or Larson in the transaction. In fact, the facts presented indicate that Compadres Auto Sales did not even know about the sale of the Vehicle until after it was already completed.

Next, Resh has failed to prove fraud or fraudulent misrepresentation by clear and convincing evidence. Under Nevada law, Resh has the burden of proving each and every element of his fraud/fraudulent misrepresentation claim by clear and convincing evidence: (1) A false representation made by the defendant; (2) defendant's knowledge or belief that its representation was false or that defendant has an insufficient basis of information for making the representation; (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the misrepresentation. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 446–47, 956 P.2d 1382, 1386 (1998).

Here, no admissible evidence has been provided that Compadres Auto Sales ever made any representations at all to Resh or Larson. Resh has also provided no evidence that Compadres Auto Sales knew or believed that any representations it made were false or that Compadres Auto Sales intended Resh or Larson to act or refrain from acting based upon any representations. According to Larson, he is the one that registered the car at Manheim under Compadres Auto Sales' name. There is no evidence that Compadres Auto Sales even knew the sale was happening until Larson showed up at their offices with a check for $143,895.00 made out to Compadres Auto Sales. As will be shown below, Larson has reason to try to blame Compadres Auto Sales for Resh's missing funds to shield himself from his own liability.

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Compadres Auto Sales did nothing to induce Resh or Larson to place the Vehicle for sale at auction under its name. There is no admissible evidence that Compadres Auto Sales agreed to sell or consign Resh's Vehicle on his behalf. The facts show that Larson acted unilaterally before Compadres Auto Sales made any representations at all. Neither Resh nor Larson acted or refrained from acting in reliance on anything Compadres Auto Sales may have said or done and there is no admissible evidence that Compadres Auto Sales made any promises to either of them. In short, Resh has failed to prove fraud/fraudulent misrepresentation by clear and convincing, admissible evidence.

Resh had not alleged nor proven any deceptive trade practice. Resh has also failed to prove any violations by Compadres Auto Sales of NRS 41, 97, 104, 104A or 598 by admissible evidence.

In sum, Resh has failed to submit admissible evidence that proves Compadres Auto Sales committed any of the prohibited acts covered by the Bond. As such, Resh is not entitled to recover from the Bond.

Resh tries to make hay out of statements made in WNMIC's Trial Brief based upon what was expected to be presented at trial. However, the facts that have ended up being presented in Resh's Motion for Summary Judgment fall short of what WNMIC anticipated at trial. It appears that Resh does not have the evidence that WNMIC anticipated would be submitted.

Based on the admissible evidence presented, it is not clear that Compadres Auto Sales ever promised to pay any money to Resh or that Compadres Auto Sales even knew the sale was happening until after it was over. No evidence has been provided to show that Compadres Auto Sales would have known the Vehicle belonged to Resh. No evidence has been submitted whatsoever as to where the money went and no evidence has been provided that Compadres Auto Sales kept the money. Based on the evidence submitted, Larson could have told Compadres Auto Sales that the Vehicle was his and kept the money for himself. There is as much evidence for that conclusion as there is for the conclusion that Compadres Auto Sales or one of its employees kept the money. The only thing proven is that Resh does not have the money. It is Plaintiff's burden to prove its case. The Court cannot grant summary judgment based on speculation and conjecture. Resh has failed to prove that Compadres Auto Sales committed any act covered by the Bond and therefore he is not entitled to recover.

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D. Robert Larson Bears the Liability in this Case

1) Larson was Acting as an Unlicensed Motor Vehicle Dealer

In Nevada, a motor vehicle dealer means any person who:

> (d) Is engaged wholly or in part in the business of selling vehicles or buying or taking in trade vehicles for the purpose of resale, selling or offering for sale or consignment to be sold or otherwise dealing in vehicles, whether or not he or she owns the vehicles.

NRS 482.020(1). Nevada law prohibits a person from engaging in the activities of a dealer unless that person obtains both "a new vehicle dealer's, used vehicle dealer's, manufacturer's, distributor's, rebuilder's or lessor's license certificate or similar license or permit by every city within whose corporate limits the person maintains an established place of business and by every county in which the person maintains an established place of business outside the corporate limits of a city" and a license from the Nevada DMV. NRS 482.322(1). A person who acts as a dealer without these licenses is guilty of a misdemeanor for a first offense, a gross misdemeanor for a second offense, and a category D felony for any third and subsequent offense. NRS 482.322(5).

Here, Robert Larson admits that he was acting as a motor vehicle dealer under Nevada law because he offers vehicles for sale at auction. Larson offered Resh's vehicle for sale at auction without a dealer's license. His name does not appear on the list of licensed dealers or brokers that is available on the Nevada DMV's website. See Declaration of Jordan F. Faux, Esq. attached hereto as Exhibit A. No evidence has been submitted that he was licensed. It also explains his need to list the car under another dealer's name at the Manheim auction. Even if Compadres Auto Sales had "stolen" Resh's money, Compadres Auto Sales would not have been involved at all if it were not for Larson violating Nevada statute by acting as an unlicensed motor vehicle dealer. If Larson had followed the law, then he would have to post his own bond to cover his own acts (in addition to the requirements outlined below) and neither Compadres Auto Sales nor WNMIC would be involved in this case at all.

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2) Larson Did Not Follow the Requirements for a Consignee Under NRS 482.31771—482.31776

Consignors are not covered by motor vehicle dealer bonds as set forth in NRS 482.345, the applicable statute in this case. This is because the Legislature enacted another set of provisions, NRS 482.31771—482.31776, to protect consignors. Larson apparently failed to follow any of the requirements of this section, which all serve to protect Resh as well as Larson himself. Because Larson is in the business of assisting individuals in selling cars at auction, he is a consignee as defined by the statute. NRS 482.31772 ("Consignee" means any person licensed pursuant to this chapter to sell or lease vehicles, or any person who holds himself or herself out as being in the business of selling, leasing or consigning vehicles.")

All consignees are required to have written agreement with the registered owner or lienholder of the vehicle to be sold. NRS 482.31774-31775. This written contract must include the following contents:

1. The names of the consignor and consignee;
2. The date on which the consignment contract was entered into;
3. A complete description of the vehicle subject to the consignment contract, including the vehicle identification number, the year, make and model of the vehicle, and the number of miles registered on the odometer of the vehicle at the time that the consignment contract is entered into;
4. The term of the consignment contract;
5. The name of each person or business entity holding any security interest in the vehicle to be consigned;
6. The minimum sales price for the vehicle and the disposition of the proceeds therefrom, as agreed upon by the consignor and consignee; and
7. The signatures of the consignor and consignee acknowledging all the terms and conditions set forth in the consignment contract.

Here, Larson failed to have any written contract with Resh at all. None of the required terms have been met. Further still, NRS 482.31776 set forth the fiduciary duties of the consignee, which are specifically designed to protect the consignor because the Legislature understands that the keys and

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title to the vehicle may need to be surrendered by the consignor before the sale just as occurred in this instance.

The fiduciary duties include:

1) opening a separate trust account in a federally insured bank for the deposit of consignment funds/purchase price of consigned vehicles which cannot be commingle or used for any other purpose;

2) requires that the consignor file a UCC1 form with the Secretary of State in order to protect the consignors interest in the vehicle and provide written notice of same in the written consignment contract that includes the words "If the [UCC1] form is not filed as required, YOU MAY LOSE YOUR VEHICLE THROUGH NO FAULT OF YOUR OWN." NRS 482.31776(1)(b).

3) Notify the consignor in person as soon as the sale money is paid. NRS 482.31776(5).

4) Prohibits the consignee from operating the vehicle. NRS 482.31776(6).

5) Requires the consignee to maintain a written log with specific information regarding the vehicle and consignment agreement. NRS 482.31176(7).

6) Requires the consignee to pay restitution to the consignor if funds are diverted. NRS 482.31176(8).

As these statutes demonstrate, the requirements and duties of consignee are very specific and designed specifically to protect the consignor.

Here, there is no evidence that Larson complied with any of the statutes or duties required of a consignee. If Larson had done so, Resh would have been more than adequately protected and the facts of this case would be very, very different. By failing to follow the requirements of NRS 482.31774-31775, it is Larson that is primarily liable for Resh's loss and not WNMIC. For this reason, Larson has reason to seek to place the blame on others such as Compadres Auto Sales.

E. Resh Was Complicit in Larson's Unlawful Acts, Which Bars Recovery

In general, a party is not entitled to recovery due to damages incurred because of the party's own inequitable conduct. *See Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 275, 182 P.3d 764, 766 (2008). Whether a party's connection with an action is sufficiently offensive to bar equitable relief, two factors must be considered: (1) the egregiousness of the misconduct at issue, and (2) the seriousness of the harm caused by the misconduct. *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 276, 182 P.3d 764, 767

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(2008). The public has constructive knowledge of state law. *Sengel v. IGT*, 116 Nev. 565, 572, 2 P.3d 258, 262 (2000).

Here, Resh was complicit in Larson's unlawful acts which caused his own damages. Resh admits to using Larson's services several times in the past in order to sell vehicles. Resh Aff. at ¶5. By choosing to use an unlicensed dealer and choosing not to follow the statutory requirements for vehicle consignment sales, Resh failed to avail himself of the various statutory protections required for consignees such as Larson's own license bond, a UCC1 filing statement to protect his interest in the vehicle, notice provisions, and separate trust account. Resh cannot recover from WNMIC for failing to protect his own assets by choosing to sell his Vehicle through an unlicensed consignee and ignoring Nevada law.

Resh has constructive knowledge of the laws regarding vehicle consignments. It is Resh and Larson's failure to follow Nevada law with regards to vehicle consignments that has led to Resh's alleged loss. But for their failure, there would be no claim against WNMIC as the alleged acts done by Compadres Auto Sales would never have taken place. The only reason Larson and Resh needed Compadres Auto Sales was because Larson had no license and, per his own testimony, could not put the Vehicle for sale without it. Larson Aff. at ¶5.

Any reasonable, responsible person would have taken steps to ensure that the consignment of a vehicle valued at between $145,000.00 to $160,000.00[1] would be done according to Nevada law. For reasons unknown Resh and Larson decided not to follow Nevada law. WNMIC is not liable for the damages suffered as a result.

F. If Resh Were Entitled to Recover, His Recovery Would be Limited to the $100,000.00 Penal Sum Inclusive of All Attorney Fees and Costs

As stated above, this is a statutory bond governed by NRS 482.345. That section requires that "the bond be continuous in form, and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond." NRS 482.345(4). The aggregate liability includes "any loss or damage established, including, without limitation: Actual damages; Consequential damages;

[1]After Larson sold the Vehicle at auction for $145,000.00, the Vehicle was sold 36 days later at the same auction for $160,000.00. Ex. 2 to MSJ at MI_000001; 000004.

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Incidental damages; Statutory damages; Damages for noneconomic loss; and Attorney's fees and costs." NRS 482.345(6)(f). Thus, per the statute, the total possible liability on the bond including attorney fees and costs is capped at the penal sum of the Bond, which in this case is $100,000.00. *See* Ex. 1 to MSJ. The statute specifically caps recovery to the penal sum and no more.

V. CONCLUSION

Summary judgment should be granted in favor of WNMIC because Resh is not a consumer as defined by the statute and is therefore not entitled to recover from the Bond.

The purpose of the Bond is to protect consumers, who are persons who have come into possession of a vehicle as the final user for any purpose other than offering it for sale. In plain language, the law is meant to protect people buying cars from car dealers for personal use. The purpose of the Bond is not to protect consignors looking to save a few bucks by using unlicensed third parties to sell their very expensive, luxury sports cars at auction. Resh's purpose was not to become the final user of the Vehicle, but to offer it for sale at auction through Larson. That is not the action of a consumer under the statute. Resh and Larson ignored Nevada law designed specifically to protect Resh from losing his interest in the Vehicle, leading to Resh's loss. WNMIC is not liable for this loss.

Summary judgment should be denied for at least the following reasons:

1) The facts prove that Resh is not a consumer as defined by statute and is therefore not entitled to recover from the Bond.
2) Resh has failed to prove by admissible evidence that Compadres Auto Sales committed any of the enumerated acts covered by the Bond.
3) But for Larson being unlicensed, Resh would not have been damaged at all and WNMIC would bear no liability.
4) Resh and Larson knew Larson was acting unlawfully and therefore, Resh's own acts led to the damages he has allegedly incurred.

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5) There are genuine issues of material fact that preclude summary judgment.

DATED this 25th day of August, 2020.

THE FAUX LAW GROUP

By: /s/ Jordan F. Faux
Kurt C. Faux. Esq.
Jordan F. Faux, Esq.
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CERTIFICATE OF SERVICE

The undersigned, an employee of The Faux Law Group, hereby certifies that on the 25th day of August, 2020, I served a copy of the foregoing document, **OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** on the parties listed below via the Court's electronic service system:

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Attorneys for Money Machine, LLC d/b/a Compadres Auto Sales and Robert Legaspi

/s/ Jordan F. Faux
An Employee of The Faux Law Group

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Exhibit A

Exhibit A

KURT C. FAUX, ESQ.
Nevada Bar No. 003407
JORDAN F. FAUX, ESQ.
Nevada Bar No. 12205
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Attorneys for Western National Mutual Insurance Company

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM HARRY RESH, an individual,

Plaintiff,

v.

MONEY MACHINE, LLC, a Nevada limited liability company dba COMPADRES AUTO SALES; ROBERT LEGASPI, an individual, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a Minnesota corporation; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

Case No. A-18-775815-C
Dept. No.: 20

DECLARATION OF JORDAN F. FAUX, ESQ. IN SUPPORT OF:

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

1. I am over the age of 18 and competent to testify to the facts set forth herein.
2. I am an attorney duly licensed in the State of Nevada and employed with The Faux Law Group. Our office has been retaind by Western National Mutual Insurance Company ("WNMIC") to represent them in the instant action.
3. At or about the time WNMIC filed its Answer to the Amended Complaint I checked whether Robert Larson was listed as a licenseholder of Motor Vehicle Dealer's license or broker's license on Business License Verification page available at the Nevada DMV website at https://dmvapp.nv.gov/DMV/OBL/Business_Reports/Pages/BusinessLicenses.aspx.

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4. This is a publically available list the DMV publishes so that consumers and others can verify whether automotive-related businesses are licensed.

5. The list is alphabetical and Robert Larson's name did not appear on the Dealer or Broker lists.

6. I checked the same list again at or about the time of the filing of the Opposition to Motion for Summary Judgment and Robert Larson's name did not appear on the Dealer or Broker lists.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 25th day of August, 2020.

THE FAUX LAW GROUP

By: /s/ Jordan F. Faux
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EXHIBIT 24

EXHIBIT 24

ROPP
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William Harry Resh

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM HARRY RESH, an individual,

Plaintiff,

v.

MONEY MACHINE, LLC, a Nevada limited liability company dba COMPADRES AUTO SALES; ROBERT LEGASPI, an individual, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a Minnesota corporation; DOES I through X; and ROE CORPORATIONS I THROUGH X.

Defendants.

Case No.: A-18-775815-C
Dept. No.: XX

PLAINTIFF'S REPLY TO OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Date of Hearing: September 16, 2020
Time of Hearing: 8:30 a.m.

Under Rule 11 of the Nevada Rules of Civil Procedure, by presenting to the Court a pleading, an attorney certifies that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances:

> "(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information."

In the instant action Defendant Western National Mutual Insurance Company ("WNMIC") filed a Trial Brief on June 15, 2020. In that pleading, counsel for WNMIC certifies to this Court that:

> "There is no question that an employee of Money Machine stole Dr. Resh's money." Emphasis added.

See Trial Brief for Western National Mutual Insurance Company, at page 5, line 14 filed on June 15, 2020.

All of the parties and attorneys to this litigation know that an employee of Money Machine stole Dr. Resh's money. The Opposition to Plaintiff's Motion for Summary Judgment filed by WNMIC ignores its earlier admission and, without any evidentiary support whatsoever, suggests that:

1. Compadres Auto Sales did not know the vehicle belonged to Dr. Resh;
2. There is no evidence as to where the money went;
3. There is no evidence that Compadres Auto Sales kept the money; and
4. Robert Larson may very well have kept the money.

These speculations, which are absolutely contrary to every bit of evidence presented is frivolous since they are "both baseless and made without a reasonable and competent inquiry." *Bergmann vs. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993).

In this Reply, Dr. Resh will address the issues raised by WNMIC in the order in which they appear in its Opposition.

I. THE BANKRUPTCYAUTOMATIC STAY

This issue was briefed by the parties prior to the status check held on July 30, 2020. In Dr. Resh's Brief Regarding Upcoming Status Check filed on July 14, 2020, Dr. Resh cited the case law from the Ninth Circuit Court of Appeals which makes it clear that with respect to sureties, state court actions against a surety are not subject to the automatic stay. This Court is referred to Dr. Resh's Brief Regarding Upcoming Status Check filed on July 14, 2020 on this issue.

WNMIC made no effort to distinguish any of the Ninth Circuit of Appeal's decisions cited in the aforementioned Brief nor does it do so in its instant Opposition to Plaintiff's Motion for Summary Judgment. Instead, WNMIC characterizes the reason for filing of the instant Motion for Summary Judgment as being "per the Court's permission based on representations that summary judgment would be sought against the surety only." The instant Motion for Summary Judgment seeks summary judgment against WNMIC only and no one else. This Court is not being asked to make findings regarding Compadres Auto Sales, alter ego, or anyone or anything else.

II. STATEMENT OF MATERIAL FACTS

WNMIC next goes through each sentence in the Affidavits of William Harry Resh and Robert Larson, line by line, and states that it is doing so "in the interests of judicial economy." WNMIC takes no issue with virtually any of the material facts set forth in those Affidavits. WNMIC's analysis does not demonstrate any disputed issues of fact and its Opposition does not include any affidavits, exhibits, or anything else which would raise a genuine issue of fact precluding summary judgment.

One discrepancy that is pointed out by WNMIC is with regard to the sale proceeds of Dr. Resh's vehicle. There is no genuine issue of material fact with regard to the sales proceeds. As pointed out by WNMIC, the records produced by the auction house, Manheim, which are attached hereto as Plaintiff's **Exhibit "1,"** demonstrate that Dr. Resh's vehicle sold for $145,000. Manheim then cut a check to Compadres Auto Sales in the amount of $143,895 and a copy of that check is attached to the Manheim Documents as MI_000026. The Court will note that the reverse side of the check is designated as MI_000027. Said document contains the legend "Credited To Account Of Within Named Payee". The named payee is Compadres Auto Sales and these two documents, which are not in any way disputed by WNMIC, absolutely establish that Compadres received the sales proceeds of this vehicle.[1]

[1] These documents absolutely establish that Compadres received the sale proceeds which should have been turned over to Dr. Resh. When WNMIC advises the Court that "no evidence has been submitted whatsoever as to where the money went and no evidence has been provided that Compadres kept the money." (See page 11, lines 20-21 of the Opposition), WNMIC is lying.

Dr. Resh has attached hereto a second Affidavit of Robert Larson clarifying a few of the mischaracterizations and obfuscations raised by WNMIC. This second Affidavit is included herewith in an abundance of caution given WNMIC's demonstrated unwillingness to be truthful to this Court. Again, this is an entity that represented to this Court that "There is no question that an employee of Money Machine stole Dr. Resh's money" and now suggests that "Larson could have told Compadres Auto Sales that the vehicle was his and kept the money for himself." See page 11, lines 22-23 of the Opposition. Every page of this Opposition demonstrates that this surety company will say anything to this Court in an effort to avoid liability.

III. LEGAL ARGUMENT

A. Dr. Resh is a consumer under NRS 482.345.

Throughout its involvement in this matter, WNMIC repeatedly argues that Dr. Resh is not a consumer and thus does not qualify as a beneficiary of the bond. This issue has been briefed, argued and decided by this Court. On October 16, 2019, this Court heard WNMIC's Motion to Dismiss and made the following findings:

> "Plaintiff falls within the definition of consumer as set forth in NRS 482.345 and, Plaintiff intended to be the final user of the vehicle at issue."

WNMIC points to Dr. Resh's Affidavit where he states that "in February and March 2018 I attempted to sell the aforementioned vehicle through auction with the assistance of Robert Larson...." The fact that Dr. Resh decided to sell the vehicle at auction rather than through private sale or as a trade-in does not somehow take him out of the definition of "consumer." As pointed out by WNMIC, consumer is defined as "any person who comes into possession of a vehicle as a final user for any purpose other than offering it for sale." Emphasis added. Dr. Resh came into possession of his 2017 Audi R8 automobile as a final user and not for the purpose of offering it for sale. By limiting the class of persons to be protected by the surety, the Nevada Legislature clearly meant to exclude dealers, finance companies and similar businesses but not consumers like Dr. Resh. WNMIC seeks to characterize this Court's earlier finding on this issue as merely a "comment" or "dicta." In fact, this Court made the finding that Dr. Resh is a

consumer under the applicable statute and that is the case whether the motion is for summary judgment or for dismissal. This issue of law has been briefed, argued and decided by this Court. WNMIC has provided no factual or legal developments which would change this Court's decision. WNMIC's return to this argument does not present a genuine issue of fact precluding summary judgement.

WNMIC next argues that Dr. Resh has failed to prove wrongdoing on the part of Compadres Auto Sales. This is the same entity that admitted in their Trial Brief that "there is no question that an employee of Money Machine stole Dr. Resh's money." This is the same entity that admits that Manheim prepared a check for $143,895 made payable to Compadres Auto Sales and that the check was delivered in approximately mid-March 2018 to Ryan Najarro, a duly authorized agent of Compadres. This is the same entity that at page 6 of its Opposition to Plaintiff's Motion for Summary Judgment states "WNMIC does not dispute the authenticity of these documents [Response to Manheim Auto Auction business records] nor their admissibility." Those records clearly demonstrate that the check for $143,895 to Compadres Auto Sales was endorsed and deposited into Compadres account.

WNMIC's ridiculous assertion that "The only thing proven is that Resh does not have the money" (see page 11, lines 24-25 of the Opposition) is almost insulting. As stated at the outset of this Reply all parties and all the attorneys know that "There is no question that an employee of Money Machine stole Dr. Resh's money." For WNMIC to now suggest that Dr. Resh has failed in his burden to prove his case and that Robert Larson could just as easily have taken the money, is more than frivolous, it is deceptive. There is a limit to advocacy and these types of assertions are beyond that limit.

B. WNMIC's focus on Robert Larson is a non-issue.

In an obvious effort to divert this Court's attention, WNMIC argues that Robert Larson was acting as an unlicensed motor vehicle dealer. The position this surety company takes is that even though "There is no question that an employee of Money Machine stole Dr. Resh's money," the surety company escapes liability if Robert Larson should have had a license but did not. Such an obvious attempt to escape liability deserves only short shrift.

The Court must first be reminded that WNMIC has presented absolutely no affidavits, documentary evidence or evidence of any kind with regard to any of the factual allegations set forth in the Affidavits of William Resh and Robert Larson. There is no genuine issue of fact but that Robert Larson is a family friend of the Resh family who assisted Dr. Resh in selling his 2017 Audi R8 automobile. There is no genuine issued of fact that Robert Larson registered Dr. Resh's automobile with Compadres Auto Sales, a dealership he had worked with in the past. There is no genuine issue of fact but that all of the Manheim records list Compadres Auto Sales as the vehicle dealer in this transaction. There is nothing either in the Manheim documents or anything else which would indicate that Robert Larson was acting as the vehicle dealer.

Whether Robert Larson was acting as an unlicensed motor vehicle dealer does not present a genuine issue of fact precluding summary judgment. WNMIC has not sought to add Robert Larson as a third-party defendant to this lawsuit, nor does it present any evidence whatsoever that the proximate cause of Dr. Resh's damages is anything other than "There is no question that an employee of Money Machine stole Dr. Resh's money." This is a red herring that is closer in color to crimson. Dr. Resh will not be lured into a discussion of whether Robert Larson should have obtained a motor vehicle dealer license in order to assist him in selling his automobile. Accusing Robert Larson of violating Nevada statutes in no way relieves WNMIC from liability for an employee having stolen Dr. Resh's money. This is but another transparent attempt by WNMIC to divert the Court's attention from the admitted fact that Compadres Auto Sales stole Dr. Resh's money. The party against whom a Motion for Summary Judgment is filed must come forward with admissible evidence which demonstrates that there is a genuine issue of fact remaining for trial. WNMIC has come forward with nothing which would raise a genuine issue of fact that Robert Larson was acting as an unlicensed motor vehicle dealer and that even if he was, that was the proximate cause of the damages suffered by Dr. Resh. WNMIC does not escape liability by arguing, without a single fact or piece of evidence, that Robert Larson is primarily responsible for Dr. Resh's loss. It is a hollow argument set forth by a desperate Defendant.

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C. DR. RESH IS SOMEHOW COMPLICIT IN ROBERT LARSON'S UNLAWFUL ACTS

It is with this argument that WNMIC destroys any remaining credibility it might have in this litigation. WNMIC is apparently arguing that Robert Larson should have obtained a motor vehicle dealer license, that Dr. Resh should have known of this requirement and as a result, Dr. Resh has no redress from an employee of Compadres having stolen money from him. WNMIC actually articulates that Dr. Resh was "complicit" in Robert Larson's alleged unlawful acts and he is therefore the cause of his own damages. This surety company argues to this Court:

> "The purpose of the Bond is not to protect consignors looking to save a few bucks by using unlicensed third parties to sell their very expensive, luxury sports cars at auction."

Page 16, lines 12-14 of the Opposition.

The callousness of this surety's position is wonderfully exemplified by its attack on Dr. Resh. This nonsensical conclusion that blames Dr. Resh for an employee of Money Machine stealing his money is not only intellectually dishonest but would be scoffed at by even the most casual observer of law and ethics in 2020. For WNMIC to ask this Court to adopt such a position is offensive.

D. DR. RESH'S RECOVERY IS NOT LIMITED TO $100,000

Fearing the entry of summary judgment, WNMIC very briefly argues that the total possible liability under the bond including attorney's fees and costs is capped at the penal sum of $100,000. That is untrue. There is a Nevada Supreme Court case directly on point on this issue. In 2004, the Nevada Supreme Court decided a case entitled *Trustees of the Plumbers and Pipefitters Union Local 525 Health and Welfare Trust Plan v. Developers Surety and Indemnity Company*, 120 Nev. 56 (2004). The Court in *Trustees* held that its previous ruling in *Basic Refractories, Inc. v. Bright*, 72 Nev. 183 (1956) was limited to the procedural posture of that case. More importantly, it held that "[when a] secured entity incurs attorney fees in direct litigation with the surety over the bond, attorney fees may be awarded under NRS 17.115, NRCP 68, and NRS 18.010." *See Trustees*, 120 Nev. at 61. The Court emphasizes that, with respect to

offers of judgment, the statutory language of NRS 17.115 and NRCP 68 "contains no exception for sureties." *See id.* It further reasoned that precluding attorney's fees in surety bond disputes would contradict the legislative intent of NRS 17.115, because it would encourage sureties to litigate, rather than settle, as contemplated by the statute. *Id.* at 62. The holding in *Trustees* was, interestingly enough, relied upon in a federal case involving this Defendant, WNMIC. While the Court did not assess attorneys' fees against WNMIC in *Glazing Health and Welfare Fund v. Accuracy Glass and Mirror Co.*, Case No. 2:13-cv-1106-KJD-NJK, 2016 WL 1270991 (D. Nev. Mar. 30, 2016), because the party seeking fees did not litigate directly against Western National, it stated: "The surety only becomes liable for fees that exceed the bond amount when it engages in direct litigation with the secured entity over the bond."

If this Court grants summary judgment, as it should, Dr. Resh will be filing a Motion for Attorney's Fees. In that Motion Dr. Resh will point out that an Offer of Judgment was served upon WNMIC and WNMIC has not obtained a more favorable judgment under NRCP 68. Dr. Resh will therefore be entitled to his attorney's fees and costs under both NRCP 68 and NRS 18.010. It is premature to decide that issue here but since it was raised by WNMIC, this Court should know that WNMIC's recovery is not limited to $100,000.

VI. CONCLUSION

It has now been two and one half years since Compadres Auto Sales admittedly stole $143,895 which belonged to Dr. Resh for the sale of his 2017 Audi R8 automobile. The surety for Compadres Auto Sales, WNMIC has come forward with not one witness, exhibit or other piece of evidence which would demonstrate that there are genuine issues of fact remaining for trial. Dr. Resh has attempted to have an appropriate Judgement entered against the surety, which has been delayed due to Defendant Robert Legaspi's filing a Petition in Bankruptcy and the COVID-19 pandemic. There have never been, nor are there now, any genuine issues of fact in this case, as admitted by WNMIC in its Trial Brief when it certified to this Court that "There is no question that an employee of Money Machine stole Dr. Resh's money." There are limits imposed by Rule 11 of the Nevada Rules of Civil Procedure as to how parties and their advocates conduct themselves in presenting their positions before courts of this state. The

surety's Opposition to the instant Motion for Summary Judgment goes beyond those limits and that should be evident to this Court.

WNMIC has failed to present any evidence whatsoever to demonstrate a genuine issue of fact remaining for trial. Therefore, Dr. Resh is entitled to Summary Judgment on his claim against WNMIC.

DATED this 1 day of September, 2020.

SKLAR WILLIAMS PLLC

By: _____
FREDERIC I. BERKLEY, ESQ.
Nevada Bar No. 1798
410 South Rampart Blvd Ste. 350
Las Vegas, NV 89145
Attorneys for Plaintiff
William Harry Resh

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of September, 2020, a true and correct copy of the foregoing **PLAINTIFF'S REPLY TO OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was submitted electronically for filing and service with the Eighth Judicial District Court. Electronic Service of the foregoing document shall be made to all parties listed on the **MASTER SERVICE LIST** in accordance with the Electronic Service and Filing Order.

An employee of SKLAR WILLIAMS PLLC

AFFIDAVIT OF ROBERT LARSON

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

ROBERT LARSON, being duly sworn, deposes and says:

1. I previously provided an Affidavit dated August 1, 2018 regarding my assisting Dr. William Harry Resh ("Dr. Resh") with the sale of his 2017 Audi R8 automobile, VIN No. WUAKBAFX0H7903087.

2. I am a family friend of the Resh family, more specifically, Brent Resh who is Dr. Resh's son and with whom I went to high school.

3. I assisted Dr. Resh once before the instant transaction in approximately 2014 in the sale of his 2013 Mustang 302 automobile at auction.

4. When Dr. Resh approached me to assist him in selling his 2017 Audi R8 automobile, I knew that in order to sell the vehicle through auction, I needed to register the vehicle under a dealership.

5. As I stated in my previous Affidavit, I registered Dr. Resh's automobile under a dealership called Compadres Auto Sales, a dealership I had worked with in the past.

6. I personally advised Compadres Auto Sales, through its then general manager, Dave Ligotti, that I would be selling Dr. Resh's vehicle under his dealership at the auction house known as Manheim.

7. I reiterate that I took the title to Dr. Resh's vehicle and the keys to the auction house know as Manheim and Manheim prepared a check for $143,895 made payable to Compadres Auto Sales.

8. I reiterate that I was given that check and personally delivered it in approximately mid-March 2018 to Ryan Najarro, a duly authorized agent of Compadres, who I had worked with before.

///

///

9. I never received any of the sale proceeds for Dr. Resh's 2017 Audi R8 automobile.

10. Further affiant sayeth naught.

DATED this 28 day of August, 2020.

ROBERT LARSON

SUBSCRIBED AND SWORN to before me this 28TH day of August, 2020.

NOTARY PUBLIC, in and for
Said County and State (seal)

NOTARY PUBLIC
EUGENE J. CRAWFORD
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP: OCT. 15, 2022
No: 18-4279-1

EXHIBIT 1

March 19, 2020

Via email: FBerkley@Sklar-law.com
Federic I. Berkley, Esq.
Sklar Williams PLLC
410 South Rampart Blvd, Suite 350
Las Vegas, Nevada 89145

RE: Resh v. Money Machine, et al.

Dear Mr. Berkley:

On behalf of Manheim Investments, Inc. d/b/a Manheim Nevada ("Manheim"), incorrectly identified as Greater Nevada Auto Auctions, LLC d/b/a Manheim Nevada, we write in response to the Subpoena Duces Tecum ("Subpoena") issued February 26, 2020 in the above-referenced matter.

Please be advised that the Subpoena was issued to an incorrect entity, Greater Nevada Auto Auctions, LLC d/b/a Manheim Nevada, instead of Manheim Investments, Inc. Therefore, Manheim objects to the Subpoena on the grounds of improper service. Manheim also objects to the Subpoena to the extent it seeks to impose an obligation on Manheim beyond those required by the Nevada Rules of Civil Procedure or any other applicable law. Manheim further objects that the Subpoena is overbroad, and imposes an undue burden on Manheim, a non-party.

Subject to and without waiving any of the foregoing objections or other potential objections that Manheim may have to the scope of the Subpoena, Manheim hereby produces records Bates-labeled MI_000001 through MI_000027. These records contain the electronic copies of the bill of sale, notes, arbitration file, condition report and a copy of the check to Compadres Auto Sales.

Attached is a signed Affidavit and an invoice for $0.00 to cover our research and retrieval costs associated with gathering the responsive information. It is our understanding that with this production, Manheim has fulfilled its obligations under the Subpoena.

Sincerely,

Shannon L. Shaw
Paralegal

CC: Adwoa Ghartey-Tagoe Seymour, Esq.

6205-A Peachtree Dunwoody Road • Atlanta, Georgia 30328 • (678) 645-0083 •Shannon.Shaw@coxinc.com

COX AUTOMOTIVE™

6205-A Peachtree Dunwoody Rd., Atlanta, Ga 30328

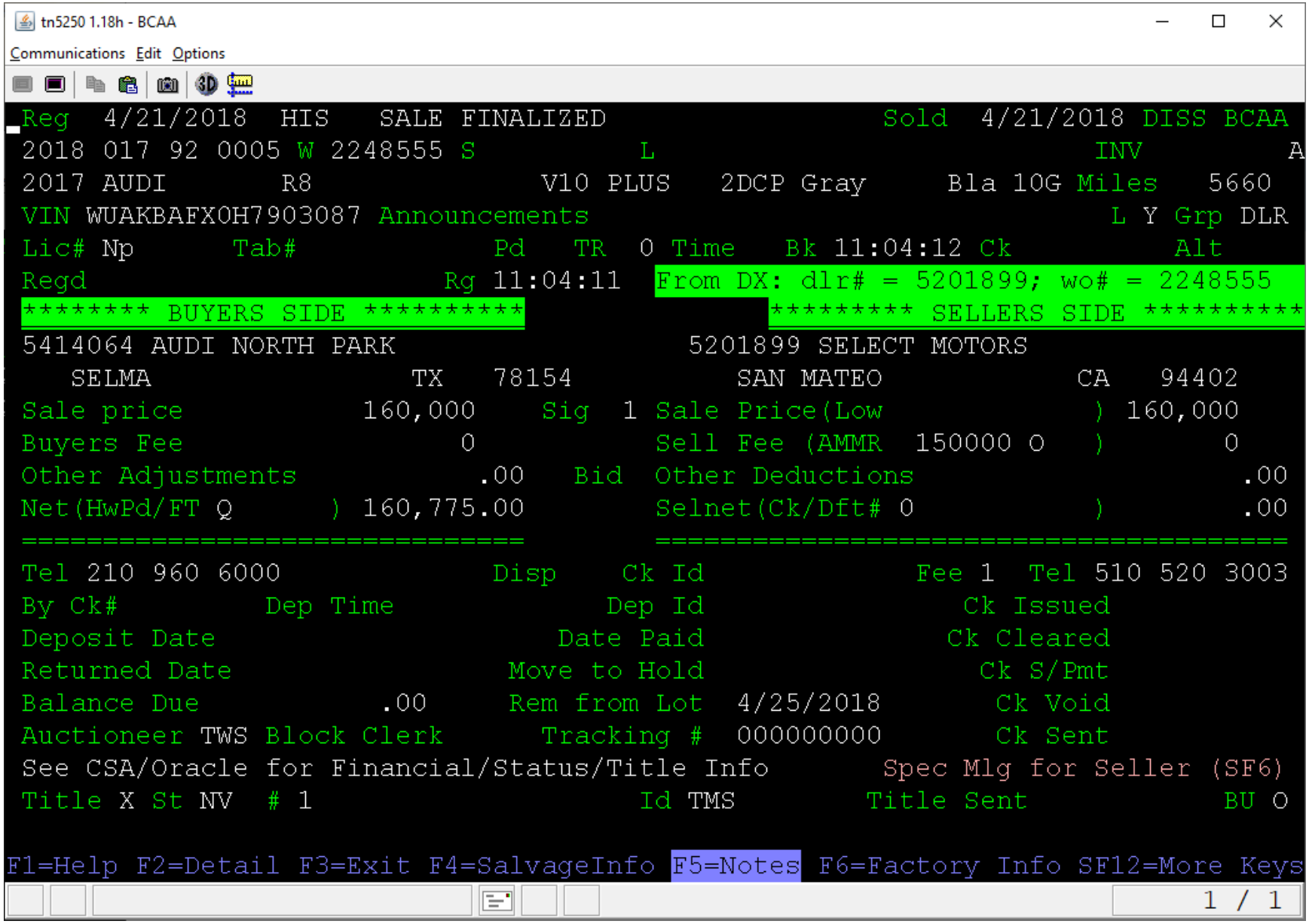
March 19, 2020
Payment due upon receipt. Thank you.

Billed Account Name and Address	**Date**
Via email: FBerkley@Sklar-law.com Federic I. Berkley, Esq. Sklar Williams PLLC 410 South Rampart Blvd, Suite 350 Las Vegas, Nevada 89145	March 19, 2020

In re: Resh v. Money Machine, et al.

Description	Nevada	Qty	Rate	Sub-Total
Research/Retrieval	Per hour	2	$40.00	$ 80.00
Pages Copied	Per page	0	$0.25	$ 0.00
Certification Fee				$0.00
Postage				$0.00
Payment Received				-$49.50
TOTAL DUE:	**THANK YOU FOR YOUR PAYMENT**			**$0.00**

Remittance Details
CHECK PAYABLE TO: **Manheim Investments, Inc.** ATTN: Shannon L. Shaw, CEI Legal Dept. 6205-A Peachtree Dunwoody Rd., 16th Floor Atlanta, GA 30328 **Tax ID# 58-1620001**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Reg 4/21/2018 HIS SALE FINALIZED Sold 4/21/2018 DISS BCAA
2018 017 92 0005 W 2248555 S L INV A
2017 AUDI R8 V10 PLUS 2DCP Gray Bla 10G Miles 5660
VIN WUAKBAFX0H7903087 Announcements L Y Grp DLR
Lic# Np Tab# Pd TR 0 Time Bk 11:04:12 Ck Alt
Regd Rg 11:04:11 From DX: dlr# = 5201899; wo# = 2248555
******** BUYERS SIDE ********** ********** SELLERS SIDE **********
5414064 AUDI NORTH PARK 5201899 SELECT MOTORS
SELMA TX 78154 SAN MATEO CA 94402
Sale price 160,000 Sig 1 Sale Price(Low) 160,000
Buyers Fee 0 Sell Fee (AMMR 150000 O) 0
Other Adjustments .00 Bid Other Deductions .00
Net(HwPd/FT Q) 160,775.00 Selnet(Ck/Dft# 0) .00
Tel 210 960 6000 Disp Ck Id Fee 1 Tel 510 520 3003
By Ck# Dep Time Dep Id Ck Issued
Deposit Date Date Paid Ck Cleared
Returned Date Move to Hold Ck S/Pmt
Balance Due .00 Rem from Lot 4/25/2018 Ck Void
Auctioneer TWS Block Clerk Tracking # 000000000 Ck Sent
See CSA/Oracle for Financial/Status/Title Info Spec Mlg for Seller (SF6)
Title X St NV # 1 Id TMS Title Sent BU O
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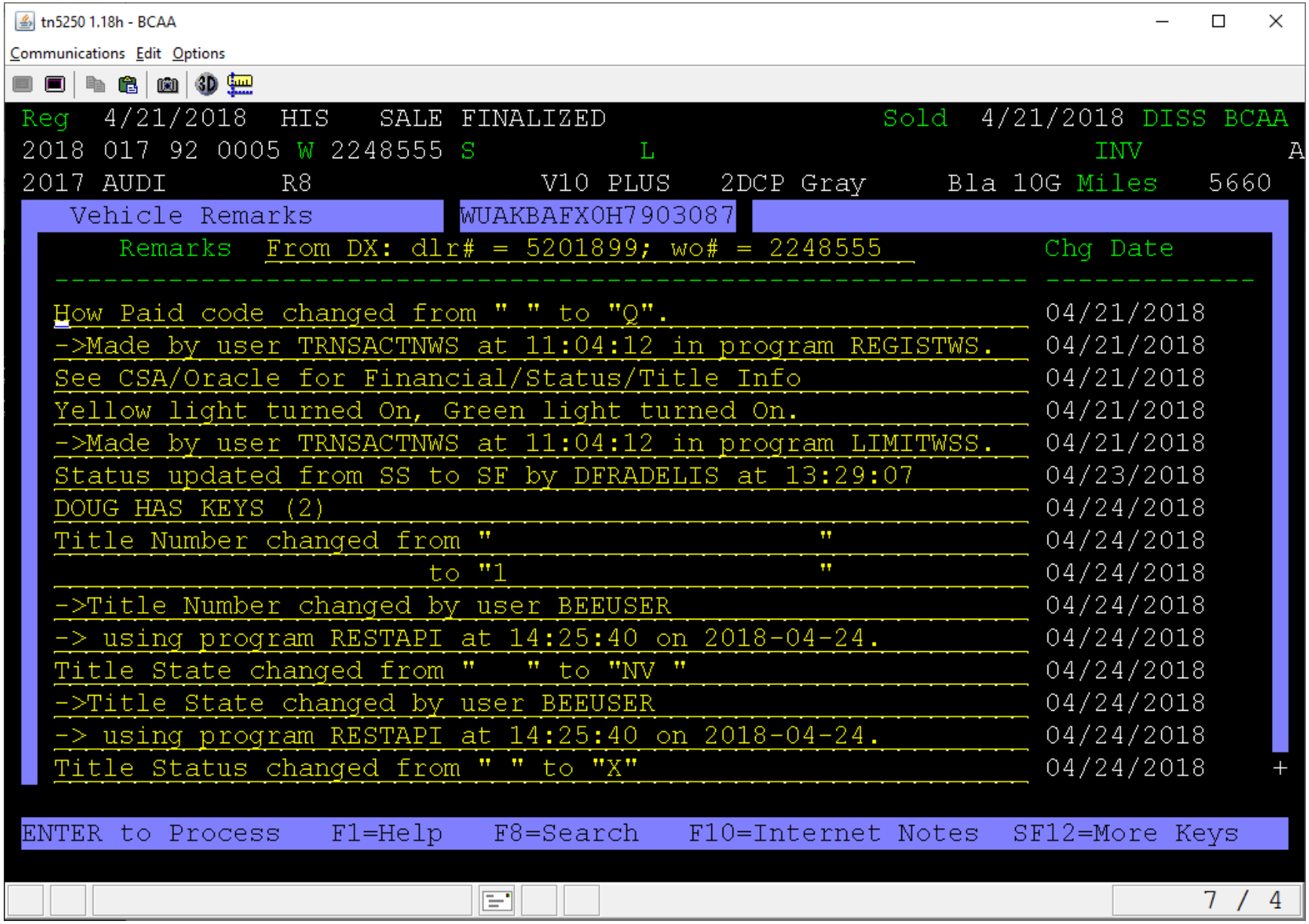
1 / 1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2017 AUDI R8 V10 PLUS 2DCP Gray Bla 10G Miles 5660
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How Paid code changed from " " to "Q". 04/21/2018
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See CSA/Oracle for Financial/Status/Title Info 04/21/2018
Yellow light turned On, Green light turned On. 04/21/2018
->Made by user TRNSACTNWS at 11:04:12 in program LIMITWSS. 04/21/2018
Status updated from SS to SF by DFRADELIS at 13:29:07 04/23/2018
DOUG HAS KEYS (2) 04/24/2018
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to "1 " 04/24/2018
->Title Number changed by user BEEUSER 04/24/2018
-> using program RESTAPI at 14:25:40 on 2018-04-24. 04/24/2018
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->Title State changed by user BEEUSER 04/24/2018
-> using program RESTAPI at 14:25:40 on 2018-04-24. 04/24/2018
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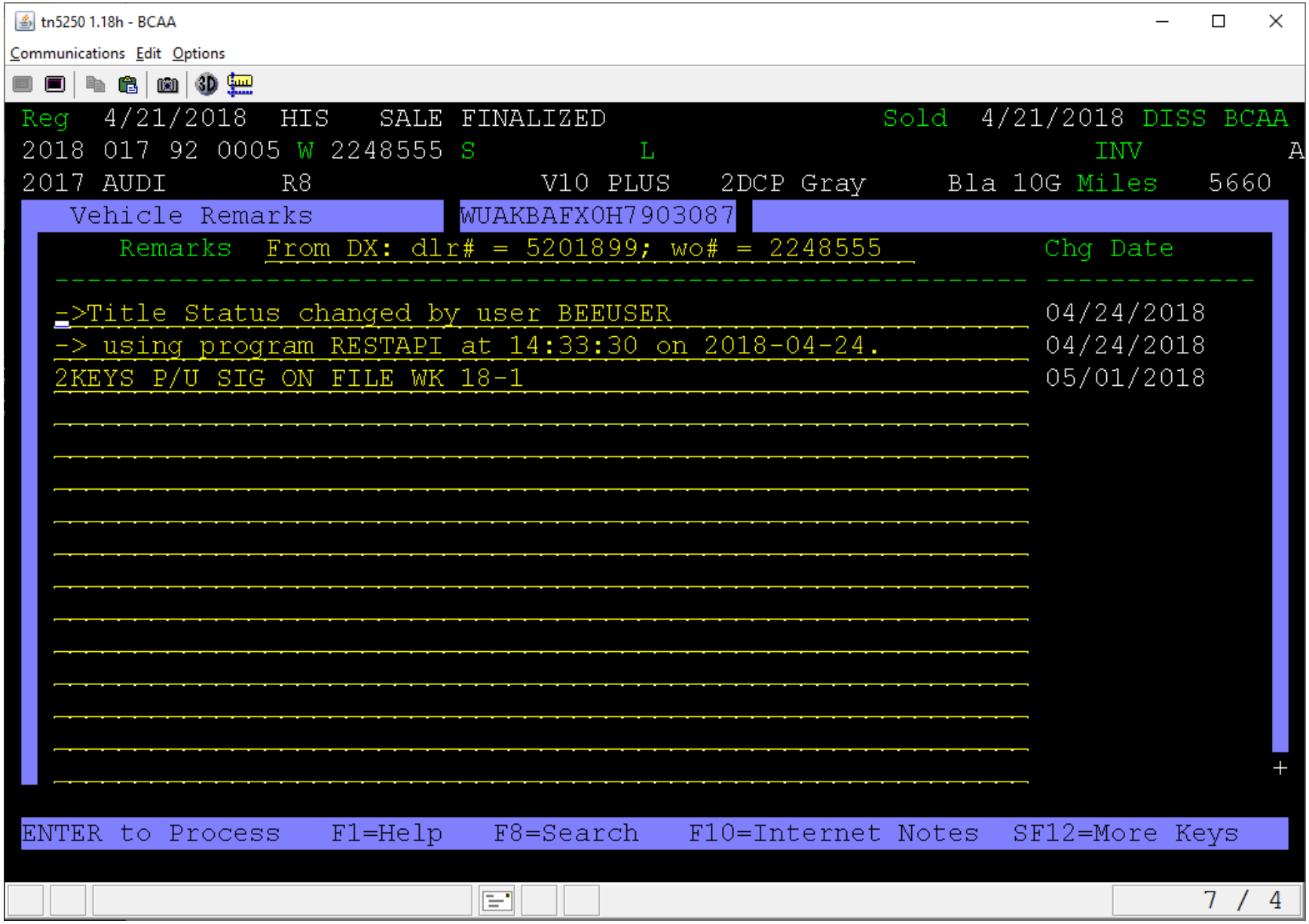
7 / 4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2017 AUDI R8 V10 PLUS 2DCP Gray Bla 10G Miles 5660
Vehicle Remarks WUAKBAFX0H7903087
Remarks From DX: dlr# = 5201899; wo# = 2248555 Chg Date
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2KEYS P/U SIG ON FILE WK 18-1 05/01/2018
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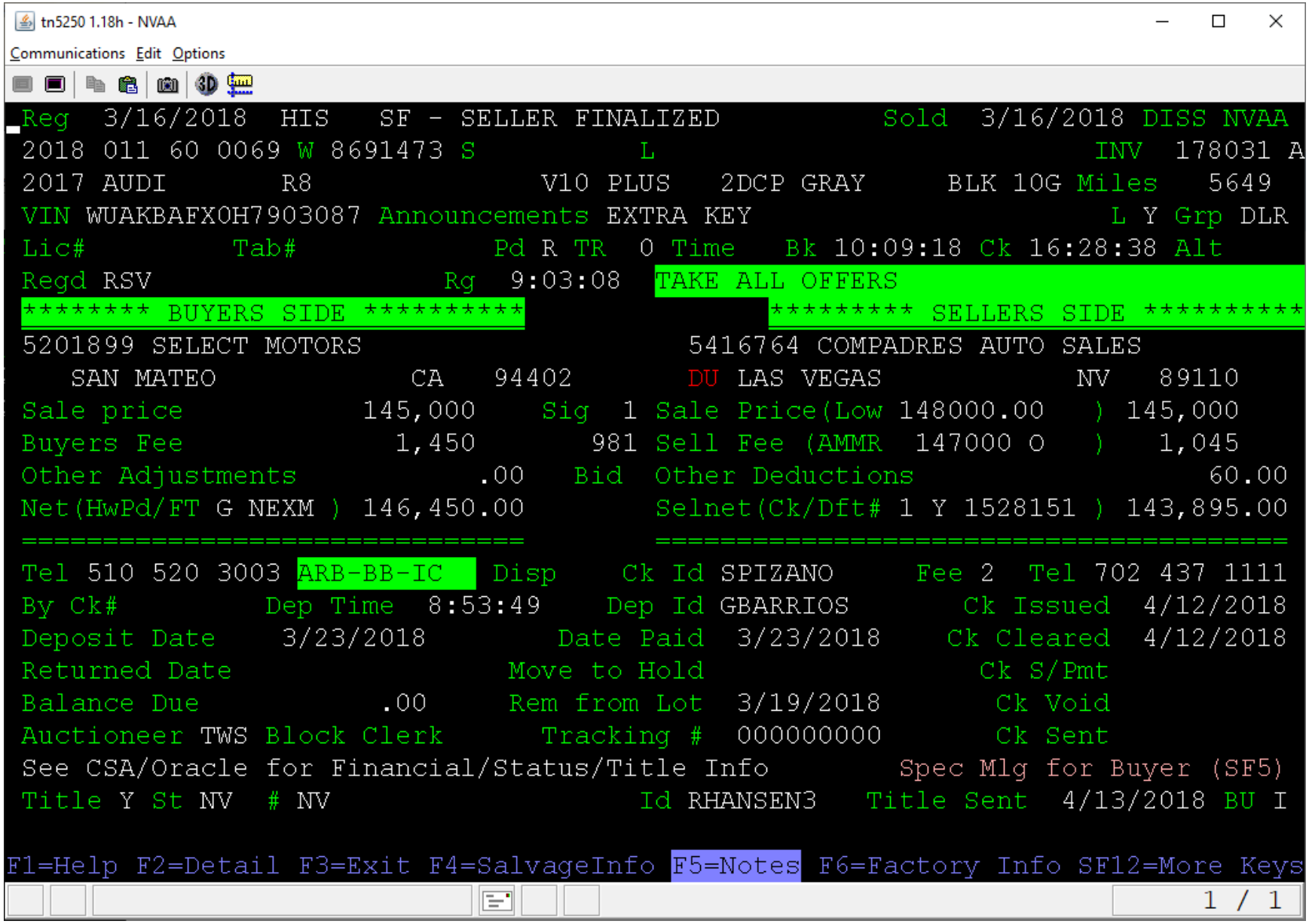
7 / 4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2017 AUDI R8 V10 PLUS 2DCP GRAY BLK 10G Miles 5649
VIN WUAKBAFX0H7903087 Announcements EXTRA KEY L Y Grp DLR
Lic# Tab# Pd R TR 0 Time Bk 10:09:18 Ck 16:28:38 Alt
Regd RSV Rg 9:03:08 TAKE ALL OFFERS
******** BUYERS SIDE ********** ********* SELLERS SIDE **********
5201899 SELECT MOTORS 5416764 COMPADRES AUTO SALES
SAN MATEO CA 94402 DU LAS VEGAS NV 89110
Sale price 145,000 Sig 1 Sale Price(Low 148000.00) 145,000
Buyers Fee 1,450 981 Sell Fee (AMMR 147000 O) 1,045
Other Adjustments .00 Bid Other Deductions 60.00
Net(HwPd/FT G NEXM) 146,450.00 Selnet(Ck/Dft# 1 Y 1528151) 143,895.00
Tel 510 520 3003 ARB-BB-IC Disp Ck Id SPIZANO Fee 2 Tel 702 437 1111
By Ck# Dep Time 8:53:49 Dep Id GBARRIOS Ck Issued 4/12/2018
Deposit Date 3/23/2018 Date Paid 3/23/2018 Ck Cleared 4/12/2018
Returned Date Move to Hold Ck S/Pmt
Balance Due .00 Rem from Lot 3/19/2018 Ck Void
Auctioneer TWS Block Clerk Tracking # 000000000 Ck Sent
See CSA/Oracle for Financial/Status/Title Info Spec Mlg for Buyer (SF5)
Title Y St NV # NV Id RHANSEN3 Title Sent 4/13/2018 BU I
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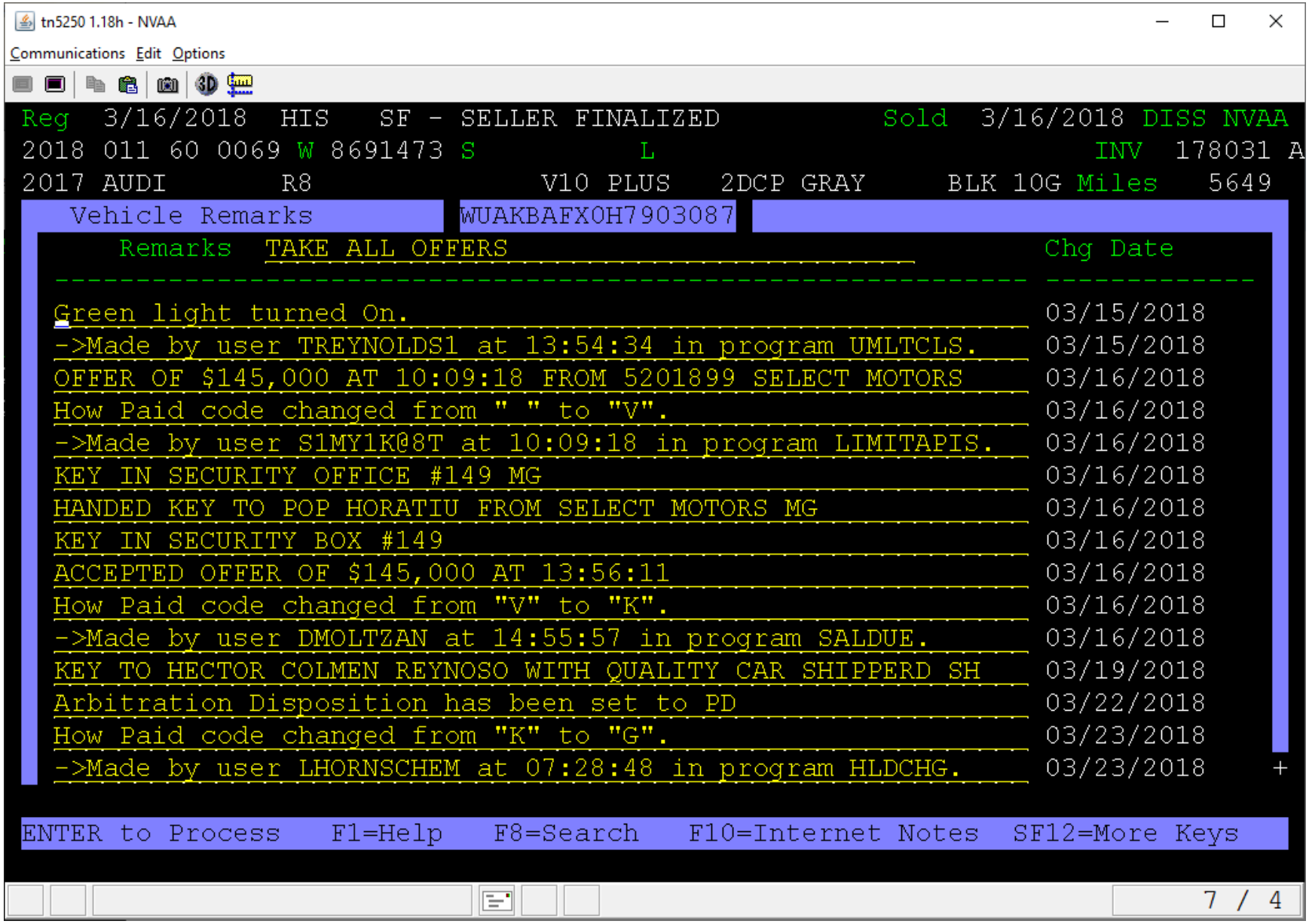
1 / 1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2017 AUDI R8 V10 PLUS 2DCP GRAY BLK 10G Miles 5649
Vehicle Remarks WUAKBAFX0H7903087
Remarks TAKE ALL OFFERS Chg Date
Green light turned On. 03/15/2018
->Made by user TREYNOLDS1 at 13:54:34 in program UMLTCLS. 03/15/2018
OFFER OF $145,000 AT 10:09:18 FROM 5201899 SELECT MOTORS 03/16/2018
How Paid code changed from " " to "V". 03/16/2018
->Made by user S1MY1K@8T at 10:09:18 in program LIMITAPIS. 03/16/2018
KEY IN SECURITY OFFICE #149 MG 03/16/2018
HANDED KEY TO POP HORATIU FROM SELECT MOTORS MG 03/16/2018
KEY IN SECURITY BOX #149 03/16/2018
ACCEPTED OFFER OF $145,000 AT 13:56:11 03/16/2018
How Paid code changed from "V" to "K". 03/16/2018
->Made by user DMOLTZAN at 14:55:57 in program SALDUE. 03/16/2018
KEY TO HECTOR COLMEN REYNOSO WITH QUALITY CAR SHIPPERD SH 03/19/2018
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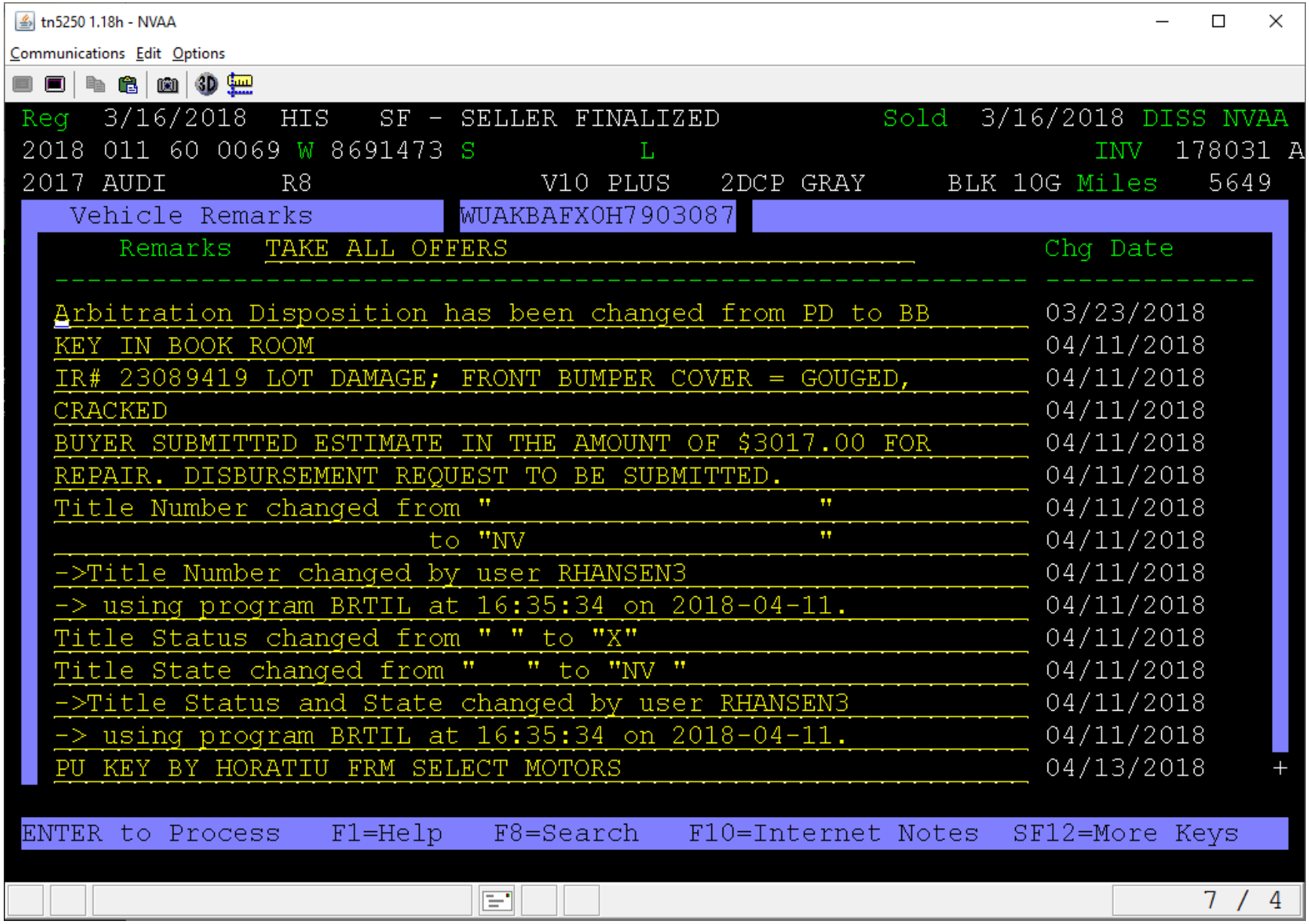
7 / 4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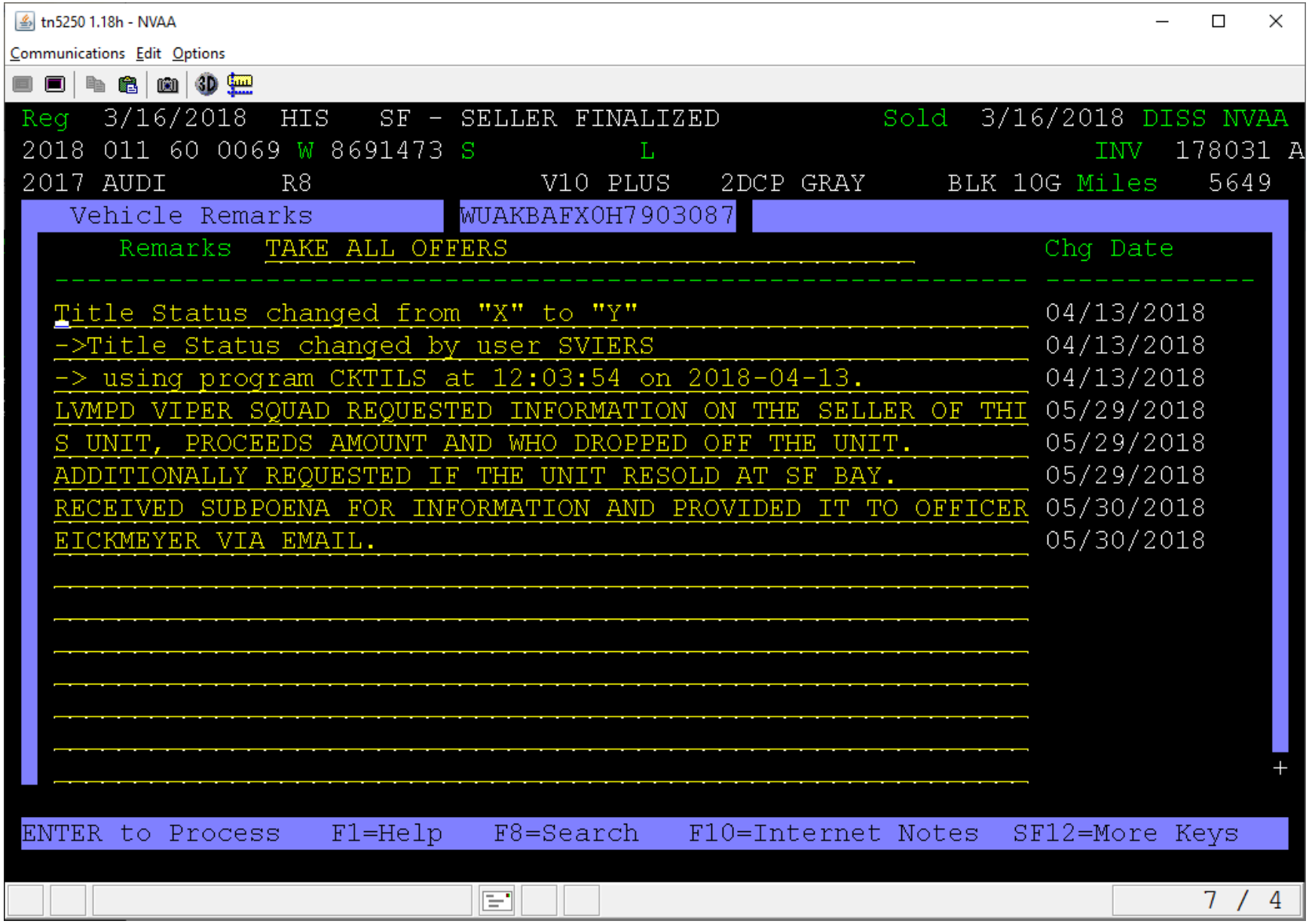
Vehicle Remarks WUAKBAFX0H7903087
Remarks TAKE ALL OFFERS Chg Date
Arbitration Disposition has been changed from PD to BB 03/23/2018
KEY IN BOOK ROOM 04/11/2018
IR# 23089419 LOT DAMAGE; FRONT BUMPER COVER = GOUGED, 04/11/2018
CRACKED 04/11/2018
BUYER SUBMITTED ESTIMATE IN THE AMOUNT OF $3017.00 FOR 04/11/2018
REPAIR. DISBURSEMENT REQUEST TO BE SUBMITTED. 04/11/2018
Title Number changed from " " 04/11/2018
to "NV " 04/11/2018
->Title Number changed by user RHANSEN3 04/11/2018
-> using program BRTIL at 16:35:34 on 2018-04-11. 04/11/2018
Title Status changed from " " to "X" 04/11/2018
Title State changed from " " to "NV " 04/11/2018
->Title Status and State changed by user RHANSEN3 04/11/2018
-> using program BRTIL at 16:35:34 on 2018-04-11. 04/11/2018
PU KEY BY HORATIU FRM SELECT MOTORS 04/13/2018 +
ENTER to Process F1=Help F8=Search F10=Internet Notes SF12=More Keys
7 / 4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2018 011 60 0069 W 8691473 S L INV 178031 A
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Vehicle Remarks WUAKBAFX0H7903087
Remarks TAKE ALL OFFERS Chg Date
Title Status changed from "X" to "Y" 04/13/2018
->Title Status changed by user SVIERS 04/13/2018
-> using program CKTILS at 12:03:54 on 2018-04-13. 04/13/2018
LVMPD VIPER SQUAD REQUESTED INFORMATION ON THE SELLER OF THI 05/29/2018
S UNIT, PROCEEDS AMOUNT AND WHO DROPPED OFF THE UNIT. 05/29/2018
ADDITIONALLY REQUESTED IF THE UNIT RESOLD AT SF BAY. 05/29/2018
RECEIVED SUBPOENA FOR INFORMATION AND PROVIDED IT TO OFFICER 05/30/2018
EICKMEYER VIA EMAIL. 05/30/2018
ENTER to Process F1=Help F8=Search F10=Internet Notes SF12=More Keys
7 / 4

powered by Manheim

Learn More

MANHEIM NEVADA
6600 AUCTION LANE
NORTH LAS VEGAS, NV 89165
(702)730-1400

VEHICLE DETAILS - 2017 AUDI R8 V10 PLUS

VIN:	WUAKBAFX0H7903087	Body Style:	2DCP	Top Type:	Hard Top
Ext Color:	GRAY	Int Color:	BLK	Odometer:	5,649
Work Order:	8691473	Seller:	COMPADRES AUTO SALES	Received Date:	03/13/2018
Sale Number:	11	Lane Number:	60	Run Number:	69
Inspector:	AFERRANTE 03/13/2018	InService Date:	N/A		

GRADING

AutoGrade

Grade 4.6 Clean

- **MSRP**-Not Available
- **Engine Starts**-Yes
- **Drivable**-Yes

*Process protected under U.S. Patent No. 8,230,362

VALUE ADDED OPTIONS

- Back-Up Camera
- Heated Exterior Driver Mirror
- Heated Exterior Passenger Mirr
- Heated Seats-Front(s)
- Leather Seats
- Navigation System

VEHICLE INFORMATION

OPTIONS

- 50 State Emissions
- A/C
- AM Radio
- Automatic Headlights
- Auxiliary Pwr Outlet
- Cruise Control
- Dual Air Bags
- Fog Lamps
- Front Floor Mats
- Front Reading Lamps
- Intermittent Wipers
- Keyless Start
- Leather Steering Wheel
- Owner's Manual
- Paddle Shifter
- Power Folding Mirrors
- Power Locks
- Power Mirrors
- Power Trunk Release
- Power Windows
- Pwr Seats - Both
- Pwr Steering
- Rear Defrost
- Security System
- Side Air Bags
- Steering Wheel Audio Control
- Telescopic Steering Wheel
- Tilt Steering
- Tilt Steering Wheel
- Tire Pressure Monitor System
- Traction Control
- Trip Computer
- Trip Counter
- Turn Signal Mirrors
- US EPA Label

MECHANICAL

- 10 Cylinder Gas
- Automatic
- AWD
- Automatic Transmission
- Anti-lock Brakes
- 5.2 L

INTERIOR

- Odometer - Digits Digital -Operable
- Regular Dash
- Leather
- Int Odor: OK

TIRES AND WHEELS

Tire Condition: **Wheels:** Alloy

Tire	Tread Depth	Brand	Size
Left Front:	5/32"	PIRELLI	245/30ZR20

KEYS

- Proximity Key - 1

OTHER

Left Rear:	6/32"	PIRELLI	305/30ZR20
Right Front:	5/32"	PIRELLI	245/30ZR20
Right Rear:	6/32"	PIRELLI	305/30ZR20
Spare:	N/A	(Mini)	N/A

- Title State: NV
- Title Received Date: 04/11/2018
- Org Mfg Basic Warranty: 4 Years/50,000 Miles
- Org Mfg Powertrain Warranty: 4 Years/50,000 Miles

*Manheim is not responsible for voided warranties

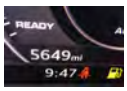
ADDITIONAL INFORMATION

EXTRA KEY,, TAKE ALL OFFERS

CHARGEABLES

HIDE PIC	HIDE LINE		ITEM	DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED
☐	☐		0020	Front Bumper	Chipped	9	Paint Chip Repair	.00	$25.00	☐
☐	☐		0532	Gas	Low Fluid	Unacceptable	Replace	.00	$14.00	☐
							TOTALS	.00	$39.00	

NON-CHARGEABLES AND ADDITIONAL IMAGES

HIDE PIC	HIDE LINE		ITEM	DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED
☐	☐		0000	Overall Picture-FRONT/LFT FRNT	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Left	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Right	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture-REAR/RGT REAR	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Wheel	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Interior	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Dash	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Engine	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Odometer	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture VIN/ID Sticker	Overall Picture			.00	$.00	☐
☐	☐		0000	Overall Picture - Cargo Area	Overall Picture			.00	$.00	☐
☐	☐		0000	Picture #1	Overall Picture REAR CAM			.00	$.00	☐
☐	☐		0000	Picture #2	Overall Picture NAV			.00	$.00	☐
☐	☐		0010	Windshield	Chipped	< 1/8"	No Action Required	.00	$.00	☐
							TOTALS	.00	$.00	

REPAIRED

HIDE PIC	HIDE LINE	ITEM	DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED
						TOTALS	.00	$.00	

RECON CHARGES

DATE	QTY	PART	DESCRIPTION	RETAIL
03/13/2018			INSPECTION FEE	$35.00
03/16/2018			Seller Registration Fee	$25.00

TOTAL CHARGES

Chargeables	$39.00
Non-Chargeables	$.00
Repaired	$.00
Deductibles	$.00
Recon Charges	$60.00
Total Charges	$99.00

MANUFACTURER PACKAGE INFORMATION

INFORMATION SET FORTH HEREIN IS BASED SOLELY ON INFORMATION PROVIDED BY THE VEHICLE MANUFACTURER AT THE TIME OF MANUFACTURE AND MAY NOT BE ACCURATE OR COMPLETE. MANHEIM HAS NOT UNDERTAKEN STEPS TO CONFIRM THE ACCURACY OF ANY SUCH INFORMATION, AND ANY INFORMATION DISCLOSED HEREIN IS PROVIDED "AS IS".

Open All Packages Close All Packages

20" Wheel Package - 45E

- Wheels: 20" 10-Spoke-Y-Design Forged Alloy
- Tires: 245/30R20 Fr & 305/30R20 Rr Summer Performance
- Titanium-Matte Finish

Diamond Stitch Leather Package w/Sport Seats - PL8

- 18-Way Power Seats
- Full Leather Package
- Door And Side Panels And Airbag Cap
- Pneumatic Side And Leg Bolsters
- Upper And Lower Dash
- Alcantara Headliner w/Diamond Stitching

OTHER OPTIONS

- USB Cables
- Delete Front License Plate Holder
- Engine: 5.2L FSI V10 DOHC Plus
- Transmission w/Driver Selectable Mode, Sequential Shift Control w/Steering Wheel Controls And Oil Cooler
- Electric Power-Assist Steering
- Mechanical Limited Slip Differential
- Tires: 245/35R19 Fr & 295/35R19 Rr Summer -inc: Performance
- Carbon Fiber Power Heated Auto Dimming Side Mirrors w/Power Folding And Turn Signal Indicator
- Speed Sensitive Rain Detecting Variable Intermittent Wipers
- Fully Automatic Projector Beam Led Low/High Beam Daytime Running Auto High-Beam Headlamps w/Delay-Off
- Radio: Audi MMI Navigation Plus -inc: Audi Music Interface w/2 USB Ports, Audi Sound System (5 Speakers, 140 watts)) Bluetooth Streaming Audio For Compatible Devices And
- Bang & OLUFSEN Sound System
- Dynamic Steering
- Transmission: 7-Speed Auto S Tronic
- Full-Time All-Wheel Drive
- 4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs, Brake Assist, Hill Hold Control, Ceramic Discs And Electric Parking Brake
- Wheels: 19" 5-Double-Spoke Design Forged -inc: Titanium Finish
- Wheels w/Locks
- Fixed Rear Window w/Defroster
- Wing Spoiler
- Front And Rear Fog Lamps
- Radio w/Seek-Scan, Console Mounted Single Remote CD, MP3 Player, Clock, Speed Compensated Volume Control, Steering Wheel Controls And Radio Data System

- Wireless Technology Preparation For Compatible Mobile Phones And SiriusXM Satellite Radio w/90-Day Trial Subscription
- Heated Front Racing Shell Sports Bucket -inc: 18-Way Power Seats w/Pneumatic Side And Leg Bolsters, 4-Way Lumbar And Power Seat Height Adjustment
- Gauges -inc: Speedometer, Odometer, Voltmeter, Engine Coolant Temp, Tachometer, Oil Temperature, Trip Odometer And Trip Computer
- Sport Leather/Aluminum Steering Wheel
- Remote Keyless Entry w/Integrated Key Transmitter, Illuminated Entry And Panic Button
- HomeLink Garage Door Transmitter
- Automatic Air Conditioning
- Day-Night Auto-Dimming Rearview Mirror
- Full Carpet Floor Covering -inc: Carpet Front Floor Mats
- Smart Device Integration
- Power Door Locks w/Autolock Feature
- Perimeter Alarm
- Electronic Stability Control (Esc)
- Dual Stage Driver And Passenger Seat-Mounted Side Airbags
- Tire Specific Low Tire Pressure Warning
- SIDEGUARD Curtain 1st Row Airbags
- Driver And Passenger Knee Airbag
- Manual Tilt/Telescoping Steering Column
- Mobile Hotspot Internet Access
- Proximity Key For Doors And Push Button Start
- Remote Releases -Inc: Power Cargo Access And Power Fuel
- Cruise Control
- Fine Nappa Leather Seat Trim
- Driver And Passenger Visor Vanity Mirrors w/Driver And Passenger Illumination
- Fob Controls -inc: Trunk/Hatch/Tailgate
- Power 1st Row Windows w/Driver And Passenger 1-Touch Up/Down
- Trip Computer
- Engine Immobilizer
- ABS And Driveline Traction Control
- Front And Rear Parking Sensors
- Dual Stage Driver And Passenger Front Airbags
- Airbag Occupancy Sensor
- Back-Up Camera

VIN: WUAKBAFX0H7903087, Work Order: 8691473


A/C
AUTO
OFF
P
R
N
D/S


READY
5649mi
9:47


MFD. BY quattro GmbH
10 16 GVWR LBS 4321 GAWR LBS FRONT 2006 /REAR 2458
THIS VEHICLE CONFORMS TO ALL APPLICABLE U S
FEDERAL MOTOR VEHICLE SAFETY, BUMPER AND THEFT
PREVENTION STANDARDS IN EFFECT ON THE DATE OF
MANUFACTURE SHOWN ABOVE
Audi
PASSENGER CAR
WUAKBAFX0H7903067
GERMANY


R8


35 mi
Not connec...
SE
Check surroundings!
9:50
61 °F


35 mi
Not connec...
SE
Image Landsat / Copernicus
N Hollywood Blvd
Speedway Blvd
15
MPH
Check surroundings!
9:50
61 °F

Manheim Search... Search Shannon Shaw Setup Help & Training Manheim Sales

Home Chatter Clients Contacts Opportunities Reports Dashboards Cases Referrals Videos License Management Projects Revenue Transactions

Case
02888686

Customize Page | Printable View | Help for this Page

Hide Feed

Post File New Task More

Write something... Share

Follow
Followers
No followers.

Show All Updates

James MacDonald to Manheim Only posted a comment.

Called, byr Horatio and requested pics of the damages. Already informed him this is NOT an arb matter.

Comment · Like · March 23, 2018 at 12:14 PM

James MacDonald changed Status from Pending to Buyer Bought.

Comment · Like · March 23, 2018 at 12:11 PM

James MacDonald closed this case as Closed.

Comment · Like · March 23, 2018 at 12:11 PM

James MacDonald changed Case Owner from Manheim Nevada Arb to James MacDonald.

Comment · Like · March 23, 2018 at 12:01 PM

Manheim Salesforce.com User changed Status from a blank value to Pending.

Comment · Like · March 22, 2018 at 9:23 PM

Manheim Salesforce.com User changed Case Owner from Manheim Salesforce.com User to Manheim Nevada Arb.

Comment · Like · March 22, 2018 at 9:23 PM

« Back to List: Cases

Case History [5+] | Open Activities [0] | Activity History [0] | Case Comments [1] | Attachments [0] | Approval History [0]

Case Detail

Edit Take Ownership Transaction Details

Custom Links
AutoCheck Link
RepairPal Link
Arb Reporting
CarFax Link
BATNA
NHTSA Recall Link
OVE Link
Policies

Discovery

Payment has been made on this transaction, contact front office to pull the check.

Operating Location	Manheim Nevada	Case Owner	James MacDonald [Change]
Purchase Market	West	Linked Real Time Transaction	WUAKBAFX0H7903087
Current Vehicle Location	Manheim Nevada	Case Origin	Online/M.com
Other Location		Case Number	02888686
Current Vehicle Mileage		Vehicle Status	SF
Sale Date	3/16/2018	National MMR (Time of Sale)	$147,000.00
Arbitration Date	3/22/2018	Sale Price	$145,000.00
Model Year	2017	Floor Type	
Make	Audi	Channel	In-Lane
Model	R8 Coupe	Red Light	0
Body	2dr Car	Green Light	1
Miles	5,649	Yellow Light	0
VIN	WUAKBAFX0H7903087	Blue Light	0

Sale #	11	Work Order	8691473
Lane #	60	CR Inspector Alias	
Run #	69	SD Link	
DealShield Product		Ready Auto Transportation Request Flag	
DealShield Status		Ready Auto Delivery Date	
Product Type		Ready Auto Arb Eligibility Expiration	
Frame Inspector		Status Summary	
Top Side Inspector		Remarks	
Test Drive Inspector		Notes	
Product Resolution			
Product Fail Reason			

Primary Claim Details

Buyer Claim Description	Hi Glen, I purchased this unit in person and I inspected it myself, the car HAD no damages. I received the car and the front bottom carbon fiber trim is cracked, so it either happened in the auction after I bought the car or transport damage. Please pull the gate pass and see if the damage is noted on it ASAP. Thank you.	Primary Estimated Amount	
		Primary Category Amount	$0.00
		Primary Within Time Limit Per NAAA	Y

Secondary Claim Details

Secondary Claim Category		Secondary Estimated Amount	
Secondary Claim Condition		Secondary Claim Valid Per NAAA	
		Secondary Within Time Limit per NAAA	

Manheim Express

ManEx Upload Type		Concierge	
ManEx Channel		CR Link	
Inspection Source			

Buyer/Seller Details

Buyer Universal	SELECT MOTORS	Seller Bill To Universal Id	
Buyer Universal Id	5201899	Seller Universal	COMPADRES AUTO SALES
Rolling 12 Month Purchases	160	Seller Universal Id	5416764
Rolling 12 Month Buyer Claims	34	Rolling 12 Month Sales	1
Rolling 12 Month Buyer Arbitration Rate	21.25%	Rolling 12 Month Seller Claims	0
		Rolling 12 Month Seller Arbitration Rate	0.00%
Buyer Rep	HORATIU POP		
Buyer Rep Id	100530662		
Email	selectmotors21@gmail.com		

Decision

Disposition	BB	Financial Adjustment Status	
Adjustment Type	Invalid Claim	Total Adjustment Amount	$0.00
Responsible Party	Buyer	Resolution Amount	$145,000.00
Primary Claim Condition			
Clear Line of Sight to Title	✓		

Inherited Vehicle Details

		Gain/Loss on Resale	$0.00

Additional Information

Contact Name	
Description	

System Information - Do Not Change

Created By	Manheim Salesforce.com User, 3/22/2018 9:23 PM	Last Modified By	Inventory Deploy, 3/27/2019 9:49 PM
Status	Closed	Subject	
Auto IMS Posted Date		Priority	
Transaction Id	a100Z00000JejcvQAB		

Edit | Take Ownership | Transaction Details

Case History

Date	User	Connection	Action
5/31/2018 6:21 PM	James MacDonald		Changed **Adjustment Type** from No Adjustment to **Invalid Claim**.

3/23/2018 12:11 PM	James MacDonald	Changed **Status** from Buyer Bought to **Closed**.
		Changed **Status** from Pending to **Buyer Bought**.
		Changed **Adjustment Type** to **No Adjustment**.
3/23/2018 12:01 PM	James MacDonald	Changed **Case Owner** from Manheim Nevada Arb to **James MacDonald**.
3/22/2018 9:23 PM	Manheim Salesforce.com User	Changed **Status** from New to **Pending**.
		Changed **Status** to **New**.
		Changed **Linked Real Time Transaction** to **WUAKBAFX0H7903087**.
		Changed **Purchase Location** to **Manheim Nevada**.
		Changed **Case Owner** from Manheim Salesforce.com User to **Manheim Nevada Arb**.

Show more » | Go to list »

Open Activities

New Task | New Event

No records to display

Activity History

Log a Call | Mail Merge | Send An Email

No records to display

Case Comments

New

Action	Public	Comment
Make Public	☐	**Created By: James MacDonald (3/23/2018 12:14 PM)** Called, byr Horatio and requested pics of the damages. Already informed him this is NOT an arb matter.

Attachments

No records to display

Approval History

Submit for Approval

No records to display

Back To Top

Always show me more records per related list

Amount: $143,895.00
Account: [redacted]
Bank Number: [redacted]

Sequence Number: 9092207933
Capture Date: 04/12/2018
Check Number: 1528151

MANHEIM NEVADA
6400 AUCTION LN NORTH LAS VEGAS, NV 89165 USA
(702) 730-1400
This CHECK must be deposited by payee and cleared through the payee's bank.

Bank of America
Atlanta, GA

64-1278 / 611
16:28:47 2018 -011 -60 -0069
K ** CHECK ** NO C1528151 *****

NOT TO EXCEED $750000.00
NOT NEGOTIABLE AFTER 6 MONTHS
FROM DATE OF ISSUE

2017 AUDI WUAKBAFX0H7903087 3-16-2018 $143,895.00***

* ONE HUND FORTY-THREE THOUS EIGHT HUND NINETY-FIVE and 00/100 Dollars **

5416764
PAY TO: COMPADRES AUTO SALES**********
1546 N NELLIS BLVD

LAS VEGAS NV 89110

MANHEIM NEVADA

[redacted]

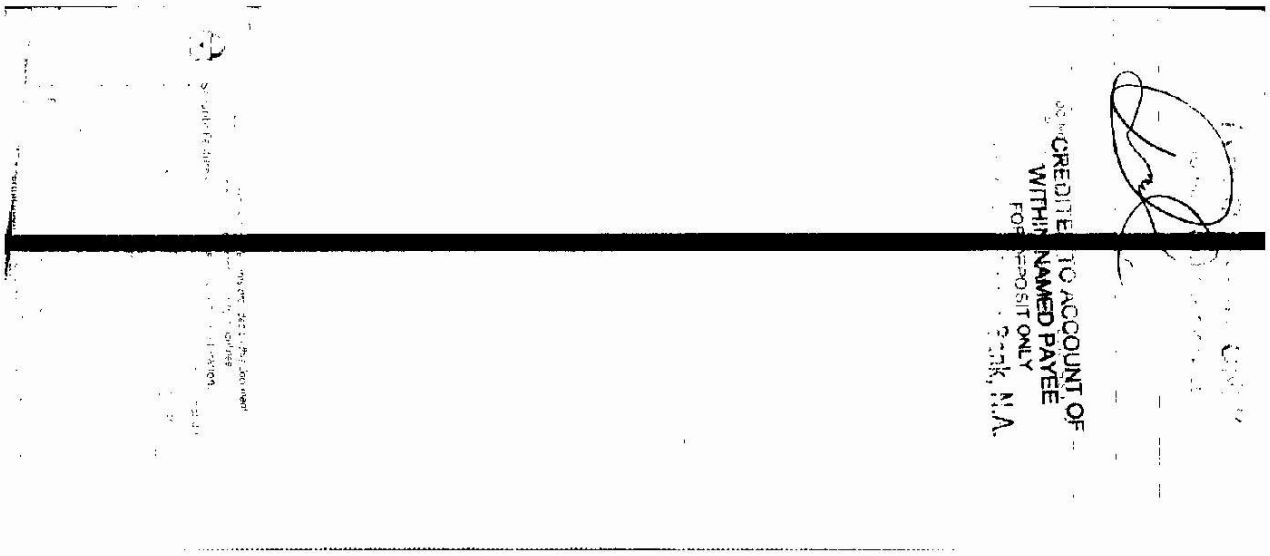
SECURITY FEATURES INCLUDED, DETAILS ON BACK

Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
04/11/2018	5590947017	111900057	Rtn Loc/BOFD	Y		JPMORGAN CHASE BANK,
04/12/2018	009092207933	11300016	Pay Bank	N		

Amount: $143,895.00
Account: [redacted]
Bank Number: [redacted]

Sequence Number: 9092207933
Capture Date: 04/12/2018
Check Number: 1528151



Electronic Endorsements

Date	Sequence	Bank #	Endrs Type	TRN	RRC	Bank Name
04/11/2018	5590947017	111900057	Rtn Loc/BOFD	Y		JPMORGAN CHASE BANK,
04/12/2018	009092207933	11300016	Pay Bank	N		

EXHIBIT "C"

AFFIDAVIT OF CUSTODIAN OF RECORDS- ~~GREATER NEVADA AUTO AUCTIONS, LLC~~ Manheim Investments, Inc. D/B/A MANHEIM NEVADA

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Case No.: A-18775815-C

COMES NOW, Shannon Shaw, (*name of custodian of records)* who after first being duly sworn deposes and says:

1. That the deponent is the Sr. Paralegal (*position or title*) of Cox Enterprises, Inc., and in his or her capacity as Sr. Paralegal (*position or title*) is a custodian of the records of Manheim Investments, Inc..

2. That Manheim Investments, Inc., is licensed to do business as a Auto Auction in the State of Nevada.

3. That on the 3 day of the month of March, 2020, the deponent was served with a subpoena in connection with the above-entitled case, calling for the production of records pertaining to 2017 Audi R8 VIN WUAKBAFX0H7903087

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

5. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or Manheim Investments, Inc..

Executed on: March 19, 2020

(*Signature of Custodian of Records*)

SUBSCRIBED AND SWORN to before me
This 19th day of March, 2020.

NOTARY PUBLIC
County of 06-26-2020
My Appointment Expires DEKALB

VERA T. CHEGE NOTARY PUBLIC DeKALB COUNTY, GEORGIA My Commission Expires 06-26-2022

EXHIBIT 25

EXHIBIT 25

MAFC
FREDERIC I. BERKLEY, ESQ.
Nevada Bar No.: 1798
SKLAR WILLIAMS PLLC
410 South Rampart Boulevard, Ste. 350
Las Vegas, Nevada 89145
Telephone: (702) 360-6000
Facsimile: (702) 360-0000
Email: fberkley@sklar-law.com
Attorneys for Plaintiff
William Harry Resh

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM HARRY RESH, an individual,

Plaintiff,

v.

MONEY MACHINE, LLC, a Nevada limited liability company dba COMPADRES AUTO SALES; ROBERT LEGASPI, an individual, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a Minnesota corporation; DOES I through X; and ROE CORPORATIONS I THROUGH X.

Defendants.

Case No.: A-18-775815-C
Dept. No.: XX

HEARING REQUESTED

PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS

COMES NOW, Plaintiff, WILLIAM HARRY RESH, by and through his attorney, FREDERIC I. BERKLEY, ESQ., of the law firm Sklar Williams PLLC and hereby moves this Court for an award of attorney's fees and costs incurred by Plaintiff in this litigation. This Motion is brought under Rule 68 of the Nevada Rules of Civil Procedure and NRS 18.010.

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This Motion is supported by the Points and Authorities and Affidavit of Frederic I. Berkley attached hereto, as well as all of the papers and pleadings on file herein.

DATED this 1 day of October, 2020.

SKLAR WILLIAMS PLLC

By: _____
FREDERIC I. BERKLEY, ESQ.
Nevada Bar No. 1798
410 South Rampart Blvd Ste. 350
Las Vegas, NV 89145
Attorneys for Plaintiff
William Harry Resh

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

As recognized by this Court in its Order Granting Summary Judgment, there is no genuine issue of any of the following facts:

Plaintiff WILLIAM HARRY RESH (hereinafter referred to as "Dr. Resh") is a board-certified cardiologist with Nevada Heart and Vascular Center and was the owner of a 2017 Audi R8 automobile, VIN No. WUAKBAFX0H7903087. In February and March 2018, Dr. Resh attempted to sell his vehicle through auction with the assistance of Robert Larson. Dr. Resh was told that in order to effectuate the sale of his vehicle, he would be required to furnish title to said vehicle to the auction house known as Manheim.

Dr. Resh was informed that his vehicle had sold for one hundred forty thousand five hundred dollars ($140,500)[1] and that a check in that amount was prepared by Manheim made payable to Compadres Auto Sales. Robert Larson brought the title to Dr. Resh's vehicle and the keys to the auction house known as Manheim. Manheim prepared a check for one hundred forty-three thousand eight hundred ninety-five dollars ($143,895) made payable to Compadres and that check was given to Robert Larson. Mr. Larson personally delivered that check in

[1] The check from Manheim was actually for $143,895 made payable to Compadres Auto Sales.

approximately mid-March 2018 to Ryan Najarro, the General Manager of Compadres, who Robert Larson had worked with before.

Robert Larson was told by Ryan Najario that as soon as the check cleared, Compadres would prepare a check for Dr. Resh in the amount of one hundred forty-three thousand eight hundred ninety-five dollars ($143,895). Despite repeated evasions, excuses, and lies, Compadres has not paid any of the proceeds of sale to Dr. Resh.

During the course of discovery in this matter, Dr. Resh discovered that Defendant Western National Mutual Insurance Company (hereinafter referred to as "Western National") furnished a Vehicle Industry License Bond in the penal sum of $100,000. Western National has admitted that it is surety on Vehicle Industry Business License Bond number 37029 with Money Machine, LLC d/b/a Compadres Auto Sales as principal and the State of Nevada as obligee. See Western National's Answer to Amended Complaint filed on November 20, 2019 at paragraph 4. A true and correct copy of said Vehicle Industry Business License Bond is attached hereto as Plaintiff's **Exhibit 1**.

During the course of discovery in this matter, a Subpoena Duces Tecum was served upon Manheim.

Among the documents Manheim produced is a check from Manheim Nevada to Compadres Auto Sales dated March 16, 2018 in the amount of $143,895 for the sale of Dr. Resh's 2017 Audi automobile. The documents produced were supported by the Affidavit of Custodian of Records for Manheim. The check clearly establishes that Compadres received $143,895 for the sale of Dr. Resh's automobile and deposited said check in its account.

In WNMIC's Trial Brief filed on June 15, 2020, WNMIC admitted that:

> "There is no question that an employee of Money Machine stole Dr. Resh's money."

On November 26, 2019, Dr. Resh filed an Offer of Judgment, a copy of which is attached hereto as Plaintiff's **Exhibit 2**. In said Offer of Judgment, Dr. Resh offered to allow judgment to be entered against WNMIC in the amount of $100,000. Said Offer of Judgment was

never accepted and this Court entered an Order Granting Summary Judgment against WNMIC in the amount of $100,000.

II.

ATTORNEY'S FEES UNDER NRCP 68

The consequences of rejecting an Offer of Judgment under NRCP 68 and failing to obtain a more favorable judgment are clearly set forth as follows:

> "(B) The offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer."

Under the express language above, Dr. Resh should be awarded attorney's fees from November 26, 2019 (the time of the Offer). As set forth in the Affidavit of Frederic I. Berkley attached hereto, the attorney's fees and costs incurred by Dr. Resh from November 26, 2019 until preparation of this Motion amount to $30,747.99. At a minimum therefore, this Court's award of attorney's fees pursuant to NRCP 68 is $30,747.99.

III.

ATTORNEY'S FEES UNDER NRS 18.010

An additional basis for an award of attorney's fees is found at NRS 18.010(2) as follows:

> "(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public."

This statute allows for the award of attorney's fees where the non-prevailing party's defense "was brought or maintained without reasonable ground or to harass the prevailing party." The intent of the statute is expressed therein and courts are specifically advised of the Legislature's desire to punish parties for and deter frivolous or vexatious claims and defenses. The instant case is just the type of case the Nevada Legislature had in mind when it spoke of its desire "to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increases the costs of engaging in business and providing professional services to the public."

Dr. Resh is a Board-certified cardiologist who in February and March 2018 attempted to sell his vehicle through the auction house known as Manheim. The vehicle sold for $145,000 and a check for $143,895 was made payable to Compadres Auto Sales. That check was delivered to the general manager of Compadres and deposited into Compadres bank account. Instead of paying the sales proceeds to Dr. Resh, Compadres simply kept the money. All of the parties and attorneys in this litigation know that an employee of Compadres stole Dr. Resh's money. In WNMIC's Trial Brief filed on June 15, 2020, it brazenly admits that:

> "There is no question that an employee of Money Machine stile Dr. Resh's money."

WNMIC admittedly furnished a Vehicle Industry License Bond in the penal amount of $100,000. Instead of reimbursing Dr. Resh for his loss, Dr. Resh has been pursuing this litigation now for more than two years and has incurred attorney's fees and costs in the amount of $76,007.17 through August 2020. Instead of paying Dr. Resh for at least a portion of his loss, WNMIC first sought to escape liability by arguing that Dr. Resh was not a consumer entitled to statutory protection. Even though a consumer is defined as "any person who comes into possession of a vehicle as a final user ...," WNMIC argued that Dr. Resh lost his consumer status and should be treated as an auto dealer or finance company. When this court made short shrift of WNMIC's dubious legal argument, WNMIC opposed summary judgment by arguing that Robert Larson, the family friend who assisted Dr. Resh in this transaction, should have been

licensed as an auto dealer and therefore Dr. Resh could not be compensated when an employee of Money Machine stole his money. This Court will be reminded that WNMIC actually had the audacity to argue that Dr. Resh was complicit in Robert Larson's allegedly unlawful acts and apparently deserved to have his money stolen by an employee of Compadres. As pointed out previously, the motivation behind WNMIC's defense of this lawsuit is beautifully exemplified by the following argument which WNMIC used as part of its Opposition to the Motion for Summary Judgment:

> "The purpose of the Bond is not to protect consignors looking to save a few bucks by using unlicensed third parties to sell their very expensive luxury sports cars at auction."

Page 16, lines 12-14 of WNMIC's Opposition to Motion for Summary Judgment.

This type of argument is why NRS 18.010(2)(b) directs courts to liberally construe the provisions of the statute in favor of awarding attorney's fees in all appropriate situations. Our courts in Nevada are overburdened and defenses such as those taken herein by WNMIC only increase the cost of litigating legitimate claims. WNMIC admitted that there was no question that an employee of Money Machine stole Dr. Resh's money. There is no legitimate reason for Dr. Resh to have incurred attorney's fees and costs in the amount of $76,007.17 through August 2020 to recover on the surety bond. When WNMIC insults Dr. Resh for trying to sell his "very expensive luxury sports cars at auction" what it really means is that this surety resents the fact that Dr. Resh had the financial means and determination not to be bullied by this surety and its frivolous defenses. WNMIC is no doubt correct that most consumers would have given up their absolutely legitimate claims as a result of the surety's making litigation so costly. When entities like WNMIC use the heavy cost of litigation to avoid payment of legitimate claims, they do a disservice both to consumers and the courts of this state. The purpose of NRS 18.010(2)(b) is to punish and deter the very conduct and attitude which WNMIC has displayed throughout the course of this litigation.

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IV.

BRUNZELL FACTORS

In discussing the factors a District Court must look at in determining the amount of attorney's fees to be awarded, the Nevada Supreme Court in *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833-34, 712 P.2d 786, 790 (1985), cited *Brunzell vs. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) as follows:

1. The qualities of the advocate: his ability, training, education, experience, professional standing and skill.

Plaintiff's counsel has been practicing in all courts of the state of Nevada for the past forty-five years, with an emphasis on civil litigation. Plaintiff's counsel graduated from the University of San Diego School of Law in 1975 where he wrote for the San Diego Law Review. Plaintiff's counsel received an "A" rating from Martindale-Hubbell as soon as he became eligible and has been voted as one of the Best Lawyers of America for many years. He was recognized in the area of Business Litigation in "Southwest Super Lawyers" published by Law and Politics Magazine. The firm was included among Best Law Firms in 2020 by U.S. News.

2. The character of the work to be done: its difficulty, intricacy, importance, the time and skill required, the responsibility imposed and the prominence and character of the parties when they affect the importance of the litigation.

Plaintiff's counsel has performed virtually all of the work in prosecuting this action including the drafting of pleadings, taking of depositions, and making all court appearances. Plaintiff's counsel would have proven that Defendant Robert Legaspi was the alter ego of Defendant Money Machine, LLC but that determination could not be reached as a result of Defendant Robert Legaspi having filed a Chapter 7 Bankruptcy. All Defendants have increased the costs of this litigation by taking whatever positions they knew lacked merit when all parties and attorneys knew that "There is no question that an employee of Money Machine stole Dr. Resh's money."

3. The work actually performed by the lawyer: the skill, time and attention given to the work.

Plaintiff has attached hereto the Affidavit of Frederic I. Berkley with an itemized breakdown of all of the time he spent litigating these issues. It is submitted that the time and attention given to the work was purely as a result of Defendants' desire to hinder the timely resolution of Dr. Resh's claim and increase the costs of engaging in what all parties and attorneys knew from the outset was meritorious litigation.

4. The result: whether the attorney was successful and what benefits were derived.

The results achieved in this litigation are straightforward, Plaintiff has been granted summary judgment since there are no genuine issues of material fact. Dr. Resh will now receive a Judgment for the $100,000 set forth in the bond plus the attorney's fees and costs awarded pursuant to this Motion.

V.

THE JUDGMENT AGAINST WNIMC IS NOT LIMITED TO $100,000

In its Opposition to Plaintiff's Motion for Summary Judgment, WNMIC apparently foresaw the entry of Summary Judgment in favor of Dr. Resh. As such, WNMIC included a section in its Opposition arguing, without any authority, that "the total possible liability on the bond including attorney's fees and costs is capped at the penal sum of the bond, which in this case is $100,000." See Opposition to Plaintiff's Motion for Summary Judgment filed on August 25, 2020 at page 16, lines 2-3. Dr. Resh logically assumes that WNMIC will take that position in its Opposition to the instant Motion as well.

Unfortunately for WNMIC, there is a Nevada Supreme Court case directly on point regarding this issue. In 2004, the Nevada Supreme Court decided a case entitled *Trustees of the Plumbers and Pipefitters Union Local 525 Health and Welfare Trust Plan v. Developers Surety and Indemnity Company*, 120 Nev. 56 (2004). The Court in *Trustees* held that its previous ruling in *Basic Refractories, Inc. v. Bright*, 72 Nev. 183 (1956) was limited to the procedural posture of that case. More importantly, it held that "[when a] secured entity incurs attorney fees in direct litigation with the surety over the bond, attorney fees may be awarded under NRS 17.115, NRCP 68, and NRS 18.010." *See Trustees*, 120 Nev. at 61. The Court emphasizes that, with respect to offers of judgment, the statutory language of NRS 17.115 and NRCP 68 "contains no exception

for sureties." *See id.* It further reasoned that precluding attorney's fees in surety bond disputes would contradict the legislative intent of NRS 17.115, because it would encourage sureties to litigate, rather than settle, as contemplated by the statute. *Id.* at 62. The holding in *Trustees* was, interestingly enough, relied upon in a federal case involving this Defendant, WNMIC. While the Court did not assess attorneys' fees against WNMIC in *Glazing Health and Welfare Fund v. Accuracy Glass and Mirror Co.*, Case No. 2:13-cv-1106-KJD-NJK, 2016 WL 1270991 (D. Nev. Mar. 30, 2016), because the party seeking fees did not litigate directly against Western National, it stated: "The surety only becomes liable for fees that exceed the bond amount when it engages in direct litigation with the secured entity over the bond."

WNMIC obviously knows that its liability is not limited to $100,000 not only from a Nevada Supreme Court case but a federal district court case in which it was a party four years ago. This is but a further example of the frivolous and vexatious nature that has permeated the defense of this lawsuit from its inception.

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VI.

INTEREST

As the prevailing party in this litigation, Dr. Resh is entitled to interest on whatever Judgment this Court enters. Under NRS 17.130(2), the rate of interest as follows:

> "When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment draws interest from the time of service of the summons and complaint until satisfied …, at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent."

Dr. Resh is therefore entitled to interest on the Judgment at least from the time when WNMIC was served with the Complaint and Summons herein (July 23, 2019).

DATED this 1 day of October, 2020.

Respectfully submitted,

By: _____

FREDERIC I. BERKLEY, ESQ.
Nevada Bar No. 1798
SKLAR WILLIAMS PLLC
410 South Rampart Blvd., Ste. 350
Las Vegas, NV 89145
Attorneys for
William Harry Resh

AFFIDAVIT OF FREDERIC I. BERKLEY, ESQ.

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

I, FREDERIC I. BERKLEY being duly sworn, hereby attest to the following:

1. I am, and have been throughout this litigation, the attorney of record for Plaintiff, William Harry Resh.

2. I have read the statements contained herein under the heading "Brunzell Factors" and can verify that they are true and correct to the best of my knowledge.

3. I have attached hereto a copy of all of my firm's time records which itemize all of the time I have spent on this matter.

4. I can verify to this Court that Dr. Resh was charged a "courtesy rate" of $400.00 per hour for my representation in this case.

5. Further affiant sayeth naught.

DATED this 1 day of October, 2020.

FREDERIC I. BERKLEY, ESQ.

SUBSCRIBED and SWORN to before me
this 1st day of October, 2020.

NOTARY PUBLIC in and for said
COUNTY and STATE

NOTARY PUBLIC
EUGENE J. CRAWFORD
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. OCT. 15, 2022
No: 18-4279-1

SKLAR WILLIAMS PLLC
410 South Rampart Boulevard, Suite 350
Las Vegas, NV 89145

HISTORY

William "Bill" H. Resh, M.D.
(VIA E-MAIL ONLY)
913 Vegas View Drive
Henderson, NV 89052

September 22, 2020

In Reference To: Resh v. Money Machine, LLC
68170.002

Professional Services

			Rate	Hours	Amount
7/2/2018	FIB	Review file and dictated email to Bill Resh and default pleadings against Money Machine, LLC.	400.00/hr	0.50	200.00
7/12/2018	FIB	Dictated email to Bill Resh regarding procedure for obtaining Default Judgment.	400.00/hr	0.30	120.00
7/16/2018	FIB	Telephone conference with Robert Larson regarding furnishing an Affidavit in support of Default Judgment.	400.00/hr	0.30	120.00
7/17/2018	FIB	Review file and dictated Application for Default Judgment including Ports and Authorities, Affidavits of Bill Resh, Robert Larson and Fred Berkley.	400.00/hr	1.70	680.00
7/18/2018	FIB	Review and revised Application for Default Judgment and all supporting documents, dictated email to Bill Resh,	400.00/hr	2.20	880.00

			Rate	Hours	Amount
		dictated email to Vince Mayo.			
7/23/2018 -	FIB	Review 2 emails from Adam Kneeht and dictated responding email, left voice mail message for Adan Kneeht regarding setting aside default.	400.00/hr	0.90	360.00
7/24/2018 -	FIB	Dictated email to Adam Knecht regarding setting aside Default and dictated email to Bill Resh regarding same, telephone call with Adam Knecht regarding Defendant's position.	400.00/hr	1.10	440.00
7/25/2018 -	FIB	Telephone conference with Robert Larson regarding signing his Affidavit in Support of Application for Default Judgment.	400.00/hr	0.30	120.00
7/31/2018 -	FIB	Review Defendant's Motion to Set Aside Default and supporting documents, dictated email to Vince Mayo and email to Bill Resh regarding same, calendared Opposition deadline and arranged for research regarding Opposition.	400.00/hr	1.50	600.00
8/1/2018 -	FIB	Telephone conference with Jack Howard regarding Robert Larson Affidavit; telephone conference with Bill Resh regarding conversation with Robert Larson, review Nevada Case law under NRCP55, revised Application for Default Judgment.	400.00/hr	1.60	640.00
8/2/2018 -	FIB	Dictated rough draft of Opposition to Defendant's Motion to Set Aside Default and email to Adam Knecht regarding hearing date, telephone conference with Bill Resh regarding claim against his insurance carrier.	400.00/hr	2.90	1,160.00

			Rate	Hours	Amount
8/6/2018 -	FIB	Review and revised Plaintiff's Opposition to Defendant's Motion to Set Aside Default, dictated emails to Dr. Resh and Vince Mayo and finalized pleading, dictated demand letter to State Farm Insurance Company.	400.00/hr	2.70	1,080.00
8/7/2018 -	FIB	Finalized Opposition to Motion to Set Aside and dictated email to Vince Mayo regarding same.	400.00/hr	0.70	280.00
8/8/2018 -	FIB	Review email from Department 20 regarding hearing date for Motion to Set Aside, sent responding email and emails to Bill Resh and Vince Mayo regarding new date.	400.00/hr	0.70	280.00
8/13/2018 -	FIB	Review Dr. Resh email to Detective Swanson, dictated email to Detective Swanson with relevant Affidavits.	400.00/hr	0.70	280.00
8/22/2018 -	FIB	Brief review of insurance contract with State Farm forwarded by agent.	400.00/hr	0.50	200.00
7/30/2018 -	JF	Review and analyze Money Machine's Motion to Set Aside Default. Conduct research regarding meritorious defense requirement for setting aside a default judgment. Conference with Fred Berkley regarding same.	325.00/hr	1.00	325.00
8/31/2018 -	FIB	Review file and telephone conference with Diane of State Farm regarding Dr. Resh's claim against his insurance carrier.	400.00/hr	0.50	200.00
9/7/2018 -	FIB	Telephone conference with Robert Larson regarding claim against Compadres and dictated email regarding Shaker Radwan to Bill Resh and reviewed reply.	400.00/hr	0.60	240.00

		Rate	Hours	Amount
8/1/2018 - JF	Prepare email correspondence to Fred Berkley regarding research on meritorious defense requirement for setting aside a default judgment.	325.00/hr	0.70	227.50
9/25/2018 - FIB	Review denial letter of September 18, 2018 from State Farm and dictated email to Bill Resh, telephone conference Dan Marks regarding status of deposition, prepare for September 26, 2018 hearing on Motion to Set Aside Default.	400.00/hr	1.40	560.00
9/26/2018 - FIB	Travel to hearing at Regional Justice Center, review Minute Order and dictated email to Bill Resh regarding Motion to Set Aside Default and exchanged emails regarding results.	400.00/hr	2.40	960.00
10/4/2018 - FIB	Review and dictated letter to Attorney Adam Knecht regarding status.	400.00/hr	0.50	200.00
10/9/2018 - FIB	Review email from Vince Mayo correcting earlier email; review email from Dr. Resh with attachments regarding 2017 taxes; telephone call to Dr. Resh regarding outstanding issues; dictated letter to Vince Mayo regarding two letters from October 5, 2018; review Notice of Intent to Appear by Communication Equipment.	400.00/hr	1.70	680.00
10/12/2018 - FIB	Lengthy telephone conference with both Vince Mayo and Bill Resh regarding outstanding issues; review Vince Mayo email and Stipulation; executed same and returned for filing.	400.00/hr	2.40	960.00
10/11/2018 - FIB	Review proposed Order from Adam Knecht and dictated email to Adam Knecht with proposed revisions.	400.00/hr	0.30	120.00

		Rate	Hours	Amount
10/31/2018 - FIB	Review Notice of Entry of Order and calendared time for Answer.	400.00/hr	0.30	120.00
11/19/2018 - FIB	Review Answer to Complaint and dictated email to Bill Resh.	400.00/hr	0.60	240.00
12/14/2018 - FIB	Review file in preparation for and participated in telephonic early case conference.	400.00/hr	0.90	360.00
12/17/2018 - FIB	Dictated proposed Joint Case Conference Report and Petition for Exemption from Arbitration Program.	400.00/hr	1.10	440.00
12/19/2018 - FIB	Finalized Joint Case Conference Report and dictated email to David Sexton regarding execution.	400.00/hr	0.80	320.00
1/7/2019 - FIB	Review Dr. Resh email and attachments regarding charges brought against David Ligotti, filled out required form, review Arbitration Commissioners Decision on Exemption, dictated email to Attorney David Sexton regarding Joint Case Conference Report.	400.00/hr	1.10	440.00
1/8/2019 - FIB	Review email from Attorney David Sexton regarding proposed Joint Case Conference Report and requested revisions, dictated responding email.	400.00/hr	0.80	320.00
1/14/2019 - FIB	Dictated Plaintiff's Case Conference Report to reflect dispute regarding time for discovery and other outstanding issues.	400.00/hr	0.80	320.00
1/22/2019 - FIB	Review letter of January 16, 2019 from State Farm regarding "theft" of vehicle, review file and dictated email to Bill Resh regarding police report.	400.00/hr	0.50	200.00

			Rate	Hours	Amount
2/4/2019 -	FIB	Review Bill Resh email and dictated email to Deputy District Attorney Jay Raman regarding Dave Ligotti.	400.00/hr	0.40	160.00
2/5/2019 -	FIB	Review emails from DA's office and police report from Detective Swanson, dictated letter to State Farm Insurance.	400.00/hr	0.60	240.00
2/11/2019 -	FIB	Prepared for appearance before Discovery Commissioner on Early Case Conference dispute.	400.00/hr	0.40	160.00
2/12/2019 -	FIB	Travel to and appearance before Discovery Commissioner Bulla regarding scheduling Order, dictated Plaintiff's NRCP 16.1 Disclosure and email to Kurt Bonds regarding his 16.1 obligations.	400.00/hr	2.90	1,160.00
3/1/2019 -	FIB	Dictated email to Kurt Bonds regarding resolution of criminal case and email to Defendant's Attorney Adam Knecht regarding NRCP 16.1 obligation.	400.00/hr	0.50	200.00
3/5/2019 -	FIB	Review State Farm demand letter of February 27, 2019 and dictated email regarding same to Bill Resh.	400.00/hr	0.40	160.00
3/7/2019 -	FIB	Review email from Deputy District Attorney Karen Mishler regarding sentencing of David Ligotti and dictated letter to Bill Resh regarding litigation strategy.	400.00/hr	0.60	240.00
3/12/2019 -	FIB	Review file and dictated email to Attorney Adam Knecht regarding insurance policy.	400.00/hr	0.40	160.00
3/13/2019 -	FIB	Review email from Attorney Adam Knecht and Surety Bonds posted by Western National.	400.00/hr	0.50	200.00

		Rate	Hours	Amount
3/14/2019 - FIB	Dictated responsive email to Adam Knecht regarding security bond and email to Dr. Resh regarding bond, instructions to Emily regarding Western National Mutual Insurance Company.	400.00/hr	0.90	360.00
3/22/2019 - FIB	Review Bond and dictated demand letter to Western National Mutual Insurance Company on bond.	400.00/hr	0.60	240.00
3/25/2019 - FIB	Review Order Setting Non-Jury Trial, calendared all dates and dictated email to Bill Resh regarding litigation strategy.	400.00/hr	0.80	320.00
3/26/2019 - FIB	Review Victim Impact Documents forwarded by Department of Parole and Probation, dictated contents of forms to be forwarded and email to Dr. Resh.	400.00/hr	0.80	320.00
3/27/2019 - FIB	Dictated letter to J. Falls of Department of Parole and Probation regarding pre-sentence investigation, dictated Notice of Taking Deposition of PMK for Money Machine and topics to be covered and email to Dr. Resh.	400.00/hr	1.50	600.00
3/28/2019 - FIB	Lengthy telephone conference with Bill Resh regarding outstanding issues.	400.00/hr	0.40	160.00
4/2/2019 - FIB	Review letter of April 1, 2019 from Faux Law Group on behalf of Western National Mutual Insurance Company, dictated email to Dr. Resh regarding same.	400.00/hr	0.80	320.00
4/11/2019 - FIB	Conference with David Barney regarding research on legislative history, dictated email to Dr. Resh and draft of letter to Faux Law Group regarding NRS 482.345 and legislative history.	400.00/hr	1.90	760.00

			Rate	Hours	Amount
4/15/2019 -	FIB	Finalized demand letter to Attorney Jordan Faux	400.00/hr	0.60	240.00
4/16/2019 -	FIB	Review Cheri Resh email regarding participation in lawsuit and dictated email to Vince Mayo regarding same, review file and made copies of Exhibits for deposition of PMK and prepared areas for examination.	400.00/hr	2.40	960.00
4/17/2019 -	FIB	Review NRCP 30(b)6 for obligations and limitations on PMK depositions and finalized questions for upcoming deposition.	400.00/hr	1.10	440.00
4/22/2019 -	FIB	Review emails from Adam Knecht of April 18 and April 22 deposition, dictated responding email to Adam Knecht, telephone conference wit Bill Resh regarding status.	400.00/hr	0.90	360.00
4/25/2019 -	FIB	Dictated email to Attorney Adam Knecht regarding deposition of PMK; review Adam Knecht response and dictated Second Amended Notice of Taking Deposition.	400.00/hr	0.90	360.00
4/26/2019 -	FIB	Exchanged emails with Adam Knecht regarding deposition of PMK, prepared Second Amended Notice of Deposition.	400.00/hr	0.70	280.00
4/30/2019 -	FIB	Reviewed notes in preparation for continued deposition of Person Most Knowledgeable from Money Machine, LLC.	400.00/hr	0.90	360.00
5/1/2019 -	FIB	Made copy of additional exhibits and performed deposition of Robert Legaspi of Money Machine, LLC.	400.00/hr	1.60	640.00

			Rate	Hours	Amount
4/5/2019 -	DBB	Conference with Fred Berkley regarding case summary. Review client documents related to DMV bond issue.	275.00/hr	0.60	165.00
4/11/2019 -	DBB	Legal research regarding Client's ability to make demand for DMV bond. Meeting with Fred Berkley regarding analysis of same.	275.00/hr	2.30	632.50
5/15/2019 -	FIB	Review pleadings dictated email to Dr. Resh regarding adding additional Defendant's to lawsuit.	400.00/hr	0.50	200.00
5/20/2019 -	FIB	Review deposition transcript of Robert Legaspi in preparation for Motion to Add Robert Legaspi as additional defendant.	400.00/hr	1.60	640.00
5/21/2019 -	FIB	Dictated beginning of draft of Motion to File Amended Complaint to name additional Defendant's including Statement of Facts and Points and Authorities.	400.00/hr	2.20	880.00
5/22/2019 -	FIB	Review Nevada law regarding "alter ego" in order to name Legaspi as additional defendant.	400.00/hr	1.60	640.00
5/23/2019 -	FIB	Dictated remaining portion of Points and Authorities in support of Motion for Leave to File Amended Complaint and proposed Amended Complaint.	400.00/hr	3.80	1,520.00
5/24/2019 -	FIB	Reviewed and revised draft of Motion for Leave to File Amended Complaint, review proposed Amended Complaint.	400.00/hr	1.20	480.00
5/28/2019 -	FIB	Finalized Motion for Leave to File Amended Complaint and email to Dr. Resh.	400.00/hr	1.30	520.00

		Rate	Hours	Amount
5/29/2019 - FIB	Review Notice of Hearing, calendared same and dictated email to Dr. Resh regarding hearing.	400.00/hr	0.50	200.00
5/22/2019 - JF	Correspondence with Fred Berkley regarding alter ego elements.	325.00/hr	0.50	162.50
7/2/2019 - FIB	Review email from law clerk from Department 20 and dictated proposed Order, dictated email to Attorney Adam Knecht and email to Dr. Resh.	400.00/hr	1.30	520.00
7/9/2019 - FIB	Dictated instructions to Emily regarding Amended Complaint and emails to Adam Knecht and Jordan Faux regarding service of process.	400.00/hr	0.90	360.00
7/10/2019 - FIB	Review email from Judge Johnson's office regarding Order allowing Amended Complaint.	400.00/hr	0.30	120.00
7/22/2019 - FIB	Review file and dictated emails to Attorneys Jordan Faux and Adam Knecht regarding service of process, review Jordan Faux reply and dictated Acceptance of Service and second email to Jordan Faux.	400.00/hr	1.60	640.00
7/23/2019 - FIB	Review Jordan Faux email and dictated reply email to Jordan Faux regarding service of process.	400.00/hr	0.50	200.00
7/24/2019 - FIB	Review email from Jordan Faux's office regarding Acceptance of Service.	400.00/hr	0.30	120.00
7/29/2019 - FIB	Dictated service instructions for Amended Complaint on Money Machine LLC an Robert Legaspi.	400.00/hr	0.30	120.00

		Rate	Hours	Amount
8/12/2019 - FIB	Review file and checked status of trial date, dictated memo regarding possible discovery needed for trial and subpoena for Robert Larson.	400.00/hr	1.20	480.00
8/20/2019 - FIB	Reviewed Defendant's Answer to Amended Complaint.	400.00/hr	0.50	200.00
8/22/2019 - FIB	Review file in order to determine what needs to be done for trial, dictated Subpoena Dueces Tecum and Notice of Deposition for Manheim and email to Dr. Resh regarding litigation strategy.	400.00/hr	1.40	560.00
8/23/2019 - FIB	Review latest letter from Attorney Roy Nelson III and dictated email to Dr. Resh regarding same.	400.00/hr	0.50	200.00
8/26/2019 - FIB	Reviewed previous correspondence; lengthy telephone call with Dr. Resh regarding issues raised by Roy Nelson III and dictated rough draft of email to Roy Nelson III.	400.00/hr	1.30	520.00
8/27/2019 - FIB	Review file and telephone conference with Robert Larson regarding copy of canceled check from Mankeim to Compadres.	400.00/hr	0.40	160.00
8/29/2019 - FIB	Review NRS provision regarding additional time for filing response and dictated email to Attorney Jordan Faux.	400.00/hr	0.70	280.00
9/3/2019 - FIB	Review Western National Mutual Insurance Company's Motion to Dismiss, began research for Opposition thereto and began dictating Opposition.	400.00/hr	2.90	1,160.00
- FIB	Review latest letter of September 3, 2019 from Roy Nelson III and dictated email to Dr. Resh regarding same.	400.00/hr	0.40	160.00

			Rate	Hours	Amount
9/4/2019	FIB	Dictated remainder of Opposition to Motion to Dismiss including legislative history.	400.00/hr	1.90	760.00
9/5/2019	FIB	Finalized Opposition to Western Nationals' Motion to Dismiss and dictated email to Dr. Resh and email to Jordan Faux.	400.00/hr	1.70	680.00
9/6/2019	FIB	Dictated Stipulation and Order Continuing Hearing Date on Motion to Dismiss and email to Jordan Faux.	400.00/hr	0.50	200.00
9/9/2019	FIB	Review email from Jordan Faux's office and draft of Stipulation and Order; revised same.	400.00/hr	0.50	200.00
10/11/2019	FIB	Review Reply to Plaintiff's Opposition to Western National Mutual Insurances' Motion to Discuss.	400.00/hr	0.60	240.00
10/15/2019	FIB	Review file and made notes for argument on Western Mutual's Motion to Dismiss set for oral argument on October 16, 2019.	400.00/hr	1.10	440.00
10/16/2019	FIB	Travel to and appearance before Judge Johnson on Defendant's Motion to Dismiss, dictated email to Dr. Resh regarding results.	400.00/hr	2.40	960.00
10/21/2019	FIB	Review notes and dictated draft of Order arising out of October 16, 2019 hearing and email to Jordan Faux.	400.00/hr	1.20	480.00
10/23/2019	FIB	Travel to and appearance at calendar call before Judge Johnson, dictated email to Dr. Resh regarding results and new trial date, review Jordan Faux email regarding proposed Order and dictated revised Order and email to Jordan Faux.	400.00/hr	3.10	1,240.00

			Rate	Hours	Amount
11/7/2019 -	FIB	Dictated email to Attorney Jordan Faux regarding Answer to Amended Complaint.	400.00/hr	0.40	160.00
11/12/2019 -	FIB	Review Jordan Faux email of November 8, 2019 and dictated email to Dr. Rexh regarding settlement offer, review Dr. Resh email.	400.00/hr	0.60	240.00
11/14/2019 -	FIB	Review email and attachment from Dr. Resh regarding car sale and dictated email to Dr. Resh regarding NRCD68 Offer of Judgment.	400.00/hr	0.70	280.00
11/18/2019 -	FIB	Review client email and dictated Offer of Judgment to insurance carrier.	400.00/hr	0.50	200.00
11/19/2019 -	FIB	Dictated email to Attorney Jordan Faux regarding settlement negotiations, two (2) telephone conference's with Robert Larson regarding securing his testimony, dictated Supplement to NRCP 16.1 Disclosure.	400.00/hr	1.20	480.00
11/20/2019 -	FIB	Travel to and appearance before Judge Johnson at status check, dictated additional email to Attorney Jordan Faux and review responding email.	400.00/hr	2.40	960.00
11/21/2019 -	FIB	Review Western National Insurance Companies Answer to Amended Complaint.	400.00/hr	0.40	160.00
11/26/2019 -	FIB	Finalized Offer of Judgment and dictated Memo regarding contact from Robert Larsen.-	400.00/hr	0.60	240.00
12/20/2019 -	FIB	Review Western Mutual's Demand for Prior Pleadings, etc. and First Set of Requests for Production, review NRCP 26 (h) and dictated email to Dr. Resh	400.00/hr	1.40	560.00

			Rate	Hours	Amount
		regarding obligations to respond, calendared responses.			
1/6/2020	FIB	Review outstanding discovery requests and began dictating responses and notes on additional documents to be accumulated.	400.00/hr	1.40	560.00
1/10/2020	FIB	Review email from Jordan Faux regarding continuance and dictated responding email regarding trial date.	400.00/hr	0.50	200.00
1/13/2020	FIB	Review rough draft of responses to Insurance Companies First Request for Production of Documents, revised responses and dictated email to Dr. Resh, review Jordan Faux email.	400.00/hr	2.10	840.00
1/15/2020	FIB	Telephone conference with Jordan Faux and JEA for Judge Johnson, dictated email to Bill Resh regarding scheduling.	400.00/hr	0.60	240.00
1/14/2020	FIB	Review Jordan Faux email and replied thereto, review Dr. Resh email regarding remaining documents to be produced and finalized responses with latest information.	400.00/hr	1.60	640.00
1/17/2020	FIB	Finalized document production propounded by Jordan Faux on behalf of Western Insurance.	400.00/hr	0.80	320.00
1/22/2020	FIB	Review Bill Resh email regarding trial dates, travel to and appearance before Judge Johnson at calendar call, dictated email to Bill Resh and calendared new trial date, review Defendant's First Supplement to Initial Disclosures and Defendant's Pretrial Disclosures.	400.00/hr	2.40	960.00

			Rate	Hours	Amount
1/31/2020	FIB	Review Stipulation and Order drafted by Jordan Faux to extend discovery, executed same.	400.00/hr	0.50	200.00
2/5/2020	FIB	Review text from Robert Larsen and sent lengthy response to Robert Larsen.	400.00/hr	0.50	200.00
2/21/2020	FIB	Review file for possible pre-trial discovery.	400.00/hr	0.80	320.00
2/24/2020	FIB	Review file and dictated Subpoena Duces Tecum to Manheim Auction Nevada to obtain copy of check for sale of Audi and supporting documents.	400.00/hr	0.90	360.00
2/25/2020	FIB	Finalized Subpoena to Manheim Nevada and identified registered agent.	400.00/hr	0.60	240.00
3/2/2020	FIB	Review Subpoena Duces Tecum sent by Jordan Faux and dictated email to Jordan Faux.	400.00/hr	0.80	320.00
3/12/2020	FIB	Telephone conference with Jordan Faux regarding Custodian of Records deposition of Manheim scheduled for March 13, 2020.	400.00/hr	0.30	120.00
3/13/2020	FIB	Review Jordan Faux email to Manheim regarding records to be produced.	400.00/hr	0.30	120.00
3/20/2020	FIB	Reviewed email from Manheim representatives; reviewed documents produced in response to Subpoena Duces Tecum.	400.00/hr	0.80	320.00
4/8/2020	FIB	Review regarding upcoming trial in view of pandemic and left voicemail message for law clerk in Department 20 regarding upcoming trial date.	400.00/hr	0.40	160.00

		Rate	Hours	Amount
4/9/2020 - FIB	Telephone conference with Judge Johnson's law clerk regarding upcoming trial date and telephone conference with assistant regarding putting file in order to prepare for May 6, 2020 trial.	400.00/hr	0.50	200.00
4/16/2020 - FIB	Review file to begin trial preparation (May 6, 2020) and dictated rough draft of Pretrial Memorandum under EDCR 2.67 and instructions to Gene.	400.00/hr	2.20	880.00
4/21/2020 - FIB	Telephone conference with Judge Johnson's law clerk regarding trial date, dictated emails to Dr. Resh, Attorney Adam Knecht and John Fayeghi regarding "alter ego" research.	400.00/hr	1.30	520.00
4/22/2020 - FIB	Prepared and sent text to Robert Larson regarding his testimony as witness at upcoming trial and review response.	400.00/hr	0.40	160.00
4/27/2020 - FIB	Review Nevada case law supplied by John Fayeghi regarding "piercing the corporate veil" and dictated rough draft of Plaintiff's Trial Brief on legal issues.	400.00/hr	2.40	960.00
4/28/2020 - FIB	Review email from Judge Johnson's law clerk and texted Dr. Resh and Robert Larson regarding continuance, telephone conference with Attorney Jordan Faux and two (2) telephone conferences with Judge Johnson's law clerk regarding new trial date.	400.00/hr	1.60	640.00
4/29/2020 - FIB	Telephone conference with Attorney Jordan Faux regarding new trial date, dictated email to law clerk for Judge Johnson, exchanged emails with Attorney Adam Knecht and revised email to law clerk.	400.00/hr	1.10	440.00

		Rate	Hours	Amount
4/27/2020 - JF	Conduct research regarding Alter Ego claim in preparation of Trial Brief. Prepare Memorandum regarding Alter Ego law to be incorporated in Trial Brief.	325.00/hr	1.40	455.00
5/1/2020 - FIB	Review email from Judge Johnson's law clerk, calendared new trial date, dictated email to Dr. Resh and text to Robert Larson, exchanged text's for Robert Larson regarding his Affidavit, dictated email to Robert Larson.	400.00/hr	1.30	520.00
4/27/2020 - JF	Conduct research regarding Alter Ego claim in preparation of Trial Brief. Prepare Memorandum regarding Alter Ego law to be incorporated in Trial Brief.	325.00/hr	1.40	455.00
5/21/2020 - FIB	Telephone conference with Dr. Resh regarding possible sale of portion of NHVC practice and legal implications thererof.	400.00/hr	0.40	160.00
6/1/2020 - FIB	Review Notice of Bankruptcy Filing by Robert Legaspi.	400.00/hr	0.50	200.00
6/2/2020 - FIB	Reviewed schedules attached to Robert Legaspi's Bankruptcy filing and summarized same; dictated email to Dr. Resh regarding bankrupting ramifications; reviewed latest Administrative Order regarding bench trials.	400.00/hr	0.90	360.00
6/8/2020 - FIB	Review email from Jordan Faux and replied to same.	400.00/hr	0.30	120.00
6/9/2020 - FIB	Telephone conference with Judge Johnson's law clerk regarding upcoming trial, telephone conference with Jordan Faux regarding status of case and settlement positions.	400.00/hr	0.60	240.00

		Rate	Hours	Amount
6/10/2020 - FIB	Dictated revised Trial Brief in view of Legaspi bankruptcy and prepared for filing.	400.00/hr	0.60	240.00
6/11/2020 - FIB	Dictated emails to Dr. Bill Resh and Robert Larsen regarding trial preparation.	400.00/hr	0.50	200.00
6/15/2020 - FIB	Began trial preparation - compiling of exhibits and review of pleadings.	400.00/hr	1.10	440.00
6/16/2020 - FIB	Telephone conference with Adam Knecht regarding trial procedure, review Jordan Faux's Trial Brief on behalf of Western Insurance, exchanged emails with Dr. Resh, review emails from Adam Knecht regarding stay of proceedings.	400.00/hr	1.40	560.00
6/17/2020 - FIB	Review email from Adam Knecht and position regarding automatic stay, telephone conference with Dr. Resh regarding trial testimony; dictated email to Dr. Resh regarding upcoming trial, review Jordan Faux email and dictated responding email, conference with David Barney regarding researching bankruptcy issue and review Memorandum.	400.00/hr	1.90	760.00
6/18/2020 - FIB	Review emails from Adam Knecht and Jordan Faux regarding Stipulation; dictated email to Dr. Resh regarding trial continuation and review response.	400.00/hr	0.80	320.00
6/23/2020 - FIB	Dictated email to Dr. Resh regarding status check hearing.	400.00/hr	0.40	160.00
6/24/2020 - FIB	Reviewed David Barney Memo regarding attorneys' fees in excess of bond amount.	400.00/hr	0.50	200.00
6/25/2020 - FIB	Reviewed two (2) emails from Judge Johnson's law clerk and telephone conference with Judge Johnson's law	400.00/hr	1.40	560.00

			Rate	Hours	Amount
		clerk regarding status check hearing. Reviewed David Barney Memo regarding lifting of automatic stay in Bankruptcy Court.			
6/29/2020 -	FIB	Drafted comprehensive email to Dr. Resh with summary of research on outstanding issues as compiled by David Barney.	400.00/hr	1.10	440.00
7/7/2020 -	FIB	Dictated rough draft of Plaintiff's Brief regarding upcoming Status Check with supporting Points and Authorities.	400.00/hr	2.80	1,120.00
7/8/2020 -	FIB	Revised Brief regarding effect of automatic stay by enlarging care law citations.	400.00/hr	0.80	320.00
6/17/2020 -	DBB	Conference with Fred Berkley regarding recently filed bankruptcy case and implications for lawsuit. Research regarding same.	275.00/hr	0.50	137.50
-	DBB	Draft memorandum to Fred Berkley regarding effects of bankruptcy case on lawsuit in state court.	275.00/hr	1.20	330.00
6/18/2020 -	DBB	Conference with Fred Berkley regarding additional issues relating to bankruptcy case and automatic stay of state court lawsuit.	275.00/hr	0.30	82.50
-	DBB	Review case documents relating to Western National's position as surety and criminal case against David Ligotti.	275.00/hr	0.50	137.50
-	DBB	Initial research regarding likelihood of success on motion to lift stay and allow state court lawsuit to proceed.	275.00/hr	1.00	275.00

			Rate	Hours	Amount
6/18/2020 -	DBB	Begin drafting memorandum to Fred Berkley regarding likelihood of success on motion to lift stay and allow state court lawsuit to proceed.	275.00/hr	0.50	137.50
6/23/2020 -	DBB	Legal research regarding potential recovery against Western National in excess of bond amount.	275.00/hr	1.00	275.00
6/24/2020 -	DBB	Continued research regarding potential recovery against Western National in excess of bond amount. Draft memorandum regarding same to Fred Berkley.	275.00/hr	0.60	165.00
-	DBB	Continued drafting memorandum to Fred Berkley regarding client's likelihood of success on motion to lift stay.	275.00/hr	0.80	220.00
6/25/2020 -	DBB	Review documents from criminal case involving David Ligotti to determine client's next steps to obtain restitution payments. Several calls to probation office and District Attorney's Office regarding same.	275.00/hr	0.70	192.50
-	DBB	Draft brief memorandum to Fred Berkley regarding client's ability to collect restitution payments from David Ligotti.	275.00/hr	0.20	55.00
7/24/2020 -	FIB	Review emails from Department 20 regarding upcoming status check.	400.00/hr	0.40	160.00
7/23/2020 -	FIB	Review email from Judge Johnson's law clerk regarding upcoming status check hearing..	400.00/hr	0.30	120.00
7/27/2020 -	FIB	Review Western National's Brief regarding Status Check, review issue to be discussed at Status Check before Judge	400.00/hr	0.90	360.00

			Rate	Hours	Amount
		Johnson.			
7/28/2020 -	FIB	Review notes for argument, renote appearance before Judge Eric Johnson and dictated email to Dr. Resh, calendared all dates supplied by Court.	400.00/hr	1.60	640.00
7/30/2020 -	FIB	Began compiling case law for Motion for Summary Judgment.	400.00/hr	1.10	440.00
8/3/2020 -	FIB	Began dictation of Motion for Summary Judgment including Points and Authorities.	400.00/hr	2.90	1,160.00
8/4/2020 -	FIB	Dictated remainder of Points and Authorities in support of Motion for Summary Judgment.	400.00/hr	2.20	880.00
8/5/2020 -	FIB	Finalized Motion for Summary Judgment for filing.	400.00/hr	0.80	320.00
8/11/2020 -	FIB	Filed Motion for Summary Judgment and dictated email to Dr. Resh regarding status.	400.00/hr	0.90	360.00
7/30/2020 -	DBB	Prepare legal standard portion of motion for summary judgment. Email correspondence with Fred Berkley regarding same.	275.00/hr	0.30	82.50
8/26/2020 -	FIB	Review Opposition to Plaintiff's Motion for Summary Judgment, telephone conference with Robert Larson regarding certain allegations raised in Opposition and began dictation of Reply to Opposition.	400.00/hr	5.10	2,040.00
8/27/2020 -	FIB	Review and revised Reply to Opposition to Motion for Summary Judgment and exchanged texts with Robert Larson	400.00/hr	2.90	1,160.00

			Rate	Hours	Amount
		regarding his Affidavit.			
8/31/2020 -	FIB	Telephone conference with Robert Larson regarding his Affidavit and finalized Reply to Opposition to Motion for Summary judgment, dictated emails to Dr. Resh regarding status.	400.00/hr	0.90	360.00
8/26/2020 -	DBB	Conference with Fred Berkley regarding legal issues in Western National's opposition to Motion for summary judgment. Review parties' filings with regard to same.	275.00/hr	1.20	330.00
-	DBB	Shepardize case law cited by Western Nation in opposition to summary judgment. Additional legal research regarding "dictum" issues and potential estoppel arguments.	275.00/hr	1.50	412.50
8/27/2020 -	DBB	Legal research regarding sufficiency of unlicensed car dealer argument and potential defenses to same. Conference with Fred Berkley regarding same.	275.00/hr	1.10	302.50
-	DBB	Continued research regarding estoppel arguments, as well as "law of the case" theory. Email correspondence with Fred Berkley regarding same.	275.00/hr	0.80	220.00
		For professional services rendered		189.40	$73,497.50
		Additional Charges :			
				Qty/Price	
6/8/2018 -	FIB	WizNet: Fee for filing District Court Civil Cover Sheet and Complaint	273.50	1	273.50

			Qty/Price	Amount
6/11/2018 -	FIB	WizNet: Fee for filing Declaration of Service	1 3.50	3.50
7/2/2018 -	FIB	WizNet: Fee for filing Amended Declaration of Service	1 3.50	3.50
7/5/2018 -	FIB	WizNet: Fee for filing Default Against - Money Machine, LLC, dba Compadres Auto Sales	1 3.50	3.50
6/11/2018 -	FIB	Vegas Pro Serv: Served Victoria Rangle Ramirez, Secretary of Rahdsma Henderson, Registered Agent, with Summons and Complaint	1 60.00	60.00
8/7/2018 -	FIB	Runner Service: Obtain executed Stipulation and Order from Adam Knecht at Alverson,Taylor and Sanders	1 15.00	15.00
-	FIB	Runner Service: Deliver Stipulation and Order to District Court, Department 20, Regional Justice Center	1 15.00	15.00
8/9/2018 -	FIB	Runner Service: Obtain Stipulation and Order From District Court, Department 20, Regional Justice Center	1 15.00	15.00
8/10/2018 -	FIB	Certified Mail to Money Machine, LLC, d/b/a Compadres, c/o Adam R. Knecht @ Alverson Taylor & Sander	1 6.67	6.67
8/8/2018 -	FIB	WizNet: Fee for filing Plaintiff's Opposition to Defendant's Motion to Set Aside Default	1 3.50	3.50
8/10/2018 -	FIB	WizNet: Fee for filing Stipulation and Order	1 3.50	3.50
8/13/2018 -	FIB	WizNet: Fee for filing Notice of Entry	1 3.50	3.50
8/1/2018 -	JF	Legal Research: WestLaw	1 53.97	53.97

			Qty/Price	Amount
11/21/2018 -	FIB	WizNet: Fee for filing Notice of Early Case Conference	1 3.50	3.50
12/5/2018 -	FIB	WizNet: Fee for filing Defendant's Opposition to Plaintiff's Motion to Compel Discovey Responses	1 3.50	3.50
12/18/2018 -	FIB	WizNet: Fee for filing Request for Exemption from Arbitration	1 3.50	3.50
1/16/2019 -	FIB	Runner Service: Deliver courtesy copy of Plaintiff's Case Conference Report to Discovery Commissioner, Regional Justice Center	1 15.00	15.00
1/15/2019 -	FIB	WizNet: Fee for filing Plaintiff's Case Conference Report	1 3.50	3.50
3/22/2019 -	FIB	Certified Mail to Western National Insurance, Claims Office	1 7.10	7.10
4/11/2019 -	FIB	Legal Research: WestLaw (FIB 04/02/2019; DBB 04/11/2019)	1 66.14	66.14
5/20/2019 -	FIB	Litigation Sevices and Technologies of Nevada, LLC: Original and Certified Copy of Transcript of PMK of Money Machine, LLC, d/b/a Compadres Auto Sales	1 459.00	459.00
5/30/2019 -	FIB	Runner Service: Deliver Courtesy Copy of Plaintiff's Motion for Leave to File Amended Complaint to District Court, Department 20 Dropbox, Regional Justice Center	1 4.12	4.12
5/29/2019 -	FIB	WizNet: Fee for filing Motion for Leave to File Amended Complaint	1 3.50	3.50
5/31/2019 -	FIB	WizNet: Fee for filing Amended Certificate of Service	1 3.50	3.50
5/22/2019 -	JF	Legal Research: WestLaw	1 50.68	50.68

			Qty/Price	Amount
7/9/2019 -	FIB	Runner Service: Deliver Order Granting Plaintiff's Motion for Leave to File Amended Complaint to Department 20, Regional Justice Center	1 15.00	15.00
7/11/2019 -	FIB	Runner Service: Obtain Order Granting Plaintiff's Motion for Leave to file Amended Complaint from District Court Department 20, Regional Justice Center	1 15.00	15.00
7/30/2019 -	FIB	Vegas Pro Serv: Served Robert Legaspi and Money Machine, LLC with Summons and Amended Complaint	1 90.00	90.00
7/11/2019 -	FIB	WizNet: Fee for filing Order Granting Plaintiff's Motion for Leave to File Amended Complaint	1 3.50	3.50
-	FIB	WizNet: Fee for filing Notice of Entry of Order	1 3.50	3.50
-	FIB	WizNet: Fee for filing Amended Complaint	1 3.50	3.50
7/24/2019 -	FIB	WizNet: Fee for filing Acceptance of Service from Western National Mutual Insurance Company	1 3.50	3.50
7/30/2019 -	FIB	WizNet: Fee for filing Declaration of Service - Robert Legaspi, an individual	1 3.50	3.50
9/6/2019 -	FIB	Runner Service: Deliver Courtesy Copy of Opposition to Defendants' Motion to Dismiss and Motion for Attorney Fees and Costs to Department 20, Regional Justice Center	1 15.00	15.00
9/11/2019 -	FIB	Runner Service: Deliver Stipulation and Order to Continue Hearing to Department 20, Regional Justice Center	1 15.00	15.00

			Qty/Price	Amount
9/6/2019 -	FIB	WizNet: Fee for filing Plaintiff's Opposition to Defendant Western National Mutual Insurance Company's Motion to Dismiss and Motion for Attorney's Fees and Costs	1 3.50	3.50
9/13/2019 -	FIB	WizNet: Fee for filing Stipulation and Order to Continue Hearing	1 3.50	3.50
10/16/2019 -	FIB	Douglas Parking: Parking	1 9.00	9.00
10/23/2019 -	FIB	Douglas Parking: Parking Expense at Court:	1 9.00	9.00
10/24/2019 -	FIB	Runner Service: Deliver Order to Department 20, Regional Justice Center	1 15.00	15.00
10/31/2019 -	FIB	WizNet: Fee for filing Notice of Entry	1 3.50	3.50
10/30/2019 -	FIB	WizNet: Fee for filing Order	1 3.50	3.50
11/20/2019 -	FIB	Douglas Parking: Parking Expense at Court:	1 9.00	9.00
11/26/2019 -	FIB	WizNet: Fee for filing Offer of Judgment	1 3.50	3.50
1/22/2020 -	FIB	Parking Expense	1 9.00	9.00
2/25/2020 -	FIB	Greater Nevada Auto Auctions, LLC, d/b/a Manheim Nevada: Custodian of Records - Witness Fee	1 49.50	49.50
3/3/2020 -	FIB	Reno Carson Messenger Sevice, Inc.: Service of Subpoena Duces Tecum to Custodian of Recods for Greater Nevada Auto Auctions, LLC, d/b/a	1 65.00	65.00

			Qty/Price	Amount
		Manheim Nevada (left with Kris Osborne, Admistrative Assistant)		
3/20/2020	FIB	WizNet: Fee for filing Declaration of Service	1 3.50	3.50
4/27/2020	JF	Legal Research: WestLaw	1 193.30	193.30
4/23/2020	FIB	WizNet: Fee for filing Plaintiff's Pretrial Memorandum	1 3.50	3.50
6/16/2020	FIB	Litigation Services: Certified Copy of Transcript of PMK of Money Machine LLC, d/b/a Compadres Auto Sales	1 140.00	140.00
6/15/2020	FIB	WizNet: Fee for filing Plaintiff's Trial Brief	1 3.50	3.50
6/24/2020	DBB	Legal Research: WestLaw (06/17/2020; 06/18/2020; 06/23/2020; 06/24/2020)	1 320.03	320.03
6/12/2020	FIB	WizNet: Fee for Filing Plaintiff's Trial Brief	1 3.50	3.50
7/14/2020	FIB	WizNet: Fee for filing Plaintiff William Harry Resh's Brief Regarding Upcoming Status Check	1 3.50	3.50
-	FIB	WizNet: Fee for filing Plaintiff William Harry Resh's Brief Regarding Upcoming Status Check	1 3.50	3.50
8/11/2020	FIB	WizNet: Fee for filing Plaintiff's Motion for Summary Judgment	1 203.50	203.50
8/27/2020	DBB	Legal Research: WestLaw (08/26/2020; 08/27/2020)	1 198.16	198.16
Total costs				$2,509.67

			Amount
	For professional services rendered	189.40	$76,007.17
9/10/2020	Payment - thank you - Fees [FIB 6280; DBB 1347.50]; Costs 405.16. Check No. 2960		($8,032.66)
7/10/2018	Payment - thank you - Costs. Check No. 1995		($277.00)
8/3/2018	Payment - thank you - Fees [FIB 3520]; Costs 7. Check No. 2059		($3,527.00)
9/19/2018	Payment - thank you - Fees [FIB 4120; JF 325]; Costs 122.17. Check No. 2131		($4,567.17)
10/11/2018	Payment - thank you - Fees [FIB 1760; JF 227.50]; Costs 53.97. Check No. 2159		($2,041.47)
11/6/2018	Payment - thank you - Fees [FIB]. Check No. 2231		($2,080.00)
12/6/2018	Payment - thank you - Fees [FIB 240]; Costs 3.50. Check No. 2295		($243.50)
1/10/2019	Payment - thank you - Fees [FIB 1120]; Costs 7. Check No. 2428		($1,127.00)
2/4/2019	Payment - thank you - Fees [FIB 1280]; Costs 18.50. Check No. 2358		($1,298.50)
3/4/2019	Payment - thank you - Fees [FIB]. Check No. 2561		($1,720.00)
4/5/2019	Payment - thank you - Fees [FIB 2960]; Costs 7.10. Check No. 2593		($2,967.10)
5/8/2019	Payment - thank you - Fees [FIB 4080; DBB 797.50]; Costs 66.14. Check No. 2602		($4,943.64)
6/5/2019	Payment - thank you - Fees [FIB 5720]; Costs 520.80. Check No. 2346		($6,240.80)
7/17/2019	Payment - thank you - Fees [JF]. Check No. 2665		($162.50)
8/5/2019	Payment - thank you - Fees [FIB 2080]; Costs 137.50. Check No. 2691		($2,217.50)
9/6/2019	Payment - thank you - Fees [FIB]. Check No. 2270		($2,400.00)
10/7/2019	Payment - thank you - Fees [FIB 3160]; Costs 37. Check No. 2495		($3,197.00)
11/5/2019	Payment - thank you - Fees [FIB 3360]; Costs 40. Check No. 2452		($3,400.00)
12/5/2019	Payment - thank you - Fees [FIB 2720]; Costs 12.50. Check No. 2292		($2,732.50)
1/10/2020	Payment - thank you - Fees [FIB]. Check No. 2473		($560.00)
2/10/2020	Payment - thank you - Fees [FIB 3200]; Costs 9. Check No. 2756		($3,209.00)
3/9/2020	Payment - thank you - Fees [FIB 1120]; Costs 49.50. Check No. 2787		($1,169.50)
4/22/2020	Payment - thank you - Fees [FIB 880]; Costs 68.50. Check No. 2853		($948.50)
5/5/2020	Payment - thank you - Fees [FIB 3960; JF 455]; Costs 196.80. Check No. 2894		($4,611.80)
6/22/2020	Payment - thank you - Fees [FIB 680; JF 455]. Check No. 2878		($1,135.00)
7/6/2020	Payment - thank you - Fees [FIB 5560]; Costs 463.53. Check No. 2918		($6,023.53)
8/6/2020	Payment - thank you - Fees [FIB 3160; DBB 2007.50]; Costs 7. Check No. 2942		($5,174.50)
	Total payments and adjustments		($76,007.17)

Attorney Summary

Name	Hours	Rate	Amount
David B. Barney	15.10	275.00	$4,152.50
Frederic I. Berkley	169.30	400.00	$67,720.00
Johnathon Fayeghi	5.00	325.00	$1,625.00

Date	Type	Client	Description	Total
7/1/2018	INV	68170.002	Invoice No. 98373	277.00
7/10/2018	PAY	68170.002	Payment - thank you - Costs. Check No. 1995	(277.00)
8/1/2018	INV	68170.002	Invoice No. 99033	3527.00
8/3/2018	PAY	68170.002	Payment - thank you - Fees [FIB 3520]; Costs 7. Check No. 2059	(3527.00)
9/1/2018	INV	68170.002	Invoice No. 99641	4567.17
9/19/2018	PAY	68170.002	Payment - thank you - Fees [FIB 4120; JF 325]; Costs 122.17. Check No. 2131	(4567.17)
10/1/2018	INV	68170.002	Invoice No. 100276	2041.47
10/11/2018	PAY	68170.002	Payment - thank you - Fees [FIB 1760; JF 227.50]; Costs 53.97. Check No. 2159	(2041.47)
11/1/2018	INV	68170.002	Invoice No. 100821	2080.00
11/6/2018	PAY	68170.002	Payment - thank you - Fees [FIB]. Check No. 2231	(2080.00)
12/1/2018	INV	68170.002	Invoice No. 101489	243.50
12/6/2018	PAY	68170.002	Payment - thank you - Fees [FIB 240]; Costs 3.50. Check No. 2295	(243.50)
1/1/2019	INV	68170.002	Invoice No. 102039	1127.00
1/10/2019	PAY	68170.002	Payment - thank you - Fees [FIB 1120]; Costs 7. Check No. 2428	(1127.00)
2/1/2019	INV	68170.002	Invoice No. 102627	1298.50
2/4/2019	PAY	68170.002	Payment - thank you - Fees [FIB 1280]; Costs 18.50. Check No. 2358	(1298.50)
3/1/2019	INV	68170.002	Invoice No. 103198	1720.00
3/4/2019	PAY	68170.002	Payment - thank you - Fees [FIB]. Check No. 2561	(1720.00)
4/1/2019	INV	68170.002	Invoice No. 103755	2967.10
4/5/2019	PAY	68170.002	Payment - thank you - Fees [FIB 2960]; Costs 7.10. Check No. 2593	(2967.10)
5/1/2019	INV	68170.002	Invoice No. 104263	4943.64

Date	Type	Client	Description	Total
5/8/2019	PAY	68170.002	Payment - thank you - Fees [FIB 4080; DBB 797.50]; Costs 66.14. Check No. 2602	(4943.64)
6/1/2019	INV	68170.002	Invoice No. 104891	6240.80
6/5/2019	PAY	68170.002	Payment - thank you - Fees [FIB 5720]; Costs 520.80. Check No. 2346	(6240.80)
7/1/2019	INV	68170.002	Invoice No. 105478	162.50
7/17/2019	PAY	68170.002	Payment - thank you - Fees [JF]. Check No. 2665	(162.50)
8/1/2019	INV	68170.002	Invoice No. 106152	2217.50
8/5/2019	PAY	68170.002	Payment - thank you - Fees [FIB 2080]; Costs 137.50. Check No. 2691	(2217.50)
9/1/2019	INV	68170.002	Invoice No. 106750	2400.00
9/6/2019	PAY	68170.002	Payment - thank you - Fees [FIB]. Check No. 2270	(2400.00)
10/1/2019	INV	68170.002	Invoice No. 107352	3197.00
10/7/2019	PAY	68170.002	Payment - thank you - Fees [FIB 3160]; Costs 37. Check No. 2495	(3197.00)
11/1/2019	INV	68170.002	Invoice No. 108025	3400.00
11/5/2019	PAY	68170.002	Payment - thank you - Fees [FIB 3360]; Costs 40. Check No. 2452	(3400.00)
12/1/2019	INV	68170.002	Invoice No. 108651	2732.50
12/5/2019	PAY	68170.002	Payment - thank you - Fees [FIB 2720]; Costs 12.50. Check No. 2292	(2732.50)
1/1/2020	INV	68170.002	Invoice No. 109219	560.00
1/10/2020	PAY	68170.002	Payment - thank you - Fees [FIB]. Check No. 2473	(560.00)
2/1/2020	INV	68170.002	Invoice No. 109905	3209.00
2/10/2020	PAY	68170.002	Payment - thank you - Fees [FIB 3200]; Costs 9. Check No. 2756	(3209.00)
3/1/2020	INV	68170.002	Invoice No. 110573	1169.50
3/9/2020	PAY	68170.002	Payment - thank you - Fees [FIB 1120]; Costs 49.50. Check No. 2787	(1169.50)
4/1/2020	INV	68170.002	Invoice No. 111652	948.50

Date	Type	Client	Description	Total
4/22/2020	PAY	68170.002	Payment - thank you - Fees [FIB 880]; Costs 68.50. Check No. 2853	(948.50)
5/1/2020	INV	68170.002	Invoice No. 112024	4611.80
5/5/2020	PAY	68170.002	Payment - thank you - Fees [FIB 3960; JF 455]; Costs 196.80. Check No. 2894	(4611.80)
6/1/2020	INV	68170.002	Invoice No. 113284	1135.00
6/22/2020	PAY	68170.002	Payment - thank you - Fees [FIB 680; JF 455]. Check No. 2878	(1135.00)
7/1/2020	INV	68170.002	Invoice No. 113456	6023.53
7/6/2020	PAY	68170.002	Payment - thank you - Fees [FIB 5560]; Costs 463.53. Check No. 2918	(6023.53)
8/1/2020	INV	68170.002	Invoice No. 114091	5174.50
8/6/2020	PAY	68170.002	Payment - thank you - Fees [FIB 3160; DBB 2007.50]; Costs 7. Check No. 2942	(5174.50)
9/1/2020	INV	68170.002	Invoice No. 114775	8032.66
9/10/2020	PAY	68170.002	Payment - thank you - Fees [FIB 6280; DBB 1347.50]; Costs 405.16. Check No. 2960	(8032.66)
Grand Total				
Invoice				76007.17
Payment				(76007.17)

Nickname	RESH, WILLIAM "BILL".002 | 68170.002
Full Name	William "Bill" H. Resh, M.D.
Address	(VIA E-MAIL ONLY) 913 Vegas View Drive Henderson, NV 89052
Phone	Fax
Cellular	[redacted] Other
In Ref To	Resh v. Money Machine, LLC
Fees Arrg.	By billing value on each slip
Expense Arrg.	By billing value on each slip
Tax Profile	Exempt
Last bill	9/1/2020
Last charge	9/17/2020
Last payment	9/10/2020 Amount $8,032.66

Date / ID	Attorney / Task	Rate / Markup %	Hours / DNB Time	Amount / DNB Amt	Total
9/14/2020 270052	FRED Conference Conference with David Barney regarding effect of discharge in Bankruptcy Court on automatic stay.	400.00	0.40	160.00	Billable
9/15/2020 270202	FRED Prepare Prepare for oral argument on Motion for Summary Judgment and outlined argument to be presented, review emails from Judges' law clerk, telephone conference with Judges' law clerk and dictated email to Dr. Resh.	400.00	1.60	640.00	Billable
9/17/2020 270332	FRED Research Research for Motion for Attorneys Fees and Costs under NRCP 68 and NRS 18.010 and began dictation of Motion.	400.00	3.90	1,560.00	Billable
TOTAL	Billable Fees		5.90		$2,360.00

Total of billable expense slips $0.00

Calculation of Fees and Costs

	Amount	Total
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips Total of Fees (Time Charges)	$2,360.00	$2,360.00
Total of Costs (Expense Charges)		$0.00

RESH, WILLIAM "BILL".002:William "Bill" H. Resh, M.D. (continued)

	Amount	Total
Total new charges		$2,360.00
Previous Balance		
Current	$8,032.66	
Total Previous Balance		$8,032.66
Accounts Receivables		
Date|ID Type Description		
9/10/2020 PAY Payment - thank you - Fees [FIB 6280; DBB 1347.50]; Costs 405.16. Check No. 2960	($8,032.66)	
100890		
Total Accounts Receivable		($8,032.66)
New Balance		
Current	$2,360.00	
Total New Balance		$2,360.00
Funds Account: Default		
Previous account balance	$0.00	
Total added to account	$0.00	
Total removed from account	$0.00	
New account balance		$0.00
Amount to replenish account to $0.00	$0.00	

Attorney Summary

Attorney	Rate	Hours	Charges	Slip Value	Adjustment
FIB	400.00	5.90	$2,360.00	$2,360.00	0.00

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of October, 2020, a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS** was submitted electronically for filing and service with the Eighth Judicial District Court. Electronic Service of the foregoing document shall be made to all parties listed on the Odyssey E-File NV Service Contact List.

An employee of SKLAR WILLIAMS PLLC

EXHIBIT 1

Occupational and Business Licensing
555 Wright Way
Carson City, Nevada 89711
(775) 684-4690
www.dmvnv.com

VEHICLE INDUSTRY BUSINESS LICENSE BOND

Bond Number 37029

License Type:

- ☐ Broker
- ☒ Dealer/Rebuilder/Lessor
- ☐ Distributor
- ☐ Manufacturer
- ☐ Off-Highway Vehicle

KNOW ALL MEN BY THESE PRESENTS:

That Money Machine LLC dba: Compadres Auto Sales (Individual or Corporate Name and Name Doing Business as), as principal,

located in the County of Clark, State of Nevada, obligee, and

Western National Mutual Insurance Company (Name of Surety), a corporation organized and existing under and by virtue of the laws of the State of MN, and authorized to transact a surety business in the State of Nevada, as surety, are held and firmly bound unto the State of Nevada in the penal sum of 100,000.00 THOUSAND DOLLARS for the payment of which well and truly to be made we hereby bind ourselves, our respective heirs, administrators, executors, successors and assigns jointly and severally, firmly by these presents.

To be effective on the 8th day of March, 20 17

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above-named principal has been licensed to carry on or conduct in this State the business of buying, selling, transporting, manufacturing, distributing, brokering or dealing in new or used vehicles, trailers, motorcycles or semitrailers; and

WHEREAS, the above-named surety herein agrees that any consumer, as defined in NRS 482.345, injured by the action or actions of the principal and/or his salesmen involved in any fraud or fraudulent representation or in violation of any of the provisions of Chapter 482 or Chapter 490 of the Nevada Revised Statutes or Nevada Administrative Codes may bring action in said injured person's own name against the said surety. This bond is continuous in form and the total aggregate liability of the bond is limited to the payment of the total amount of the bond. In the event of a dispute of a claim by the surety company, application may be made to the Director, Department of Motor Vehicles for good cause shown. After notice and hearing, the director may authorize payment of funds from here said surety coverage.

Bond Number 37029

This bond may be canceled by the surety at any time by giving written notice by registered mail of its desire and intention so to do. Said cancellation shall be effective thirty (30) days after the receipt of said notice by the State of Nevada Department of Motor Vehicles, Occupational and Business Licensing Section.

Signed, sealed and dated this 8th day of March, 20 201

X _____
(Principal's Signature)

_____
(Principal's Printed Name)

Western National Mutual Insurance Company
(Surety)

Telephone Number of Surety: (800) 862 -6070

5350 W 78th Street
(Mailing Address of Surety Company, Street)

Edina MN 55439
(City, State and Zip Code)

By _____
(Signature, Attorney-In-Fact for Surety)

_____
(Printed Name, Attorney-In-Fact)

(Surety Seal)

Countersigned on behalf of

Western National Mutual Insurance Company
(Surety)

this _____ day of _____, 20___

_____
(Signature, Agent)

Ryan Dye
(Printed Name, Agent)

SAFEGUARD INSURANCE LLC
(Business Name, Agent)

5225 S DURANGO DR LAS VEGAS, NV 89113
(Business Address, Agent)

WESTERN NATIONAL
The relationship company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Western National Mutual Insurance Company, a Minnesota mutual insurance company, does make, constitute and appoint: Ryan Dye SAFEGUARD INSURANCE LLC

its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto (if a seal is required) bond, undertakings recognizances or other written obligations in the nature thereof, **(other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, hazardous waste remediation bonds or black lung bonds)**, as follows:

All written instruments in an amount not to exceed an aggregate of One Hundred Thousand Dollars ($100,000.00) for any single obligation, regardless of the number of instruments issued for the obligation.

and to bind Western National Mutual Insurance Company thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a meeting held on September 28, 2010. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of Western National Mutual Insurance Company on September 28, 2010:

RESOLVED that the president, any vice president, or assistant vice president in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds, and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

(i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or

(ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or

(iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the Company to such person or persons.

RESOLVED FURTHER that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, Western National Mutual Insurance Company has caused these presents to be signed by its proper officer and its corporate seal to be affixed this 18th day of December, 2015.

Jon R. Hebeisen, Secretary

SEAL

Larry A. Byers, Sr. Vice President

STATE OF MINNESOTA, COUNTY OF DAKOTA

On this 16th day of December, 2015, personally came before me, Jon R. Hebeisen and Larry A. Byers and to me known to be the individuals and officers of the Western National Mutual Insurance Company who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally dispose and say; that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.

JENNIFER A YOUNG
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES 01/31/2021

Jennifer A. Young, Notary Public
My commission expires January 31, 2021

CERTIFICATE

I, the undersigned, assistant secretary of the Western National Mutual Insurance Company, a Minnesota corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

Signed and sealed at the City of Edina, MN on 03/09/2017

SEAL

Jennifer A. Young, Assistant Secretary

EXHIBIT 2

OFFR
FREDERIC I. BERKLEY, ESQ.
Nevada Bar No.: 1798
SKLAR WILLIAMS PLLC
410 South Rampart Blvd., Suite 350
Las Vegas, Nevada 89145
Telephone: (702) 360-6000
Facsimile: (702) 360-0000
Email: fberkley@sklar-law.com
Attorneys for Plaintiff
William Harry Resh

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM HARRY RESH, an individual, Plaintiff, v. MONEY MACHINE, LLC, a Nevada limited liability company dba COMPADRES AUTO SALES; ROBERT LEGASPI, an individual, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a Minnesota corporation; DOES I through X; and ROE CORPORATIONS I THROUGH X. Defendants.	Case No.: A-18-775815-C Dept. No.: XX **OFFER OF JUDGMENT**

TO: WESTERN NATIONAL MUTUAL INSURANCE COMPANY, Defendant; and

TO: KURT C. FAUX, ESQ., and JORDAN F. FAUX, ESQ., THE FAUX LAW GROUP; Attorneys for Defendant.

Pursuant to Rule 68 of the Nevada Rules of Civil Procedure, Plaintiff WILLIAM HARRY RESH "Dr, Resh"), by and through his attorney, FREDERIC I. BERKLEY, ESQ., of the law firm SKLAR WILLIAMS PLLC, hereby offers to allow judgment to be entered against Defendant Western National Mutual Insurance Company and in favor of Plaintiff in the total amount of ONE HUNDRED THOUSAND DOLLARS ($100,000), inclusive of interest, attorneys' fees, and costs.

This offer precludes a separate allowance for interest, attorneys' fees or costs. The offered judgment will resolve all claims, cross-claims and counterclaims between Plaintiff and Defendant Western National Mutual Insurance Company only that were brought or could have been brought by such parties in this action.

In the event the Offer of Judgment is accepted by Defendant, Defendant may elect to pay the amount offered herein within twenty-one (21) days after service of written notice that the offer is accepted and obtain a dismissal of the claims as provided by NRCP 68(d), rather than entry of a judgment.

DATED this 26th day of November, 2019.

SKLAR WILLIAMS PLLC

By _____
FREDERIC I. BERKLEY, ESQ.
Nevada Bar No. 1798
410 S. Rampart Blvd., Suite 350
Las Vegas, Nevada 89145
Telephone: (702) 360-6000
Facsimile: (702) 360-0000
Attorney for Plaintiff
William Harry Resh

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of November, 2019, a true and correct copy of the above and foregoing ***Offer of Judgment*** was submitted electronically for service with the Eighth Judicial District Court. Electronic Service of the foregoing document shall be made to Counsel for *Western National Mutual Insurance Company* listed on the Odyssey EFileNV Service Contact list.

An employee of SKLAR WILLIAMS PLLC

EXHIBIT 26

EXHIBIT 26

FFCO
KURT C, FAUX, ESQ.
Nevada Bar No. 003407
JORDAN F. FAUX, ESQ.
Nevada Bar No. 12205
THE FAUX LAW GROUP
2625 N. Green Valley Parkway, #100
Henderson, Nevada 89014
Telephone: (702) 458-5790
Facsimile: (702) 458-5794
Email: kfaux@fauxlaw.com
jfaux@fauxlaw.com
Attorneys for Western National Mutual Insurance Company

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM HARRY RESH, an individual,

Plaintiff,

v.

MONEY MACHINE, LLC, a Nevada limited liability company dba COMPADRES AUTO SALES; ROBERT LEGASPI, an individual, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a Minnesota corporation; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

Case No. A-18-775815-C
Dept. No.: 20

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING SUMMARY JUDGMENT

THE FAUX LAW GROUP
1540 W. Warm Springs Road, Suite 100
Henderson, Nevada 89014
Tel. (702) 458-5790

This matter having come before the Court on Plaintiff's Motion for Summary Judgment, and the Court having considered the aforementioned Plaintiff's Motion for Summary Judgment, the Opposition to Plaintiff's Motion for Summary Judgment and Plaintiff's Reply to Opposition to Plaintiff's Motion for Summary Judgment, and all of the pleadings on file herein, this Court enters the following Findings of Fact and Conclusion of Law:

FINDINGS OF FACT

1. Plaintiff William Harry Resh (hereinafter referred to as "Dr. Resh") is a Board-certified cardiologist with Nevada Heart and Vascular Center and is, and was during all times relevant herein, a resident of the state of Nevada.

2. Dr. Resh was the owner of a 2017 Audi R8 automobile (hereinafter referred to as his "vehicle"), VIN No. WUAKBAFX0H7903087.

3. In February and March 2018, Dr. Resh attempted to sell his vehicle through auction with the assistance of a family friend, Robert Larson.

4. In order to sell Dr. Resh's vehicle at auction, Robert Larson registered the vehicle under the auto dealership known as Money Machine, LLC, d/b/a Compadres Auto Sales (hereinafter referred to as "Compadres").

5. In order to sell the vehicle through the auction house known as Manheim, Robert Larson took the title to Dr Resh's vehicle and the keys to Manheim.

6. Dr. Resh's vehicle sold at auction by Manheim for the sum of $145,000.

7. Manheim prepared a check for $143,895 made payable to Compadres and the check was given to Robert Larson.

8. Robert Larson personally delivered that check in mid-March 2018 to Ryan Najarro, general manager for Compadres, who he had worked with before.

9. Compadres deposited the check for $143,895 into its bank account.

10. Despite repeated demands, Compadres never paid Dr. Resh any of the sales proceeds for his vehicle.

11. Defendant Western National Mutual Insurance Company (hereinafter referred to as ("WNMIC") furnished a Vehicle Industry License Bond for Compadres in the penal sum of $100,000.

12. As a result of Defendants' actions herein, Dr. Resh was required to retain the services of Sklar Williams PLLC to prosecute this matter.

CONCLUSIONS OF LAW

1. Dr. Resh falls within the definition of "consumer" as set forth at NRS 482.345.

2. Dr. Resh intended to be the final user of the vehicle at issue.

3. Compadres has wrongfully converted the sales proceeds of Dr. Resh's vehicle in the sum of $143,895.

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HENDERSON, NEVADA 89014
TEL. (702) 458-5790

4. WNMIC is liable to Dr. Resh under the terms of the Vehicle Industry Business License Bond number 37029.

5. Any Conclusion of Law which should more properly be set forth as a Finding of Fact is hereby deemed a Finding of Fact, and vice versa.

ORDER GRANTING SUMMARY JUDGMENT

Based on the aforementioned Findings of Fact and Conclusions of Law, and this Court specifically finding that there are no remaining genuine issues of material fact, this Court hereby grants Plaintiff's Motion for Summary Judgement against Defendant Western National Mutual Insurance Company and finds that Dr. Resh shall have Judgment against this Defendant in the amount of $100,000.

DATED this ____ day of September, 2020.

Dated this 13th day of October, 2020

DISTRICT COURT JUDGE
16B 532 E326 9824
Eric Johnson
District Court Judge

Submitted by:

THE FAUX LAW GROUP

Kurt C. Faux. Esq.
Jordan F. Faux, Esq.
2625 N. Green Valley Pkwy., Suite 100
Henderson, NV 89014
Attorneys for Western National Mutual Insurance Company

THE FAUX LAW GROUP
1540 W. WARM SPRINGS ROAD, SUITE 100
HENDERSON, NEVADA 89014
TEL. (702) 458-5790

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

William Resh, Plaintiff(s) vs. Money Machine LLC, Defendant(s)	CASE NO: A-18-775815-C DEPT. NO. Department 20

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/13/2020

Jordan Faux	jfaux@fauxlaw.com
Gene Crawford	gcrawford@sklar-law.com
Frederic Berkley	fberkley@sklar-law.com
Kathy Fenn	kfenn@fauxlaw.com
Copy Room	efile@alversontaylor.com
Kurt Bonds	kbonds@alversontaylor.com
Adam Knecht	aknecht@alversontaylor.com
Kurt Faux	kfaux@fauxlaw.com
Foniah Abbott	fabbott@fauxlaw.com
Terri Scott	tscott@sklar-law.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 10/14/2020

Kurt Bonds	Alverson Taylor & Sanders Attn: Kurt R. Bonds 6605 Grand Montecito Pkwy., Suite 200 Las Vegas, NV, 89149

EXHIBIT 27

EXHIBIT 27

OPPM
KURT C. FAUX, ESQ.
Nevada Bar No. 03407
JORDAN F. FAUX, ESQ.
Nevada Bar No. 12205
THE FAUX LAW GROUP
2625 N. Green Valley Pkwy., #100
Henderson, Nevada 89014
Telephone: (702) 458-5790
Facsimile: (702) 458-5794
Email: kfaux@fauxlaw.com
jfaux@fauxlaw.com
Attorneys for Western National Mutual Insurance Company

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM HARRY RESH, an individual,

Plaintiff,

v.

MONEY MACHINE, LLC, a Nevada limited liability company dba COMPADRES AUTO SALES; ROBERT LEGASPI, an individual, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a Minnesota corporation; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

Case No. A-18-775815-C
Dept. No.: 20

OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY FEES AND COSTS

Hearing Date: November 3, 2019
Hearing Time: 12:00 P.M.

THE FAUX LAW GROUP
1540 W. Warm Springs Road, Suite 100
Henderson, Nevada 89014
Tel. (702) 458-5790

Defendant, Western National Mutual Insurance Company ("WNMIC"), by and through the Faux Law Group, submits it Opposition to Plaintiff's Motion for Attorney Fees and Costs.

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This Opposition is supported by the attached memorandum of points and authorities, the papers on file with the Court, and any oral argument held.

DATED this 15th day of October, 2020.

THE FAUX LAW GROUP

By: /s/ Jordan F. Faux
KURT C. FAUX, ESQ.
Nevada Bar No. 03407
JORDAN F. FAUX, ESQ.
Nevada Bar No. 12205
THE FAUX LAW GROUP
2625 N. Green Valley Pkwy., #100
Henderson, Nevada 89014
Attorneys for Western National Mutual Insurance Company

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In lieu of trial, the Court permitted Plaintiff to file a motion for summary judgment despite the relevant deadlines being expired. Thereafter, Plaintiff submitted its Motion for Summary Judgment (MSJ) and after full briefing, Plaintiff's MSJ was granted without hearing via Minute Order on September 15, 2020. Plaintiff submitted its Motion for Attorney Fees and Costs on October 1, 2020. Findings of Fact and Conclusions of Law and Order Granting Summary Judgment was entered on October 13, 2020.

WNMIC opposes Plaintiff's Motion for Attorney Fees and Costs for the following reasons:

1) Plaintiff failed to present evidence of his attorney fees and costs at summary judgment and is not entitled to recover them as damages.
2) Plaintiff is limited by statute to the penal sum of the Bond, $100,000.00, which has already been awarded.
3) Even if Plaintiff were not limited, recovery is not available under NRS 18.010 or NRCP 68.

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Tel. (702) 458-5790

II. ARGUMENT

A. Resh Failed to Present Any Evidence of His Attorney Fees or Costs on Summary Judgment and Is Not Entitled to Recover Them as Damages

This claim is a statutory bond claim governed by NRS 482.345. Section 6(f) of NRS 482.345 entitles consumers to recover attorney fees and costs incurred because of unlawful acts committed by the dealer. "When a party claims it has incurred attorney fees as foreseeable damages arising from tortious conduct or a breach of contract, such fees are considered special damages." *Sandy Valley Assocs. v. Sky Ranch Estates*, 117 Nev. 948, 956 (Nev. 2001). "When attorney fees are considered as an element of damages, they must be the natural and proximate consequence of the injurious conduct" *Sandy Valley Assocs. v. Sky Ranch Estates*, 117 Nev. 948, 957 (Nev. 2001).

Here, Plaintiff has claimed attorney fees and costs under the statute as part of Plaintiff's damages. Amended Complaint at ¶16. Plaintiff also requested attorney fees and costs in his Motion for Summary Judgment. Motion for Summary Judgment at 6:17. However, Plaintiff did not present any evidence that the fees and costs incurred were the natural and proximate consequence of the dealer's injurious conduct nor did Plaintiff present any evidence as to the amount of attorney fees and costs incurred or what work was performed. In other words, Plaintiff has failed to prove its damages and is now essentially seeking a second bite at the apple. This should not be permitted.

B. Recovery is be Limited to the $100,000.00 Penal Sum Inclusive of All Attorney Fees and Costs

The Bond is a statutory bond governed by NRS 482.345. That section requires that "the bond be continuous in form, and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond." NRS 482.345(4). The aggregate liability includes "any loss or damage established, including, without limitation:

1) Actual damages;
2) Consequential damages;
3) Incidental damages;
4) Statutory damages;
5) Damages for noneconomic loss; and

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6) Attorney's fees and costs."

NRS 482.345(6)(f). Thus, per the statute, the total possible liability on the bond including attorney fees and costs is capped at the penal sum of the Bond, which in this case is $100,000.00. *See* Ex. 1 to MSJ. The statute specifically caps recovery to the penal sum and no more. No interest is authorized.

The Legislature was perfectly aware of *Trustees v. Developers Surety*, 120 Nev. 56 (Nev. 2004), when it amended NRS 482.345 to add attorney fees and costs to the list of damages that are included in the capped penal sum of the Bond in 2013. Assembly Bill No. 282 attached hereto as Exhibit A at 5; *see Olson v. Richard*, 120 Nev. 240, 246 (Nev. 2004) (Point out that "the Legislature is presumed to be aware of our case law"); *City of Sparks, Corp. v. Reno Newspapers, Inc.*, 399 P.3d 352, 358 (Nev. 2017) ("This court also assumes that, when enacting a statute, the Legislature is aware of related statutes.") .

Developers cannot be read in isolation from the revised statute. *See Banegas ex rel. Banegas v. State Industrial Insurance System*, 117 Nev. 222, 229 (Nev. 2001) (holding that "a statute must not be read in isolation, and statutes must be construed to give meaning to all of their parts and language within the context of the purpose of the legislation"). The purpose of NRS 482.345 is to allow consumers to resolve claims as inexpensively as possible not only for the benefit of the consumer, but also because of the penal sum cap.

The statute is crafted such that a consumer does not need to incur attorney fees pursuing the surety at all. NRS 482.345(7)(a)(1) states that "a judgment on the merits against the dealer, distributor, rebuilder, manufacturer, representative or salesperson, the judgment is binding on the surety." Even default judgments are binding on the surety if the surety "was given notice and an opportunity to defend at least 20 days before the date on which the judgment was entered against the dealer." NRS 482.345(7)(a)(2). The consumer may also apply directly to the DMV Director: "for good cause shown, for compensation from the bond. The Director may determine the amount of compensation and the consumer to whom it is to be paid. The surety shall then make the payment."

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NRS 482.345(7)(b)[1]. Finally, the consumer can settle directly with the dealer in good faith and then, absent a finding of fraud of collusion by the DMV Director, the surety is obligated to make the payment. NRS 482.345(7)(c). Based on a plain reading of the statute, WNMIC agrees with Plaintiff's assessment that "there is no legitimate reason for Dr. Resh to have incurred attorney's fees and costs in the amount of $76,007.17 through August 2020 to recover on the surety bond" because the statute provides several ways to recover from the surety bond without having to incur such attorney's fees and costs. It appears that Plaintiff chose to pursue the path he did either because he did not know there were other options or because he chose to ignore them in favor of a more expensive option.

The various means for recovery from the bond were created precisely because of the statute's penal sum limitation and so that consumers would not have to litigate against the surety at all before recovering from the bond. The fact that the Plaintiff here chose not to avail himself of these statutory cost-savings measures does not mean the statutory penal sum (which was specifically amended in 2013 to include attorney fees and costs, despite the holding in *Developers*) does not apply to Plaintiff.

C. Even if Plaintiff Could Recover More Than the Bond Penal Sum, Plaintiff is Not Entitled to Recovery Under NRS 18.010

A district court may award attorney fees to a prevailing party when it finds that the opposing party brought or maintained a claim without reasonable grounds. NRS 18.010(2)(b). For purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it. *Rodriguez v. the Primadonna*, 125 Nev. Adv. Op. No. 45, 49409 (2009), 216 P.3d 793, 14 (Nev. 2009); citing *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687 (1995); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996, 860 P.2d 720, 724 (1993).

Here, the issue of whether a consignor is a consumer under NRS 482.345(10) is an issue of first impression. Only consumers may make claim upon the Bond. NRS 482.345. It was reasonable for WNMIC to argue that Resh was not a consignor for several reasons. First, the definition of a consumer is "any person who comes into possession of a vehicle as a final user for any purpose other

[1] Undersigned counsel has participated in many claims like Plaintiff's with the DMV Administrative Judges and such claims are resolved faster, more efficiently, and at a much lower cost than litigation in District Court.

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than offering it for sale." In this case, Resh did not have "possession" of the vehicle because it was sold at auction at his request. *See* Findings of Fact and Conclusions of Law at ⁋⁋3-6. Resh was not the "final user" of the vehicle because it was sold to someone else at auction at his request. *Id*. Resh's purpose in dealing with WNMIC's bond principal, Money Machine, was "for the purpose of offering it for sale" at auction, (the only prohibited purpose) which Resh, in fact, did. *Id*. So, it was not unreasonable, frivolous, or in bad faith for WNMIC to argue that Resh was not a consumer as defined by the statute and therefore not entitled to make claim upon the Bond.

Further, as argued in WNMIC's Opposition to the MSJ, the legal framework on a Motion to Dismiss is very different than on summary judgment, therefore it was not frivolous, unreasonable, or in bad faith to continue to assert that Resh did not qualify as a consumer under the statute. It was reasonable for WNMIC to believe that the Court would not determine Resh was a consumer based upon the facts asserted once the Court found facts.

Finally, WNMIC's "admission" in its pre-trial brief that "There was no question that an employee of Money Machine stole Dr. Resh's money" is also irrelevant with regards to NRS 18.010. First, WNMIC's defense was that Resh was not entitled to make claim upon the Bond at all because he was not a consumer, whether his money was stolen or not. Second, as explained in WNMIC's Opposition to the MSJ, WNMIC anticipated evidence at trial that Resh did not submit in support of his MSJ. For example, WNMIC saw police reports disclosed by Resh during discovery that made the fact that his money had been stolen very clear. WNMIC has no idea why Plaintiff did not present this evidence to the Court, but the case is Plaintiff's to prove and WNMIC asserted defenses based upon the evidence and arguments presented by Plaintiff in the MSJ. This does not constitute bad faith, frivolity, or unreasonableness.

WNMIC still maintains that it is unreasonable to determine that Resh is a consumer as a matter of law where he does not possess the vehicle because he sold it, wanted someone else to become the final user because he was selling it, and had the purpose of offering the vehicle for sale, evidenced all evidenced by his own testimony. WNMIC maintains that it is Resh's claim that is frivolous based upon the plain language of the statute.

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D. Even if Plaintiff Could Recover More Than the Bond Penal Sum, Plaintiff is Not Entitled to Recovery Under NRCP 68

In exercising its discretion regarding the allowance of fees and costs under NRCP 68, *see* Armstrong v. Riggi, *supra*, the trial court must carefully evaluate the following factors: (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount. After weighing the foregoing factors, the district judge may, where warranted, award up to the full amount of fees requested. On the other hand, where the court has failed to consider these factors, and has made no findings based on evidence that the attorney's fees sought are reasonable and justified, it is an abuse of discretion for the court to award the full amount of fees requested. *Beattie v. Thomas*, 99 Nev. 579, 588-89 (Nev. 1983).

Here, Plaintiff does not bother addressing any of the factors outlined in *Beattie*. The Court cannot award any fees under NRCP 68 without addressing such factors.

(1) Whether The Plaintiff's Claim Was Brought In Good Faith

As explained above, WNMIC maintains that Plaintiff's claim is not reasonable based upon the plain language of the statute, which would support a finding that the claim was not brought in good faith. However, given the Court's findings and conclusions of law, it is unlikely that the Court would agree.

(2) Whether The Defendants' Offer Of Judgment Was Reasonable And In Good Faith In Both Its Timing And Amount

Next, from WNMIC's perspective, Plaintiff's offer of judgment was not reasonable in its amount. Because the defenses in this case were based upon Plaintiff's entitlement to make claim upon the Bond at all, this is an "all or nothing" case. Plaintiff's recovery would be either $0.00 or the bond penal sum of $100,000.00. Plaintiff's offer of judgment for the full penal sum does not consider the risks involved nor did it offer any compromise at all. Therefore, it was not a reasonable offer.

///

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(3) Whether The Plaintiff's Decision To Reject The Offer And Proceed To Trial Was Grossly Unreasonable Or In Bad Faith

WNMIC's rejection of the offer was not grossly unreasonable or in bad faith. As explained above, this is an "all or nothing" case. It is also not unreasonable or in bad faith because the definition of a consumer is "any person who comes into possession of a vehicle as a final user for any purpose other than offering it for sale." NRS 482.345(10). Here, Plaintiff purposefully gave up possession of the vehicle to another user via a sale at an auction. Therefore, it was not reasonable for WNMIC to assume that the Court would find that Plaintiff qualifies as a "consumer" under the statute once the Court was presented with all the facts. Based on a plain reading of the statute, it was perfectly reasonable for WNMIC to reject the offer.

(4) Whether The Fees Sought By The Offeror are Reasonable and Justified In Amount

Here, it is somewhat difficult to determine whether the amount of fees sought by Plaintiff are reasonable and justified because Plaintiff's counsel used the "block billing" method. "Block billing is the time-keeping practice whereby a lawyer enters the total daily time spent working on a case and lists all of the tasks worked on during the day, rather than separately itemizing the time spent on each task. *Welch v. Metro. Life Ins. Co*., 480 F.3d 942, 945 n.2 (9th Cir. 2007). The courts that have addressed block billing observe that block billing makes it difficult for a court to review the reasonableness of the requested attorney fees, as compared with single task time entries. *See, e.g., id*. at 948 ("[B]lock billing makes it more difficult to determine how much time was spent on particular activities."). As an increasing number of tasks are listed for a particular time entry, reviewing the reasonableness of the time entries becomes correspondingly more difficult. *See Okla. Natural Gas Co. v. Apache Corp*., 355 F. Supp. 2d 1246, 1264 (N.D. Okla. 2004) (finding that it was difficult, if not impossible, to review the reasonableness of block-billed time entries, one of which was a time entry for 7.3 hours containing eight tasks)."

In fact, "the California State Bar's Committee on Mandatory Fee Arbitration, … concluded that block billing may increase time by 10% to 30%." *Welch v. Metropolitan Life*, 480 F.3d 942, 948 (9th Cir. 2007) See The State Bar of California Committee on Mandatory Fee Arbitration, Arbitration Advisory 03-01 (2003) ("Fee Report")."

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Here, many of the entries are block billed, making it difficult for WNMIC to properly address the reasonableness of the fees. There are at least some examples where the time billed seems inflated. For example, on November 7, 2019, counsel billed 0.40 hours (19-24 minutes) for "Dictated email to Attorney Jordan Faux regarding Answer to Amended Complaint." The relevant email consists of 3 sentences:

> Dear Jordan:
>
> As you know, Judge Johnson denied your Motion to Dismiss at the hearing on October 16, 2019. I have not yet received an Answer to the Amended Complaint.
>
> Please let me know when I can expect to receive same as I would like to move this matter toward trial.

Email dated November 8, 2019 Attached hereto as Exhibit B.

It does not seem reasonable for it to take 19-24 minutes to dictate a 3-sentence email, even taking into account double-checking the date of the order. Given this mark-up, it is likely there are other tasks that are similarly marked up, but because of the block billing strategy, WNMIC cannot make a determination as to the reasonableness of the fees.

Next, it appears that the smallest increment billed is 0.3 hours. In similar cases, Courts have imposed a 20 percent across-the-board reduction in requested hours because billing in larger increments results in a request for excessive hours. *Welch v. Metropolitan Life*, 480 F.3d 942, 948 (9th Cir. 2007). For example, in Welch, there were numerous emails and phone calls that were billed a minimum of 15 minutes that likely took a fraction of the time, resulting in the District Court imposing a 20% across the board reduction, which was upheld on appeal. *Id*.

Similarly here, there are numerous emails and telephone calls that likely took a fraction of the time billed, but WNMIC cannot make such a determination as these entries are often combined with other tasks. The email highlighted above, which happened to be listed on its own, shows a clear mark-up. It is not unreasonable to assume that other tasks have also been similarly marked up.

Overall, even if Plaintiff were entitled to recovery above the penal sum, the weight of the Beattie factors is against an award of attorney fees based on NRCP 68. Further, if a fee were appropriate, Plaintiff's demanded amount of $30,747.99 is inflated based upon the block billing and

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0.3 minimum billing time and should be reduced 10-30% on block billed entries and 20% across the board. However, this type of calculation is unnecessary for the Court to perform because Plaintiff's recovery is statutorily limited to the $100,000.00 penal sum of the bond.

III. CONCLUSION

Plaintiff is not entitled to an additional award for attorney fees because:

1) Plaintiff failed to present evidence of his attorney fees and costs at summary judgment and is not entitled to recover them as damages.

2) Plaintiff is limited by statute to the penal sum of the Bond, $100,000.00, which has already been awarded.

3) Even if Plaintiff were not limited, recovery is not available under NRS 18.010 or NRCP 68. Finally, Plaintiff has failed to submit a memorandum of costs and so no costs should be awarded.

DATED this 15th day of October, 2020.

THE FAUX LAW GROUP

By: /s/ Jordan F. Faux
Kurt C. Faux. Esq.
Jordan F. Faux, Esq.
2625 N. Green Valley Pkwy., Suite 100
Henderson, NV 89014
Attorneys for Western National Mutual Insurance Company

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CERTIFICATE OF SERVICE

The undersigned, an employee of The Faux Law Group, hereby certifies that on the 15th day of October, 2020, I served a copy of the foregoing document, **OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY FEES AND COSTS** on the parties listed below via the Court's electronic service system:

Frederic I. Berkley, Esq.
SKYLAR WILLIAMS, PLLC
410 S. Rampart Blvd., Suite 350
Las Vegas, NV 89145
Attorneys for William Harry Resh

Adam Knecht, Esq.
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Attorneys for Money Machine, LLC d/b/a Compadres Auto Sales and Robert Legaspi

/s/ Jordan F. Faux
An Employee of The Faux Law Group

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Exhibit A

Exhibit A

Assembly Bill No. 282–Assemblymen Aizley; Ohrenschall and Pierce

Joint Sponsor: Senator Segerblom

CHAPTER.....

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

Legislative Counsel's Digest:

Under existing law, each broker, manufacturer, distributor, dealer and rebuilder of motor vehicles is required to procure and file a surety bond with the Department of Motor Vehicles or make a deposit with the Department. Any person, including consumers as well as corporate entities, injured by the actions of such a broker, manufacturer, distributor, dealer or rebuilder is allowed to apply to the Director of the Department or to bring and maintain an action in any court of competent jurisdiction for compensation from the bond or deposit. (NRS 482.3333, 482.345, 482.346)

Additionally, under existing case law in Nevada, the phrase "any person," as used in NRS 482.345(6), has been interpreted literally to allow any individual person or group of persons (including a finance company) who is injured by the actions of a broker, manufacturer, distributor, dealer or rebuilder of motor vehicles to apply for compensation from the bond that section requires to be procured and filed. (*Western Sur. Co. v. ADCO Credit, Inc.*, 127 Nev. Adv. Op. No. 8, 251 P.3d 714 (Mar. 17, 2011)) This bill amends NRS 482.3333, 482.345 and 482.346 to provide that bonds procured pursuant to NRS 482.3333 and 482.345 and deposits made in lieu of such bonds pursuant to NRS 482.346 may be used to compensate only a consumer, for any loss or damage established, and no other person.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 482.3333 is hereby amended to read as follows:

482.3333 1. Before a person may be licensed as a broker, the person must procure and file with the Department a good and sufficient bond in the amount of $100,000 with a corporate surety thereon licensed to do business within the State of Nevada, approved as to form by the Attorney General, and conditioned that the applicant shall conduct business as a broker without breaching a consumer contract or engaging in a deceptive trade practice, fraud or

fraudulent representation, and without violation of the provisions of this chapter.

2. The Department may allow a broker who provides services for more than one category of vehicle described in subsection 1 of NRS 482.345 at a principal place of business or at any branch location within the same county as the principal place of business to provide a good and sufficient bond for a single category of vehicle and may consider that single bond sufficient coverage to include all other categories of vehicles.

3. The bond must be continuous in form, and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond.

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

5. The bond must provide that ***it is for the use and benefit of*** any ~~[person injured by the action]~~ ***consumer*** of the broker or an employee of the broker ~~[in violation of any provision of this chapter may apply to the Director, for good cause shown, for compensation from the bond.]~~ ***for any loss or damage established, including, without limitation:***

(a) Actual damages;

(b) Consequential damages;

(c) Incidental damages;

(d) Statutory damages;

(e) Damages for noneconomic loss; and

(f) Attorney's fees and costs.

➥ The surety issuing the bond shall appoint the Secretary of State as its agent to accept service of notice or process for the surety in any action upon the bond brought in a court of competent jurisdiction or brought before the Director.

6. If a ~~[person is injured by the actions of]~~ ***consumer has a claim for relief against*** a broker or an employee of the broker, the ~~[person]~~ ***consumer*** may:

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

(1) A judgment on the merits against the broker or employee, the judgment is binding on the surety.

(2) A judgment other than on the merits against the broker or employee, including, without limitation, a default judgment, the

judgment is binding on the surety only if the surety was given notice and an opportunity to defend at least 20 days before the date on which the judgment was entered against the broker or employee.

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

(c) Settle the matter with the broker or employee. If such a settlement is made, the settlement must be reduced to writing, signed by both parties and acknowledged before any person authorized to take acknowledgments in this State, and submitted to the Director with a request for compensation from the bond. If the Director determines that the settlement was reached in good faith and there is no evidence of collusion or fraud between the parties in reaching the settlement, the surety shall make the payment to the ~~[injured person]~~ ***consumer*** in the amount agreed upon in the settlement.

7. Any judgment entered by a court ***in favor of a consumer and*** against a broker or an employee of the broker may be executed through a writ of attachment, garnishment, execution or other legal process, or the ~~[person]~~ ***consumer*** in whose favor the judgment was entered may apply to the Director for compensation from the bond of the broker or employee.

8. As used in this section, "consumer" means any person who comes into possession of a vehicle as a final user for any purpose other than offering it for sale.

Sec. 2. NRS 482.345 is hereby amended to read as follows:

482.345 1. Before any dealer's license, dealer's plate, special dealer's plate, rebuilder's license or rebuilder's plate, distributor's license or distributor's plate or manufacturer's license or manufacturer's plate is furnished to a manufacturer, distributor, dealer or rebuilder as provided in this chapter, the Department shall require that the applicant make an application for such a license and plate upon a form to be furnished by the Department, and the applicant shall furnish such information as the Department requires, including proof that the applicant has an established place of business in this State, procure and file with the Department a good and sufficient bond with a corporate surety thereon, duly licensed to do business within the State of Nevada, approved as to form by the Attorney General, and conditioned that the applicant or any employee who acts on behalf of the applicant within the scope of his or her employment shall conduct business as a dealer, distributor, manufacturer or rebuilder without breaching a consumer contract or

engaging in a deceptive trade practice, fraud or fraudulent representation, and without violation of the provisions of this chapter. The bond must be:

(a) For a manufacturer, distributor, rebuilder or dealer who manufactures, distributes or sells motorcycles, $50,000.

(b) For a manufacturer, distributor, rebuilder or dealer who sells vehicles other than motorcycles, trailers or travel trailers, $100,000.

(c) For a manufacturer, distributor, rebuilder or dealer who sells travel trailers or other dual purpose trailers that include living quarters in their design, $100,000.

(d) For a manufacturer, distributor, rebuilder or dealer who sells horse trailers designed without living quarters or special purpose trailers with an unladen weight of 3,501 pounds or more, $50,000.

(e) For a manufacturer, distributor, rebuilder or dealer who sells utility trailers or other special use trailers with an unladen weight of 3,500 pounds or less or trailers designed to carry boats, $10,000.

2. The Department may, pursuant to a written agreement with any manufacturer, distributor, rebuilder or dealer who has been licensed to do business in this State for at least 5 years, allow a reduction in the amount of the bond of the manufacturer, distributor, rebuilder or dealer, if the business has been conducted in a manner satisfactory to the Department for the preceding 5 years. No bond may be reduced to less than 50 percent of the bond required pursuant to subsection 1.

3. The Department may allow a manufacturer, distributor, rebuilder or dealer who sells more than one category of vehicle as described in subsection 1 at a principal place of business or at any branch location within the same county as the principal place of business to provide a good and sufficient bond for a single category of vehicle and may consider that single bond sufficient coverage to include all other categories of vehicles.

4. The bond must be continuous in form, and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond.

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

6. The bond must provide that ***it is for the use and benefit of*** any ~~[person]~~ ***consumer*** ~~[injured by the action]~~ of the dealer, distributor, rebuilder, manufacturer, representative or salesperson ~~[in violation of any provisions of this chapter may apply to the Director, for good cause shown, for compensation from the bond.]~~ ***for any loss or damage established, including, without limitation:***

(a) Actual damages;

(b) Consequential damages;

(c) Incidental damages;

(d) Statutory damages;

(e) Damages for noneconomic loss; and

(f) Attorney's fees and costs.

➥ The surety issuing the bond shall appoint the Secretary of State as its agent to accept service of notice or process for the surety in any action upon the bond brought in a court of competent jurisdiction or brought before the Director.

7. If a ~~[person]~~ ***consumer*** ~~[is injured by the actions of]~~ ***has a claim for relief against*** a dealer, distributor, rebuilder, manufacturer, representative or salesperson, the ~~[person]~~ ***consumer*** may:

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

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

(2) A judgment other than on the merits against the dealer, distributor, rebuilder, manufacturer, representative or salesperson, including, without limitation, a default judgment, the judgment is binding on the surety only if the surety was given notice and an opportunity to defend at least 20 days before the date on which the judgment was entered against the dealer, distributor, rebuilder, manufacturer, representative or salesperson.

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

(c) Settle the matter with the dealer, distributor, rebuilder, manufacturer, representative or salesperson. If such a settlement is made, the settlement must be reduced to writing, signed by both parties and acknowledged before any person authorized to take acknowledgments in this State, and submitted to the Director with a request for compensation from the bond. If the Director determines that the settlement was reached in good faith and there is no

evidence of collusion or fraud between the parties in reaching the settlement, the surety shall make the payment to the ~~[injured person]~~ ***consumer*** in the amount agreed upon in the settlement.

8. Any judgment entered by a court ***in favor of a consumer and*** against a dealer, distributor, rebuilder, manufacturer, representative or salesperson may be executed through a writ of attachment, garnishment, execution or other legal process, or the ~~[person]~~ ***consumer*** in whose favor the judgment was entered may apply to the Director for compensation from the bond of the dealer, distributor, rebuilder, manufacturer, representative or salesperson.

9. The Department shall not issue a license or plate pursuant to subsection 1 to a manufacturer, distributor, rebuilder or dealer who does not have and maintain an established place of business in this State.

10. As used in this section, "consumer" means any person who comes into possession of a vehicle as a final user for any purpose other than offering it for sale.

Sec. 3. NRS 482.346 is hereby amended to read as follows:

482.346 1. In lieu of a bond, an applicant may deposit with the Department, under terms prescribed by the Department:

(a) A like amount of lawful money of the United States or bonds of the United States or of the State of Nevada of an actual market value of not less than the amount fixed by the Department; or

(b) A savings certificate of a bank, credit union or savings and loan association situated in Nevada, which must indicate an account of an amount equal to the amount of the bond which would otherwise be required by NRS 482.345 and that this amount is unavailable for withdrawal except upon order of the Department. Interest earned on the amount accrues to the account of the applicant.

2. ~~[A]~~ ***Except as otherwise provided in subsection 3, a*** deposit made pursuant to subsection 1 may be disbursed by the Director, for good cause shown and after notice and opportunity for hearing, in an amount determined by the Director to compensate a person injured by an action of the licensee, or released upon receipt of:

(a) A court order requiring the Director to release all or a specified portion of the deposit; or

(b) A statement signed by the person or persons under whose name the deposit is made and acknowledged before any person authorized to take acknowledgments in this State, requesting the Director to release the deposit, or a specified portion thereof, and stating the purpose for which the release is requested.

3. ***A deposit made pursuant to subsection 1 in lieu of a bond required by NRS 482.345 may only be disbursed to compensate a consumer. As used in this subsection, "consumer" has the meaning ascribed to it in NRS 482.345.***

4. When a deposit is made pursuant to subsection 1, liability under the deposit is in the amount prescribed by the Department. If the amount of the deposit is reduced or there is an outstanding court judgment for which the licensee is liable under the deposit, the license is automatically suspended. The license must be reinstated if the licensee:

(a) Files an additional bond pursuant to subsection 1 of NRS 482.345;

(b) Restores the deposit with the Department to the original amount required under this section; or

(c) Satisfies the outstanding judgment for which the licensee is liable under the deposit.

~~[4.]~~ ***5.*** A deposit made pursuant to subsection 1 may be refunded:

(a) By order of the Director, 3 years after the date the licensee ceases to be licensed by the Department, if the Director is satisfied that there are no outstanding claims against the deposit; or

(b) By order of court, at any time within 3 years after the date the licensee ceases to be licensed by the Department, upon evidence satisfactory to the court that there are no outstanding claims against the deposit.

~~[5.]~~ ***6.*** Any money received by the Department pursuant to subsection 1 must be deposited with the State Treasurer for credit to the Motor Vehicle Fund.

Sec. 4. This act becomes effective on July 1, 2013.

Exhibit B

Exhibit B

From:	"Jordan Faux" <jfaux@fauxlaw.com>
To:	"Frederic Berkley" <fberkley@sklar-law.com>
Date:	11/8/2019 2:22:01 PM
Subject:	RE: Resh v. Money Machine, LLC

Dear Frederic,

The order of October 30, 2019 states the answer is due in 20 days which would be November 19, 2019. I expect to have an answer on file on or before that deadline.

Further, in the interest of settlement, I am authorized to offer $20,000 as full and final settlement of all Dr. Resh's claims against WNMIC. Please let me know if that is acceptable.

Sincerely,

- Jordan

Jordan F. Faux, Esq. | THE FAUX LAW GROUP | 2625 N. Green Valley Pkwy, Suite 100, Henderson, NV 89074 | T: 702.458.5790 | F: 702.458.5794 | jfaux@fauxlaw.com

---

From: Frederic Berkley [mailto:fberkley@sklar-law.com]
Sent: Friday, November 8, 2019 1:57 PM
To: Jordan Faux <jfaux@fauxlaw.com>
Cc: Frederic Berkley <fberkley@sklar-law.com>
Subject: Resh v. Money Machine, LLC

Dear Jordan:

As you know, Judge Johnson denied your Motion to Dismiss at the hearing on October 16, 2019. I have not yet received an Answer to the Amended Complaint.

Please let me know when I can expect to receive same as I would like to move this matter toward trial.

Frederic I. Berkley, Esq.
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EXHIBIT 28

EXHIBIT 28

ROPP
FREDERIC I. BERKLEY, ESQ.
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Email: fberkley@sklar-law.com
Attorneys for Plaintiff
William Harry Resh

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM HARRY RESH, an individual,

Plaintiff,

v.

MONEY MACHINE, LLC, a Nevada limited liability company dba COMPADRES AUTO SALES; ROBERT LEGASPI, an individual, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a Minnesota corporation; DOES I through X; and ROE CORPORATIONS I THROUGH X.

Defendants.

Case No.: A-18-775815-C
Dept. No.: XX

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS

Defendant Western National Mutual Insurance Company ("WNMIC") has filed Opposition to Plaintiff's Motion for Attorney's Fees and Costs. WNMIC adopts the same "throw it against the wall" approach to this issue as it did in opposing Plaintiff's Motion for Summary Judgment. Plaintiff William Harry Resh ("Dr. Resh") will address the arguments raised by WNMIC in the order in which they appear as follows:

1. Dr. Resh has used the proper procedure to raise the issue of attorney's fees and costs.

WNMIC attempts to categorize Dr. Resh's claim for attorney's fees as being governed by NRS 482.345. By so doing, WNMIC argues that Dr. Resh cannot raise the issue of attorney's fees and costs by separate motion and that no attorney's fees may be awarded in excess of the

penal amount of the bond being $100,000. As to the first argument, WNMIC has mischaracterized Dr. Resh's position as clearly set forth in the Motion for Attorney's Fees.

Dr. Resh's Motion for Attorney's Fees and Costs is based on NRCP 68 and NRS 18.010. WNMIC cites no authority which requires that such a motion be brought as part of a Motion for Summary Judgment. On the contrary, the only case cited by WNMIC is *Sandy Valley Associates v. Sky Ranch Estates*, 117 Nev. 948, 956 (Nev. 2001). In fact, that decision does not support WNMIC's position. The Court in *Sandy Valley Associates, supra*, specifically held:

> "Procedurally, when parties seek attorney fees as a cost of litigation, documentary evidence of the fees is presented to the trial court, generally in a post-trial motion. Opposing parties have an opportunity to contest the request for attorney fees, and the trial court must determine if any agreement, statute or rule authorizes fees. If the fees are authorized, the trial court examines the reasonableness of the fees requested and the amount of any award. Thus, when a court is requested to award attorney fees as a cost of litigation, the matter is decided based upon pleadings, affidavits and exhibits."

Sandy Valley Associates, supra at 956.

Under NRCP 68, there is no way to know if the party to whom an Offer of Judgment has been made has failed to obtain a more favorable Judgment until that Judgment is entered. A Court can only award attorney's fees under NRCP 68 once a Judgment has been rendered. Until this Court decided Dr. Resh's Motion for Summary Judgment, a Motion for Attorney's Fees would have been premature. That is why, as recognized by the case cited by WNMIC (*Sandy Valley Associates, supra*), attorney's fees are generally addressed in a post-Trial Motion. The identical rationale would apply to attorney's fees under NRS 18.010.

2. Attorney's fees may be awarded in excess of the amount of the bond.

This issue has been addressed by Dr. Resh twice previously, both in his Reply to Opposition to Motion For Summary Judgment filed on September 1, 2020 and in the instant Plaintiff's Motion for Attorney's Fees and Costs. Dr. Resh has cited this Court to a Nevada Supreme Court decision in *Trustees of the Plumbers and Pipefitters Union Local 525 Health and Welfare Trusts Plan v. Developers Surety and Indemnity*, 120 Nev. 56 (2004). That decision

made it clear that NRCP 68 does not contain an exception for sureties and that attorney's fees may be awarded in excess of the amount of the bond. WNMIC attempts to somehow escape the holding in *Trustees of the Plumbers and Pipefitters Union ..., supra*, by arguing that the Nevada Legislature somehow intended to change the Nevada Supreme Court's ruling by amending the statute in 2013. WNMIC attaches to its Opposition a copy of Assembly Bill No. 282 which contains the amendment WNMIC relies upon.

Even a cursory review of Assembly Bill No. 282 discloses the intent of that Bill. The Legislature recognized that under Nevada case law, "any person" as used in NRS 482.345(6) has been interpreted literally to allow any individual person or group of persons (including a finance company) who was injured by the actions of a broker, manufacturer, etc. of motor vehicles to apply for compensation from the bond. Assembly Bill No. 282 changed the beneficiary from "any person" to "a consumer." There is absolutely nothing in the legislative history which would support WNMIC's position that the Nevada Legislature somehow intended to address, and in fact overturn, *Trustees of the Plumbers and Pipefitters Union ..., supra.* WNMIC's flight of fancy that the Legislature is "presumed to be aware of our case law" does not merit a reply.

The Court will note that WNMIC does not respond in any way to a federal decision cited in Plaintiff's Motion for Attorney's Fees entitled *Glazing Health and Welfare Fund v. Accuracy Glass and Mirror Co.*, Case No. 2:13-cv-1106-KJD-NJK, 2016 WL 1270991 (D. Nev. Mar. 30, 2016). That case was decided after Assembly Bill No. 282 and clearly holds that the surety may be held liable for fees that exceed the bond when it engages in direct litigation with the secured entity over the bond. WNMIC was a party to that litigation and yet still argues to this Court that Assembly Bill No. 282 somehow changed the law in regard to attorney's fees in excess of the penal amount of the bond.

WNMIC appears to fault Dr. Resh for not simply applying directly to the DMV Director for compensation from the bond. As a factual matter, Dr. Resh was not even furnished a copy of the bond or surety's name until after litigation was commenced. After the remaining Defendants in this case finally disclosed WNMIC as the surety, counsel for Dr. Resh made demand on

WNMIC and his claim was flatly rejected.[1] It was only when WNMIC flatly refused Dr. Resh's claim that he was forced to move to add WNMIC as an additional Defendant in this litigation. Hopefully, WNMIC is not asking this Court to believe that had Dr. Resh applied to the DMV Director, WNMIC would have gladly paid the bond. For WNMIC to argue that this alternate means of recovery was created "so that consumers would not have to litigate against the surety at all" is hypocrisy at its purest. It is precisely this type of approach that has led the Nevada Legislature to encourage courts to award attorney's fees "in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public." See NRS 18.010(b).

3. The *Beattie* Factors.

WNMIC insists that this Court may not award attorney's fees without addressing the *Beattie* Factors. Each will be dealt with below as follows:

a. Whether Plaintiff's claim was brought in good faith.

Dr. Resh attempted to sell his vehicle through the auction house known as Manheim. Defendant Money Machine, LLC d/b/a Compadres Auto Sales ("Compadres") received the sales proceeds and stole his money. WNMIC furnished the surety bond for Compadres and denied Dr. Resh's request for payment under the surety bond. How a party such as WNMIC can argue that Dr. Resh's claim was not reasonable or brought in good faith is something the Court should take into consideration in assessing how to deal with WNMIC.

b. Whether the Offer of Judgment was reasonable and in good faith in both its timing and amount.

WNMIC takes the position that Dr. Resh's Offer of Judgment was not a

[1] If WNMIC disputes these facts, Dr. Resh is perfectly willing to produce the correspondence his counsel had with counsel for WNMIC in an attempt to avoid litigation.

reasonable offer because it was for the full amount of the bond. In other words, a consumer who is robbed by an auto dealer is not being reasonable when he/she demands the entire amount of the bond.[2] WNMIC goes on to argue that Dr. Resh's offer "does not consider the risks involved nor did it offer any compromise at all." At page 7, lines 25-26 of Opposition.

This Court determined that Dr. Resh was a "consumer" in denying WNMIC's Motion to Dismiss by Order of October 30, 2019. As of that date, WNMIC knew that it had no defense to the instant lawsuit since "There is no question that an employee of Money Machine stole Dr. Resh's money." See WNMIC Trial Brief filed on June 15, 2020. Knowing that this Court considered Dr. Resh a consumer, one must wonder how WNMIC considered the risks involved. While WNMIC attacks Dr. Resh for not offering any compromise at all, where is the compromise offered by WNMIC? Reference to the file demonstrates that WNMIC never made a formal Offer of Judgment in any amount.[3] On the contrary, WNMIC has done everything in its power to prolong the resolution of Dr. Resh's meritorious claims.

c. Whether the Plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith.

WNMIC takes the position that this is an "all or nothing" case so therefore its decision to reject Dr. Resh's offer was perfectly reasonable. Moreover, WNMIC takes the position that as a member of the general public, a board-certified cardiologist working for Nevada Heart and Vascular Center (Dr. Resh), loses his status as a "consumer" by selling his vehicle through auction. It is submitted that WNMIC's position is unsupportable under any section of the Nevada Revised Statutes and simply defies logic.

d. Whether the fees sought by the offeror are reasonable and justified in amount.

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[2] The Court will keep in mind that the Offer of Judgment was not even in the full amount of Dr. Resh's loss. Dr. Resh's vehicle sold for $143,895 and the Offer of Judgment was for $100,000.

[3] Although as discussed below, WNMIC "sneaks" into its Opposition, an offer it made to Dr. Resh for $20,000.

WNMIC argues that since there was some block-billing, it is difficult for WNMIC to properly address the reasonableness of the fees. Block-billed time does not in any way preclude this Court from awarding reasonable attorney's fees. In fact, block-billed time entries are generally amenable to consideration under the *Brunzell* factors. See *Mendez v. County of San Bernardino*, 540 F.3d 1190, 1129 (9th Circuit 2008), overruled on other grounds by *Arizona v. ASARCO LLC*, 773 F.3d 1050 (9th Circuit 2014). A District Court must consider block-billed time entries when awarding attorney's fees. If a District Court encounters difficulty considering the character of the work done or the work actually performed because of block-billing, the District Court may order additional briefing or discount the relevant block-billed time entry or entries by an appropriate amount. See *Schuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005).

In the instant case, any block-billed entries submitted by Dr. Resh's counsel contained two to four task entries. Clearly, this is not an extreme example of block-billing and does not unduly interfere with this Court's ability to judge the reasonableness of the attorney's fees being requested. See, e.g. *Meriwhether v. Coughlin*, 727 F.Supp 823, 827 & n.5 (S.D.N.Y. 1989).

According to the itemized billings, counsel for Dr. Resh spent approximately 189.4 hours prosecuting this matter. The sole entry questioned by WNMIC is an entry of November 7, 2019 where Dr. Resh's counsel billed .4 hours for dictating an email to attorney Jordan Faux reminding him that he had neglected to file his Answer to the Amended Complaint in a timely manner. WNMIC attaches the relevant email to its Opposition as Exhibit B.

It does not take a Sherlock Holmes to figure out why counsel for WNMIC attached the one email he takes issue with to his Opposition as Exhibit B. The Court will note that counsel also includes his responding email which contains a settlement offer of $20,000 "as full and final settlement of all Dr. Resh's claims against WNMIC." It is clear that under the pretense of questioning why it took .4 hours to dictate the email in question, counsel for WNMIC sneaks into evidence the fact that his client made a $20,000 offer in settlement of this litigation.

Counsel's attempt to bootstrap his argument that his client's decision to reject Dr. Resh's offer and proceed to trial was reasonable is transparently specious. Offering twenty cents on the dollar[4] was never a reasonable offer to resolve this litigation. This is the rare case where a consumer (Dr. Resh) had the financial means and determination not to be bullied by a surety and its frivolous defenses. This case is a clear example of a surety using the heavy costs of litigation to avoid payment of legitimate claims. The Court is to be reminded that WNMIC actually had the audacity to argue that Dr. Resh was complicit with family friend Robert Larson to somehow circumvent the Nevada regulatory scheme and deserved to have his money stolen by an employee of Compadres. Similarly, WNMIC asks this Court to assume that Dr. Resh's attorney lied about his time entries. There is apparently no "rock bottom" for WNMIC's frivolous position.

4. Costs must be awarded.

In its Opposition, WNMIC does not identify any particular costs it believes was inadequately documented. Instead, WNMIC in its section entitled "Conclusion," includes a single sentence which states:

> "Finally, Plantiff has failed to submit a memorandum of costs and so no costs should be awarded."

Opposition at page 10, line 11.

The exact same argument was proferred by an unsuccessful litigant in *Garmong v. Rogney and Sons Construction*, 132 Nev. 971 (March 18, 2016). In that case, the unsuccessful litigant argued that since the party requesting costs listed its costs in its Motion for Attorney's Fees rather than a separate Memorandum of Costs, no costs could be awarded. In rejecting said argument, the Supreme Court of Nevada held as follows:

> "With respect to Valley Door Works, appellant contends that the award was improper because Valley Door Works provided insufficient supporting documentation. Beyond this general assertion, however, appellant does not identify any particular component of the costs that he believes was inadequately

[4] Or 14% of Dr. Resh's total loss, before attorney's fees and costs are added.

> documented, and our review of Valley Door Works' supporting documentation reveals a Client Expense Journal itemizing and describing every individual cost that it sought to recover, as well as an affidavit from counsel attesting that those costs were actually and necessarily incurred. Based on this documentation and appellant's lack of a particularized argument, we are not persuaded that the district court abused its discretion in awarding $565 in costs to Valley Door Works" *Garmong, supra* at page 3 of Slip Copy.

5. Conclusion.

There has never been a genuine dispute as to the facts of this case. All of the Defendants, including WNMIC, knew that an employee of Compadres stole the sales proceeds of Dr. Resh's vehicle to the tune of $143,895. The only issue in this litigation was whether Dr. Resh had the stomach not to be bullied into resolving this matter for pennies on the dollar. The positions taken by WNMIC in this litigation are the reason for an overburdened limited judicial system and the widespread delay in timely resolving meritorious claims. This Court should award Dr. Resh all of the attorney's fees and costs he has incurred in pursuing what all of the parties knew from the outset was a legitimate claim.

DATED this 23 day of October, 2020.

Respectfully submitted,

By: _____

FREDERIC I. BERKLEY, ESQ.
Nevada Bar No. 1798
SKLAR WILLIAMS PLLC
410 South Rampart Blvd., Ste. 350
Las Vegas, NV 89145
Attorneys for William Harry Resh

AFFIDAVIT OF FREDERIC I. BERKLEY, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, FREDERIC I. BERKLEY being duly sworn, hereby attest to the following:

1. I am, and have been throughout this litigation, the attorney of record for Plaintiff, William Harry Resh.

2. Although I believe it is clear from the Affidavit I signed which is attached to Plaintiff's Motion for Attorney's Fees and Costs filed on October 1, 2020, I can attest to the fact that all of the attorney's fees itemized in the time records which are attached to my previous Affidavit plus all of the costs which are itemized were actually and necessarily incurred in prosecuting this matter.

3. I have read the statements contained herein under the heading "*Beattie* Factors" and can verify that they are true and correct to the best of my knowledge.

4. Further affiant sayeth naught.

DATED this 23 day of October, 2020.

FREDERIC I. BERKLEY, ESQ.

SUBSCRIBED and SWORN to before me
this 23RD day of October, 2020.

NOTARY PUBLIC in and for said
COUNTY and STATE

NOTARY PUBLIC
EUGENE J. CRAWFORD
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. OCT. 15, 2022
No: 18-4279-1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of October, 2020, a true and correct copy of the foregoing **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS** was submitted electronically for filing and service with the Eighth Judicial District Court. Electronic Service of the foregoing document shall be made to all parties listed on the Odyssey E-File NV Service Contact List.

An employee of SKLAR WILLIAMS PLLC

EXHIBIT 29

EXHIBIT 29

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM RESH, Plaintiff, vs. MONEY MACHINE, LLC, Defendant.	CASE#: A-18-775815-C DEPT. XX

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

WEDNESDAY, NOVEMBER 4, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS:
MOTION FOR ATTORNEY FEES AND COSTS

APPEARANCES VIA VIDEO CONFERENCE:

For the Plaintiff: FREDERIC I. BERKLEY, ESQ.

For the Defendant: JORDAN F. FAUX, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

Las Vegas, Nevada, Wednesday, November 4, 2020

[Case called at 9:53 a.m.]

THE COURT: William Resh versus Money Machine, LLC, case number A775815.

Counsel, please note your appearances for the record.

MR. BERKLEY: Good morning and congratulations, Your Honor, Attorney Fred Berkley, Bar Number 1798, on behalf of the Plaintiff, William Harry Resh.

MR. FAUX: Jordan Faux, 12205, for -- or for Western National Mutual Insurance Company.

THE COURT: Okay. Is that it?

THE COURT CLERK: Yes.

THE COURT: All right.

All right. This is on for Plaintiff's motion for attorney's fees and costs. You know, looking at everything let me just start with -- let me turn to Western National.

You know, I tend to agree that, you know, until I decided Dr. Resh's motion for summary judgment, a motion for attorney's fees would have been premature. And I don't think that necessarily when the legislature decided to change the bill from person to consumer that it intended necessarily to overrule the decision of the Supreme Court in *Trustees of the Plumbers and Pipefitters*. So, you know, the Plaintiff cites the one Nevada District Court case, which obviously is not controlling, but it is relatively persuasive, I think, on that point. So, that's

sort of where I'm leaning at this point in time. So, let me give you -- let me turn to you first rather than Plaintiffs as far as argument.

MR. FAUX: Well, Judge, I think we -- you know, we laid it out in our papers as far as that point. It -- so -- and if I understand what you're saying, it sounds like you, you know, don't agree with our point of view on that. So, I don't know that there's anything I can say here that would change your mind on that issue and so I guess I'll just rely on the papers and the arguments we asserted in our papers as far as that issue goes.

THE COURT: Okay. I appreciate that.

Let me just ask, anything from Plaintiff's side?

MR. BERKLEY: Well, Your Honor, very briefly. Our motion for attorney's fees is brought under two different grounds. First, we've made an Offer of Judgment, which was filed on November the 26th, 2019. There's no question but that the surety did not obtain a more favorable verdict or a more favorable judgment, and therefore, under NRCP 68 we certainly should be entitled, I believe, for attorney's fees and costs.

But I think Your Honor should also, I respectfully request, give serious consideration to NRS 18.010. In that statute the legislature specifically stated the purpose of awarding attorney's fees under subsection b; that purpose being to punish and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims, and increase the cost of engaging in business and

providing professional services to the public.

This -- without going too far back into the facts of the case, this was not a difficult case, this was a straightforward case. Dr. Resh attempted to sell his vehicle at auction through Compadres. Compadres received a check meant for Dr. Resh, a hundred and forty-three thousand-plus dollars, and Compadres stole the money. No one disputes that. In fact -- and I know I've cited it a number of times, but I feel compelled to again point out to the Court -- in its trial brief the surety says, and I quote, there is no question that an employee of Money Machine stole Dr. Resh's money.

I really don't see how, at least with a straight face, the surety can now come before the Court and argue that this was a hotly disputed case or that there was any reason for the attorney's fees and for what we've been put through during the course of this litigation. We've spent years' worth of litigation, we've spent $76,000.00 plus in attorney's fees and costs.

There is case law which specifically says -- and Your Honor has alluded to a Nevada Supreme Court decision which says that our judgment against the surety is not limited to $100,000.00. And in the Federal District Court case, which I understand, as Your Honor has rightly pointed out, is not controlling. This Defendant was in that case, this very Defendant. The surety was also a defendant in that case, so they know that it's not limited to a hundred thousand dollars, and yet they argue -- the positions they have taken throughout, Your Honor, have no validity at all.

They brought up the question of whether or not Dr. Resh was a consumer and argued that the doctor lost his consumer status because he was selling his vehicle through auction, which I believe is a frivolous defense. Now, once Your Honor told him that or once Your Honor held against them on the motion to dismiss and they knew that Dr. Resh was a consumer, they made no effort at all to resolve this case.

I -- as I pointed out -- and I'd like to at least, you know, make it part of the record, you know, verbally -- this surety decided to attach as an exhibit to its opposition an exchange of emails that we had. The only bit of attorney's fees, the only detailed or specific, I should say, time that they specifically objected to was an email that I sent to Mr. Faux on November the 8th, 2019 reminding him that he hadn't filed his answer yet, but somewhat curiously and perhaps coincidentally right above that on that very same page is Mr. Faux's email to me in which he sneaks into the record the fact that they did make an offer of settlement of $20,000.00, which I think is something that you are not permitted to do under statute. Nevertheless, that's the one and only offer they ever made, was $20,000.00, which would have amounted, as I pointed out in my reply, to a very, very small percentage of Dr. Resh's loss.

And I say these things, Your Honor, not vindictively, but there was no reason for this lawsuit to have gone on this long and to have been fought out this vociferously. We all know what happened. Sureties like this generally get away with this type of behavior because people unlike Dr. Resh don't have the means or the stomach to litigate

them to its conclusion. He spent almost three quarters of what the bond amount is litigating issues such as this.

I believe this is an appropriate case for an award of all of our attorney's fees and costs. I would point out to the Court as well that I did not even include the attorney's fees we have expended in September and October because of the timing of this motion. I would ask the Court to seriously consider the award under the two grounds we've stated. Thank you.

THE COURT: All right. Thank you.

Let me hear anything further from insurance company.

MR. FAUX: Sure. Geez, where do I start? Well, I think, first of -- first off, I've been representing sureties for almost ten years now and we pay valid claims. My clients pay valid claims and they pay them a lot of times before litigation even starts, so I don't appreciate the allegations that we're trying to screw people over or not pay valid claims.

Now, in terms of NRS 18.010(b), I think our defense is -- our defense that we raised against Dr. Resh's claims were very reasonable.

THE COURT: Let me -- counsel, let me -- I -- I'm not going to find on 18.010. I don't think you reached the level of frivolousness or vexatiousness [sic] that that statute requires. So, the focus you -- should be on any issue you have as far as Rule 68.

MR. FAUX: Okay. All right. Well, with regards to Rule 68, I think some of the issues are the same there, and whether it was -- specifically, whether it was reasonable -- whether it was a reasonable Offer of Judgment and whether it was reasonable for Western National

to reject that Offer of Judgment.

So, you know, as we've argued in this case -- and obviously the Court did not agree with us, but the definition of a consumer under the statute on the plain face is, you know, the -- a final user who comes into possession of a vehicle for any purpose other than offering it for sale. So, you know, under that definition and the facts of this case, Dr. Resh gave up possession of the vehicle. The Court found facts that he gave the title and the keys to Mr. Larson with the intention of selling it at the auction. And so, you know, he did not have possession of the vehicle, he wasn't using the vehicle, and his intention in forming a relationship with our bond principal was to offer the car for sale.

And so, you know, I understand the Court's perspective that, you know, the legislature's intent was not to preclude or exclude claims by consignees, I guess, in situations like these, but I think, based on the plain language of the statute, Western National was justified and it was reasonable for Western National to reject the Offer of Judgment, which was, you know, in the full penal sum of the bond. So, there was no compromise there, no acknowledgment that, you know, at least under a plain reading of the statute, Dr. Resh didn't qualify as a consumer. Now, I understand the Court has disagreed with us, but I think that at the time those defenses were asserted, it was -- it's reasonable. It was a reasonable defense.

In regards to the amount of attorney fees, the only reason that I was -- cited only the one email was because that's the only specific example I could find because all the other examples are block billed and

joined together with other tasks. So, it's -- which is why, you know, the courts have held that when block billing occurs, you know, that time needs to be cut down and discounted because it takes away my ability to respond specifically to specific entries. And so that's the reason why I was only able to cite one because that's the only example that I could find where there was a single task and a single entry or at least one of the only ones I could find.

And I think another thing to highlight, you know, which is an issue too with the block billing, is that there's not a single -- I don't think there's a single point, one entry in these entire -- in the entire bills, and that's just flabbergasting to me, you know, so -- and we've cited case law that indicates that when the -- you know, when the minimum billing amount is a third of an hour or a quarter of an hour, that the fees also ought to be cut in those circumstances as well.

So, I think, under the *Beattie* factors Western National's rejection of the Offer of Judgment wasn't unreasonable, was reasonable and justified under the facts of this case.

You know, in regards to Western's statement in its trial brief, that was based on the evidence that we anticipated to see at trial. And frankly, the evidence wasn't submitted on the motion for summary judgment, and I was surprised to see that, that the evidence that clearly showed the principal stole the car wasn't submitted to the Court. I'm not sure why that was, but that's the case.

And so that's why we argued what we did in the opposition to the motion for summary judgment. We argue based on the evidences

presented by the Plaintiff that's actually presented, which was different than the world of evidence that we expected to be presented, which, like I said, was surprising.

But any event, I think that if Your Honor is inclined to award fees, that those should be discounted based on the block billing and the high and minimum hourly entry. And on that I'll -- that's -- submit.

THE COURT: All right. Thank you.

Plaintiff want to make a short reply?

MR. BERKLEY: I'll make a short reply, Your Honor. The -- I believe counsel said that that one entry that he has attached to his opposition is the only time that there was not block billing. If Your Honor had the time -- and I won't put the Court through it -- I could go through and -- dozens and dozens of my entries were single entries during the course of the last two years. It wasn't always block billing. There were certain entries that were just for telephone calls, just for review of emails, just for dictating stipulations, et cetera. I mean, I've -- there are dozens and dozens of them as you go through.

So, you know, just because there were times when I combined a telephone conversation and a dictation doesn't mean you should totally throw out the time, and no case law says that. Your Honor has broad discretion, and if Your Honor is saying that you are not going to be awarding attorney's fees under NRS 18.010, I think at the very minimum Your Honor should consider all of my client's attorney's fees under NRCP 68.

THE COURT: All right.

All right. I am going to grant attorney's fees under Rule 68. Considering the *Beattie* factors, I do find that Plaintiff's claim was brought in good faith, that the offer was reasonable, in good faith both in timing and in amount.

Again, I'm not going to go down 180.10 [sic], but, you know, as to whether the rejection of the offer and proceeding to trial was grossly unreasonable or in bad faith, I -- I'm not necessarily going to call it grossly unreasonable, but I have to admit I don't really see -- I didn't really have much trouble in terms of the decision that I rendered in this case, and if it wasn't grossly unreasonable, it was, I think, unreasonable in a -- in an obvious way.

And then, generally I think the fees are reasonable and justified. I'm going to go back and take a look at it in terms of the issues that Defense raised and as far as the billing and evaluate the fees, but as -- overall, I do find the fees are reasonable under the *Brunzell* factors in terms of the nature of the litigation, the qualities of the advocate, the time and difficulty of the case, and the result that was achieved.

So, I'll ask -- I am not going to go, like I said, down 18.010. I'll ask that Plaintiff's counsel prepare a order, run it by Defense counsel, essentially setting out the Court's findings as it relates to the Rule 68 under *Beattie* and under *Brunzell* and leave the amount for attorney's fees open.

MR. BERKLEY: Your Honor, may I file a supplement demonstrating my time for September and October, which happened after I filed the motion?

THE COURT: Sure, go ahead.

MR. BERKLEY: And of course counsel has certainly every right to object to that if he'd like.

THE COURT: No, that's fine. I can -- you know, under the Rule 68 finding I -- I'm totally good with that.

MR. BERKLEY: I'll file a supplement then.

THE COURT: Okay.

All right. Anything else from either side at this point?

MR. BERKLEY: None from the Plaintiff, Your Honor.

THE COURT: Okay. All right.

MR. FAUX: Nope.

THE COURT: That will be the order of the Court. Thank you, guys.

MR. BERKLEY: Thank you, Your Honor.

[Proceedings concluded at 10:13 a.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Trisha Garcia
Court Transcriber

EXHIBIT 30

EXHIBIT 30

SUPPL
FREDERIC I. BERKLEY, ESQ.
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William Harry Resh

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM HARRY RESH, an individual, Plaintiff, v. MONEY MACHINE, LLC, a Nevada limited liability company dba COMPADRES AUTO SALES; ROBERT LEGASPI, an individual, WESTERN NATIONAL MUTUAL INSURANCE COMPANY, a Minnesota corporation; DOES I through X; and ROE CORPORATIONS I THROUGH X. Defendants.	Case No.: A-18-775815-C Dept. No.: XX **SUPPLEMENT TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS**

During the hearing on November 4, 2020 on Plaintiff's Motion for Attorney's Fees and Costs, this Court granted Plaintiff's counsel's request to supplement his request for attorney's fees and costs by adding his firm's October and November time and costs. Plaintiff has therefore attached hereto an itemization of Plaintiff's attorney's fees and costs from September 1, 2020

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through November 4, 2020. These attorney's fees and costs in the amount of $14,932.27 are in addition to the attorney's fees and costs set forth in the itemized billings which are attached to Plaintiff's Motion for Attorney's Fees and Costs filed on October 1, 2020.

DATED this 6 day of November, 2020.

Respectfully submitted,

By: _____

FREDERIC I. BERKLEY, ESQ.
Nevada Bar No. 1798
SKLAR WILLIAMS PLLC
410 South Rampart Blvd., Ste. 350
Las Vegas, NV 89145
Attorneys for William Harry Resh

AFFIDAVIT OF FREDERIC I. BERKLEY, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, FREDERIC I. BERKLEY being duly sworn, hereby attest to the following:

1. I am, and have been throughout this litigation, the attorney of record for Plaintiff, William Harry Resh.

2. I can attest to the fact that all of the attorney's fees itemized in the time records attached hereto plus all of the costs which are itemized were actually and necessarily incurred in prosecuting this matter.

3. Further affiant sayeth naught.

DATED this 6 day of November, 2020.

FREDERIC I. BERKLEY, ESQ.

SUBSCRIBED and SWORN to before me
this 6th day of November, 2020.

NOTARY PUBLIC in and for said
COUNTY and STATE

NOTARY PUBLIC
EUGENE J. CRAWFORD
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. OCT. 15, 2022
No: 18-4279-1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6TH day of November, 2020, a true and correct copy of the foregoing **SUPPLEMENT TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS** was submitted electronically for filing and service with the Eighth Judicial District Court. Electronic Service of the foregoing document shall be made to all parties listed on the Odyssey E-File NV Service Contact List.

An employee of SKLAR WILLIAMS PLLC

SKLAR WILLIAMS PLLC
410 South Rampart Boulevard, Suite 350
Las Vegas, NV 89145

HISTORY

William "Bill" H. Resh, M.D.
(VIA E-MAIL ONLY)
913 Vegas View Drive
Henderson, NV 89052

November 04, 2020

In Reference To: Resh v. Money Machine, LLC
68170.002

Professional Services

			Rate	Hours	Amount
9/14/2020 -	FIB	Conference with David Barney regarding effect of discharge in Bankruptcy Court on automatic stay.	400.00/hr	0.40	160.00
-	DBB	Review order of discharge in Legaspi bankruptcy case. Legal research regarding effect of same on lawsuit; conference with Fred Berkley regarding same.	275.00/hr	1.00	275.00
9/15/2020 -	FIB	Prepare for oral argument on Motion for Summary Judgment and outlined argument to be presented, review emails from Judges' law clerk, telephone conference with Judges' law clerk and dictated email to Dr. Resh.	400.00/hr	1.60	640.00

			Rate	Hours	Amount
9/17/2020 -	FIB	Research for Motion for Attorneys Fees and Costs under NRCP 68 and NRS 18.010 and began dictation of Motion.	400.00/hr	3.90	1,560.00
-	DBB	Email correspondence with Fred Berkley regarding standards for award of attorney's fees.	275.00/hr	0.30	82.50
9/21/2020 -	DBB	Conference with Fred Berkley regarding legal issues involved with motion for attorney's fees. Begin research regarding starting time for pre-judgment interest.	275.00/hr	0.70	192.50
9/22/2020 -	FIB	Dictated further sections of draft of Motion for Attorneys Fees and email to Office Manager regarding fees, review Minute Order of September 15, 2020 and dictated proposed Findings of Fact, Conclusions of Law and Order Granting Summary Judgment and email to Jordan Faux regarding review of same.	400.00/hr	4.30	1,720.00
9/23/2020 -	FIB	Compile attorneys fees and costs for Motion and made additional revision to Points and Authorities.	400.00/hr	1.60	640.00
9/25/2020 -	FIB	Review email from Dr. Resh regarding status and dictated reply with status and legal ramifications.	400.00/hr	0.40	160.00
-	DBB	Continued research regarding prejudgment interest and other issues to prepare motion for attorney's fees. Email correspondence with Fred Berkley regarding same.	275.00/hr	0.50	137.50
9/29/2020 -	FIB	Dictated email to Jordan Faux regarding review of Finding of Fact, Conclusions of Law and Order, review Jordan Faux	400.00/hr	0.80	320.00

			Rate	Hours	Amount
		emails and dictated revisions to pleading and responding email to Jordan Faux.			
9/30/2020 -	FIB	Review email from Jordan Faux and finalized Findings of Fact, Conclusions of Law, etc., dictated email to Judge Johnson and finalized Motion for Attorney's Fees and Interest.	400.00/hr	2.80	1,120.00
10/1/2020 -	FIB	Review Jordan Faux email to Department 20 and competing Order, filed Motion for Attorney Fees and Costs.	400.00/hr	0.90	360.00
10/2/2020 -	FIB	Review Notice of Hearing and calendared same on Motion for Attorney Fees and Costs, dictated email to Dr. Resh regarding same.	400.00/hr	0.70	280.00
10/14/2020 -	FIB	Review Findings of Fact, Conclusions of Law and Order Granting Summary Judgment entered by Judge Johnson.	400.00/hr	0.40	160.00
10/16/2020 -	FIB	Review Plaintiff's Opposition to Motion for Attorneys Fees, dictated memo to David Barney regarding issues of law to be researched for Reply and begun formatting arguments for Reply.	400.00/hr	1.60	640.00
10/19/2020 -	DBB	Begin legal research regarding timing of motion for attorney's fees issue.	275.00/hr	1.20	330.00
-	DBB	Review email correspondence from Fred Berkley regarding legal issues for motion for attorney's fees. Review of Motion and Western Mutual opposition to respond to same. Email correspondence with Fred Berkley regarding same.	275.00/hr	1.20	330.00
10/20/2020 -	FIB	Dictated rough draft of Plaintiff's Reply to Defendant's Opposition to Motion for Attorneys Fees and Costs.	400.00/hr	4.20	1,680.00

			Rate	Hours	Amount
10/21/2020 -	DBB	Legal research regarding outstanding issues relating to attorney's fee motion. Draft email memorandum to Fred Berkley regarding same.	275.00/hr	1.80	495.00
10/22/2020 -	FIB	Reviewed, revised and finalized Reply to Opposition to Motion for Attorney's Fees and Costs and dictated email to Dr. Resh.	400.00/hr	3.40	1,360.00
11/2/2020 -	FIB	Review two (2) emails from Department 20 regarding upcoming hearing and Notice of Change of Hearing.	400.00/hr	0.60	240.00
11/3/2020 -	FIB	Review pleadings and prepared for oral argument on Motion for attorneys Fees and Costs.	400.00/hr	1.10	440.00
11/4/2020 -	FIB	Prepared for and appearance before Judge Johnson on Plaintiff's Motion for Attorneys Fees and Costs, dictated email to Liz regarding accounting and dictated email to Dr. Resh regarding results of hearing and reviewed response.	400.00/hr	3.20	1,280.00
		For professional services rendered		38.60	$14,602.50

Additional Charges :

			Qty/Price	
9/1/2020 -	FIB	WizNet: Fee for filing Plaintiff's Reply in Opposition to Plaintiff's Motion for Summary Judgment	1 3.50	3.50
9/14/2020 -	DBB	PACER: Public Access to Court Electronic Records (3rd Quarter)	1 3.60	3.60
9/25/2020 -	DBB	Legal Research: WestLaw (09/21/2020; 09/25/2020)	1 78.84	78.84

			Qty/Price	Amount
10/1/2020	FIB	WizNet: Fee for filing Plaintiff's Motion for Attorney's Fees and Costs	1 3.50	3.50
10/22/2020	DBB	Legal Research: WestLaw (10/19/2020; 10/21/2020; 10/22/2020)	1 236.83	236.83
10/23/2020	FIB	WizNet: Fee for filing Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Attoreny's Fees and Costs	1 3.50	3.50
		Total costs		$329.77
		For professional services rendered	38.60	$14,932.27
9/10/2020		Payment - thank you - Fees [FIB 6280; DBB 1347.50]; Costs 405.16. Check No. 2960		($8,032.66)
10/9/2020		Payment - thank you - Fees [FIB 6320]; Costs 82.34. Check No. 2921		($6,402.34)
		Total payments and adjustments		($14,435.00)

Attorney Summary

Name	Hours	Rate	Amount
David B. Barney	6.70	275.00	$1,842.50
Frederic I. Berkley	31.90	400.00	$12,760.00