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May 17, 2023

Federal Trade Commission  
Office of the Secretary, Suite CC-5610,  
600 Pennsylvania Avenue NW,  
Washington, DC 20580  
Via: [electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov)

**Re: Attached Petition for Rulemaking Concerning  
the Finality of a Car Purchase (Yo-Yo Financing)**

To Whom This May Concern:

We hereby re-submit the enclosed petition for rulemaking to the Federal Trade Commission (FTC or Commission), concerning the harms to car buyers from unfair, deceptive and sometimes fraudulent conduct relating to the finality of a car purchase, i.e. yo-yo sales. The petition seeks a rulemaking pursuant to 15 U.S.C. 57a(1)(B) and 12 U.S.C. 5519(d). With the support of written materials, including individual cases, consumer experiences, and published research, the petition requests a rule that would require auto dealers to include specific language in the credit contract that accompanies each sale, to state that the terms of the signed contract are final, the consumer was fully approved for the credit terms in the contract before the signing, and the terms are not conditional on whether the contract is or will be assigned to a third party. Violations of this proposal would amount to an unfair and deceptive practice under the Federal Trade Commission Act.

In a typical auto sale transaction, buyers are asked to sign numerous documents, including a contract with credit terms, which includes the expected down payment, monthly payment, and interest rate, and are then permitted to drive off the lot with the purchased car. In a yo-yo sale, car buyers are then surprised when days, weeks or even months later, the dealer summons them with demands to change the credit terms (typically with less favorable terms), change the purchased vehicle, or unwind the deal completely.<sup>1</sup> Notably, although dealers engage in these post-contractual changes in some deals, for others they also assert that the buyers are bound by the credit contract terms as of the date of signing.

The enclosed petition, signed by six national public interest organizations who represent car buyers across the country, demonstrates that despite agreeing to terms in signed credit contracts, car dealers regularly refuse to follow through with the original agreement with buyers, and typically engage in yo-yo tactics by claiming the transaction depends on the dealer's ability to sell the signed sales contract to a third-party financing entity at the dealer's desired price. The petition shows that in many situations the dealer holds the door open for itself with additional fine print that asserts it can make multiple changes to the terms depending on its ability to sell or assign the credit contract to a third-party. The petition also shows that this systemic practice misleads consumers and traps them with unexpected, prohibitive costs.

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<sup>1</sup> Chris Arnold, "Even after you think you bought a car, dealerships can 'yo-yo' you and take it back," NPR, Feb. 4, 2023, available at <https://www.npr.org/2023/02/04/1152932192/yo-yo-car-sales>.

The petition asserts that this practice is deceptive by its very nature and is wholly inconsistent with several federal consumer protection laws.

Based on the evidence, dealers control the details involved in a car sale and can shoulder the risk when a consumer signs the credit contract. Dealers can ensure that the contract terms are complete and satisfactory before the final stage of signing the original credit contract. Further, dealers at their own discretion can facilitate a non-deceptive process for potential buyers to leave the dealership with a vehicle, through test drives or other temporary possession of the car, without requiring the consumer to sign a credit contract. So long as the buyer has not signed the credit contract that the dealer offered to them, the average consumer will be aware and will not be misled into relying on oral or written representations that are changed on a dealer's whim.

The petition's suggested language for credit contracts in auto sales would provide proper notice of the parties' obligations regarding the finality of a signed credit contract, similar to the FTC's well-established Holder Rule. The Holder Rule, formally known as the "Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses," requires sellers to include language in credit contracts that provides notice to consumers that they have a right to assert the same legal claims and defenses against anyone who purchases the credit contract, as they would have against the original seller of goods or services who originally provided the credit.<sup>2</sup> Under the Holder Rule, failure to provide the notice in contracts constitutes an unfair and deceptive practice. The petition recommends that the FTC follow this reliable model to help avoid unnecessary obfuscation in car sales transactions.

In a proposed rulemaking published in July 2022, the FTC, among other things, proposed to make it a prohibited misrepresentation for a dealer to mislead a consumer about when a sale becomes final and for a dealer to mislead a consumer about what will happen to a cash down payment or trade-in vehicle if a sale is not finalized.<sup>3</sup> We strongly believe that this approach will not deter dealers from pressuring consumers to enter into additional contracts with less favorable terms, and may, in fact, exacerbate consumer harm resulting from yo-yo sales tactics.

By adopting a policy that ensures credit contracts signed by consumers and auto dealers are binding and enforceable, the FTC would accomplish several goals. It would facilitate accurate, non-conflicting information regarding the final terms of auto sales transactions, deter systemic violations of state and federal laws, level the playing field for honest dealers that do not engage in deceptive yo-yo tactics, and shield car buyers from costly and lasting harm.

We appreciate your serious consideration and attention to this matter.

Sincerely,

Thomas Domonoske  
Consumer Litigation Associates, PC

Christine Hines  
National Association of Consumer Advocates

Enclosure

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<sup>2</sup> 16 CFR § 433.2.

<sup>3</sup> Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, July 13, 2022.



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April 29, 2022

Federal Trade Commission  
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### **Request for Rulemaking Concerning the Finality of a Car Purchase (Spot Delivery and Yo-Yo Financing)**

The National Association of Consumer Advocates, the Consumer Federation of America, the Center for Responsible Lending, Consumers for Auto Reliability and Safety, the National Consumer Law Center, on behalf of its low-income clients, and U.S. PIRG respectfully request that the Federal Trade Commission (FTC or Commission) promulgate a rule requiring that a credit contract between a consumer and an auto dealer constitutes the final terms of a car sale. Under this proposal, the terms of the signed retail credit contract (also known as the retail installment sales contract-RISC) between the buyer and commercial seller of a car are treated as final, and would include a requirement that the consumer was fully approved for the credit terms in the contract before the signing, and that the credit terms in the contract remain effective whether or not the contract is or will be assigned to a third party. As discussed below, many sellers represent to car buyers that the sales transactions are complete with knowledge that the sales may actually be incomplete, causing costly additional negotiations and damage to buyers. The requested regulatory revisions would provide guidance to the auto retail sales industry with a bright line rule and bring clarity to help ensure that car buyers receive accurate, non-conflicting information regarding the final terms of the transaction.

The FTC has no formal regulation establishing an auto dealer's responsibilities regarding the finality of a car purchase. It has exclusive jurisdiction over car dealers that first extend credit to car buyers and then assign financing to third-party lenders. It is specifically authorized to issue a rule to curb unfair and deceptive practices relating to the sale, servicing, and leasing of motor vehicles.<sup>1</sup>

Under this proposal, dealers would be required to include specific language in the credit contract that would protect both buyers and sellers, and ensure that all parties to a contract that sets forth the credit terms of a car sale can reasonably rely on the finality of those terms.

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<sup>1</sup> 12 U.S.C. 5519(d).

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## I. STATEMENT OF INTEREST

**The National Association of Consumer Advocates (NACA)** is a nationwide, non-profit organization of more than 1,500 private and public sector attorneys, legal services attorneys, law professors, law students, and non-attorney consumer advocates. NACA and its members' primary interest is the protection and representation of consumers. NACA's mission is to promote justice for all consumers and to provide a forum for information sharing among consumer advocates across the country. From its inception, NACA has focused on issues concerning unfair, deceptive, abusive and fraudulent practices by businesses that provide financial and credit-related services, including in auto sales. NACA follows developments in this area and consults with federal agencies that enforce laws that regulate this type of sale.

In 2021, NACA issued a survey to 115 advocates at private law firms, legal services and nonprofit organizations in 33 states about consumer experiences in auto transactions.<sup>2</sup> Notably, 63% of these advocates reported that in a four-year period covering 2016 – 2020, they had represented consumers with claims related to spot delivery or yo-yo financing.<sup>3</sup> One of every three survey respondents cited spot delivery/yo-yo financing schemes as one of the most prevalent issues in their work. As a group, private consumer attorneys, named spot delivery/yo-yo financing schemes as one of the top three practices that causes the most systemic harm to consumers in the auto sales market.<sup>4</sup>

**The Consumer Federation of America (CFA)** is an association of nearly 300 non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. CFA investigates consumer issues and behavior through surveys, focus groups, investigative reports, and analysis, and advances pro-consumer policies on various issues before federal and state legislatures, regulatory agencies and courts. CFA has a history of researching practices by auto dealers and manufacturers that harm consumers, and it has worked to promote policies and legislation which prioritize fairness in the auto marketplace for consumers.

**Consumers for Auto Reliability and Safety (CARS)** is a national, award-winning non-profit auto safety and consumer advocacy organization based in Sacramento and dedicated to preventing motor vehicle-related fatalities, injuries, and economic losses. CARS has successfully spearheaded enactment of numerous landmark laws in California and nationally to improve protections for America's new and used car buyers. The president of CARS was named to represent the public interest in regulatory negotiations with the auto industry regarding state auto lemon laws, and has been repeatedly invited by Congress to testify on behalf of the public interest regarding auto sales and financing policies. CARS also participated as a panelist in FTC workshops and a hearing convened by the Consumer Financial Protection Bureau regarding auto

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<sup>2</sup> National Association of Consumer Advocates, *Online Survey: Consumer Harms in Auto Transactions Today*, January 2021, available at [https://www.consumeradvocates.org/wp-content/uploads/2022/01/naca\\_survey\\_report\\_autotransactions\\_012021.pdf](https://www.consumeradvocates.org/wp-content/uploads/2022/01/naca_survey_report_autotransactions_012021.pdf).

<sup>3</sup> Id.

<sup>4</sup> Id.

sales and financing practices, including discriminatory auto dealership "markups" and yo-yo financing.

**The National Consumer Law Center (NCLC)** is a non-profit national research and advocacy organization focusing on the legal needs of low-income, financially distressed, and elderly consumers. NCLC provides legal and technical consulting and assistance on consumer law issues to legal services offices, government attorneys, and private attorneys representing low-income consumers across the country. NCLC seeks to bring transparency and fairness to the markets for cars and car finance. Through its Working Cars for Working Families project, NCLC seeks to ensure that the lack of a car does not stand in the way of families' ability to become economically successful and to promote solutions to help car-ownership efforts assist struggling families to get a car.

**The Center for Responsible Lending** is a non-partisan, nonprofit research and policy advocacy organization working to promote financial fairness and economic opportunity for all, end predatory lending, and close the racial wealth gaps. CRL's expertise gives it trusted insight to evaluate the impact of financial products and policies on the wealth and economic stability of Asian, Black, Latino, rural, military, low-wage, low-wealth, and early-career workers and communities. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Our work leverages the strength of partnerships with national and local consumer and civil rights organizations.

**U.S. PIRG** is an advocate for the public interest. We speak out for a healthier, safer world in which we're freer to pursue our own individual well-being and the common good. U.S. PIRG serves as the federation of non-profit state Public Interest Research Groups, with member PIRGs and hundreds of thousands of citizen members across the country. U.S. PIRG and its affiliates have long had an interest in making markets fair and products safe for the consumers who use them. U.S. PIRG and the state PIRGs have conducted research into the sale of unsafe vehicles, advocated for passage of state new and used car lemon laws and documented how vehicle sales practices are fueled by unfair or deceptive add-ons that have driven consumers into record amounts of auto debt.

## II. ACTION REQUESTED AND PROPOSED REGULATORY LANGUAGE

We recommend the following language for a rulemaking:

"A. Every consumer credit contract for the sale of a vehicle by a dealer shall include the following paragraph:

*"BY PRESENTING THIS CONSUMER CREDIT CONTRACT TO A CONSUMER FOR SIGNATURE, THE DEALER AS CREDITOR AFFIRMS THAT THE CONSUMER HAS BEEN FULLY APPROVED FOR THE CREDIT THAT IS BEING EXTENDED. ANY TERMS THAT ASSERT THAT THIS CREDIT CONTRACT IS "CONDITIONAL" OR "NOT YET APPROVED"*

OR SIMILAR TO THAT EFFECT SHALL BE VOID AND UNENFORCEABLE. ONCE SIGNED BY THE CONSUMER, THIS CREDIT CONTRACT CANNOT BE WITHDRAWN BY THE DEALER WHETHER OR NOT THIS CREDIT CONTRACT IS ASSIGNED TO A THIRD PARTY.”

- B. Regarding a consumer credit contract for the sale of a vehicle by a dealer, misrepresenting the credit contract as conditional after the consumer has signed it is an unfair and deceptive practice under 15 USC Section 45(a).”

### III. BACKGROUND AND SUPPORT

An auto purchase is the second largest financial transaction for millions of consumers, second only to buying a home. Car buyers primarily obtain financing for car purchases through dealers – “87% of buyers finance the car through the dealership,” making the dealer the original lender.<sup>5</sup> Automobiles are the only regular major purchase that is financed primarily by the seller.<sup>6</sup> In auto sales, the dealer usually assigns the credit contract, which it has negotiated with the buyer, to a third-party assignee, typically a bank, credit union, a finance company associated with a manufacturer, or a nonbank entity that purchases credit contracts. Many of these assignees then pool and sell rights to such credit contracts through the securitization process.

Consumer finance experts contend that a car purchase has become what is arguably “the most complicated transaction a consumer ever faces, even more so than a home purchase.”<sup>7</sup> Certainty, transparency and clarity of sale terms, particularly the financing details, are crucial to facilitate a smooth, incident- and injury-free process for all parties in this seemingly complex process.

Historically, during a car purchase, buyers are asked to physically sign numerous documents, including a contract with credit terms, which includes the expected down payment, monthly payment, and interest rate, and are then permitted to drive off the lot with the purchased car. The stack of documents often includes a separate document (referred to in some places as the “spot delivery agreement”) that asserts the deal is not final until the credit terms disclosed on the credit contract and agreed to by the buyer are assigned to a third party. Now, many car dealers conduct the transaction on computers or other electronic devices, and some dealers give the consumer a flash drive with electronic documents on it. The credit contract and spot delivery agreement contradict each other in a material way – one appears to be final while another claims the transaction is incomplete until further action is taken.

While from the seller’s perspective the deal may not be final until it can complete the sale of the credit contract to an assignee on terms known only to it, consumers leave with their new car overwhelmingly believing that the transaction is complete. A credit contract’s typical terms support the conclusion that the transaction is complete and that buyers when they sign it, are

<sup>5</sup> Levitin, Adam J., *The Fast and the Usurious: Putting the Brakes on Auto Lending Abuses*, 108 Georgetown Law Journal 1257, 1262 (April 17, 2020), available at <https://ssrn.com/abstract=3438528>.

<sup>6</sup> Id.

<sup>7</sup> Levitin, Adam J., at 1262.

bound by its terms. Yet, a signed credit contract along with a contradictory spot delivery agreement ensure that a buyer does not become a potential customer for other car sellers in the marketplace because the consumer naturally believes the transaction is complete. Car buyers are then surprised when days, weeks or even months later, the dealer summons them with demands to change the credit terms, change the purchased vehicle, or unwind the deal completely. To be clear, only the dealer can engage in these post contractual changes as the buyers are bound by the terms of the contract.

Auto sales are unique in commerce in that a seller can generate and execute a sales credit contract with discrete payment terms set out for the buyer and, deliver the product, but simultaneously intends to cancel the transaction and insist on return of the product if the seller's separate negotiation with a third-party does not result in the desired outcome for the seller. The yo-yo consequences on the buyer stemming from a dealer's repeated demands to change a signed contract cause serious financial harm and emotional distress to car buyers. Consumers have no power to influence a creditor or third-party assignee's willingness to agree to any terms the dealer may want when it attempts to sell the credit contract. Nor do consumers have any power over the dealership's willingness to comply with the credit contract, or what terms it may demand from any assignee.

As the Center for Responsible Lending reported in 2012, "(y)o-yo scams are possible because of the pervasive practice of conditioning finance contracts on the dealer's decision to accept, or reject, purchase offers from third parties."<sup>8</sup> Particularly now in an era where the supply chain is reeling from the coronavirus pandemic and the auto sales markets is experiencing an ongoing inventory shortage,<sup>9</sup> sellers may be motivated to abuse yo-yo schemes that harm consumers but that may beef up dealer profits.

### **A. Allegations in Recent Cases Show Misrepresentations and Deceptions of the Finality of Car Deals Harm Consumers**

Below are summaries of allegations set forth in complaints filed in state courts and arbitration proceedings.

***Heidi McGill v. Bob Moore Dodge Chrysler Jeep***<sup>10</sup> – In November 2020, Heidi McGill, an Oklahoma consumer, arrived at a dealership to buy a car. While there, after the dealer conducted a review of her credit history, Ms. McGill made a down payment on a new Dodge Charger, traded-in her old car, and took the Dodge Charger home. Ms. McGill alleged that she did not receive a copy of the contract at the time. She reported that the dealer told her that the bank it intended to sell her loan to was not available on the weekend.<sup>11</sup>

<sup>8</sup> Delvin Davis, *Deal or No Deal: How Yo-Yo Scams Rig the Game against Car Buyers*, (April 2012, available at <https://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/Deal-or-No-Deal-How-Yo-Yo-Scams-Rig-the-Game.pdf>).

<sup>9</sup> Jane Ulitskaya, *Inventory Shortage Update: Should You Wait to Buy a Car?*, CARS.com, (Jan 13, 2022), available at <https://www.cars.com/articles/inventory-shortage-update-should-you-wait-to-buy-a-car-445723/>.

<sup>10</sup> Complaint, *McGill v. Bob Moore Dodge Chrysler Jeep*, Dist. Ct. Oklahoma, Case CJ-2021-2872 (July 2, 2021) and Exhibit.

<sup>11</sup> *Id.*, at 1.



A week later, she returned to the dealer and was asked to sign a new set of documents with different financing terms. She was provided a copy of the contract with the new terms, but with pages missing. Seventeen days after she took the car home, the dealer asked her repeatedly for additional financial information including her W-2, and then demanded return of the car.<sup>12</sup> According to Ms. McGill, about 26 days after she took possession of the car, the dealer demanded a co-signer for the financing terms, indicating that the process was still not completed from the dealer's perspective.<sup>13</sup> Ms. McGill alleged that the dealer allowed 10 other banks to review her credit during this time, lowering her credit score.<sup>14</sup>

About 31 days after she took possession of the car, Ms. McGill alleged the dealer told her that if no financial entity purchased her loan, then they will return some funds based on the value of her trade-in.<sup>15</sup> She returned to the dealer and signed a third set of financing documents. Yet, around 37 days after taking possession of the vehicle, the dealer told her she would have to find her own financing, according to Ms. McGill. In response, she offered to return the Dodge Charger in return for her down payment and trade-in, which the dealer declined to do.<sup>16</sup>

Around 40+ days later, according to Ms. McGill, the dealer threatened to file a stolen vehicle report if the Dodge Charger was not returned. Ms. McGill returned the Charger the next day.<sup>17</sup> The dealer refused to return the down payment unless she executed a release of all claims. McGill did not execute the release, and the dealer repossessed the Charger without filing for replevin.<sup>18</sup>

The deal included a signed Retail Installment Sale Contract setting forth the financing terms, as well as a "Spot Delivery Agreement" (signed with the same date), which stated the car purchase was conditional on the dealer finding a lending institution willing to purchase the Retail Installment Sales Contract.<sup>19</sup> In her filed complaint against the dealer, Ms. McGill alleged breach of contract, fraud, fraudulent inducement, negligence, credit defamation, failure to accurately disclose loan terms, deceptive trade practices, intentional infliction of emotional distress, conversion, and wrongful repossession.<sup>20</sup>

***Justin Sacco v. Paradise Auto Center***<sup>21</sup> – Oregon consumer Justin Sacco went to Paradise Auto Center, an auto dealer, to purchase a car in mid-August 2020. According to Mr. Sacco, after a review of his credit history, the dealer selected a 2017 Mitsubishi Mirage to sell to Mr. Sacco. The dealer and Mr. Sacco agreed to a loan, a \$3,000 down payment, and signed a Retail Installment

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<sup>12</sup> Id., at 2.

<sup>13</sup> Id., at 3.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id., at 3.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Documents are attached as Exhibits A and B.

<sup>20</sup> Id.

<sup>21</sup> Complaint, *Sacco v. Paradise Auto Center, LLC*, Ore. Circuit Ct., Case No.: 20CV36597 (Oct.16, 2020) and Exhibit C.

Contract (RISC) containing the credit terms. Mr. Sacco signed all the papers that day and drove the car home. He returned to the dealer the next day and gave them the down payment.<sup>22</sup>

Mr. Sacco reported that about two weeks after paying the down payment, Paradise called and told him that the bank did not approve the loan with the terms on the RISC and that he needed to return to the dealer. Mr. Sacco returned to the dealer on August 29, 2020 where they discussed new financing options. Mr. Sacco said that he and the dealer agreed to new credit terms.<sup>23</sup>

Mr. Sacco alleged that about a month later, on September 25, 2020, Paradise called him and said that they could not get secure the financing and that he needed to return the car. He returned the car on the same day, but Paradise refused to return his down payment.<sup>24</sup> Consequently, he did not have sufficient funds for a down payment to purchase another car, lacked transportation to go to work, and lost wages as a result.

According to Mr. Sacco's filed complaint, the dealer allowed him to execute a purchase order and a retail installment contract (RISC) and to take possession of the car prior to Mr. Sacco's loan being approved by another financing entity.<sup>25</sup> Paradise offered to sell the motor vehicle to Mr. Sacco under a retail installment contract that is subject to an assignee's agreement to purchase the retail installment contract. Prior to offering or negotiating new financing terms in person, the dealer failed to return all items of value to Mr. Sacco. No assignee agreed to purchase the retail installment contract on the exact terms that the dealer and Mr. Sacco negotiated, and Paradise did not receive final approval for a purchase of the contract from another financing entity on terms acceptable to it. Mr. Sacco alleged that the dealer's conduct violated Oregon's unlawful trade practices law.<sup>26</sup>

***Estephania Palacios Gomez v. Low Price Auto LLC Db a Salem Auto Market***<sup>27</sup> – On March 23, 2021, Oregon resident Ms. Estephania Palacios Gomez bought a 2012 Mercedes Benz C250 from Salem Auto, an auto dealer.<sup>28</sup> Ms. Gomez traded in her current car, paid a \$2,000 down payment, and agreed to pay additional funds in a deferred down payment. After applying the down payment, Salem Auto and Ms. Gomez agreed to a loan for the remaining amount, and signed a Retail Installment Contract (RISC) with the understanding that the dealer Salem Auto was to obtain financing for Ms. Gomez. Ms. Gomez signed all the purchase paperwork that day and drove the car home.<sup>29</sup>

Ms. Gomez alleged that on or about June 2, more than two months after signing the original RISC and taking home the car, Salem Auto called Ms. Gomez and told her that it could not obtain

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<sup>22</sup> Id., at 2.

<sup>23</sup> Id., at 2-3.

<sup>24</sup> Id., at 3.

<sup>25</sup> Id., at 4.

<sup>26</sup> Id., at 4-5.

<sup>27</sup> Complaint, *Estephania Palacios Gomez v. Low Price Auto LLC Db a Salem Auto Market*, Ore. Circuit Ct., Case No.: 21CV37572 (Sept. 20, 2021) and Exhibits D and E.

<sup>28</sup> Id., at 2.

<sup>29</sup> Id.

financing for her and told her to come in to sign a new loan. Ms. Gomez returned to the dealer, and signed a new RISC.<sup>30</sup> According to Ms. Gomez, the dealer did not return the original down payment to her before entering into the new agreement, but it increased the price of the car by \$1,000. Ms. Gomez also reported that the dealer falsely represented the amount of her down payment.<sup>31</sup> The parties signed the second RISC with the understanding that Salem Auto was to obtain financing from another entity for Ms. Gomez.<sup>32</sup>

A month later, Ms. Gomez reported in her complaint that the dealer called and informed her that the second entity rejected the loan and that it was back with Salem Auto. Ms. Gomez asked if Salem Auto would carry the loan in house but the dealer refused. Ms. Gomez returned her key to the dealer and requested return of her down payment. Ms. Gomez made multiple requests for her down payment but the dealer refused to return it.<sup>33</sup>

According to Ms. Gomez' filed complaint, the dealer allowed her to execute a purchase order and/or a retail installment contract and take the car home, prior to the credit terms being approved by a third-party financial entity.<sup>34</sup> The dealer offered to sell a motor vehicle to her under a retail installment contract which contains terms which conditioned the transaction on a lender's agreement to purchase the retail installment contract. No third-party entity agreed to purchase the RISC on the exact terms that Ms. Gomez and the dealer negotiated, and the dealer did not receive final approval of funding from any third-party lender within 14 days of Ms. Gomez taking the car home, as required under Oregon law.<sup>35</sup> Ms. Gomez alleged violations of Oregon's unfair trade practices law, fraudulent misrepresentations, and violations of the Truth in Lending Act.<sup>36</sup>

***Renee Galloway v. Priority Imports Richmond LLC***,<sup>37</sup> – Virginia resident Renee Galloway, an African-American woman, went to Priority Imports Richmond (Priority), a car dealer, to make a deal on a Toyota Camry that she test-drove days earlier. After a dealer review of her credit history, Ms. Galloway reported an offer where she could buy the car on credit at 8.49% interest, with 72 payments of \$572.68 and a \$3,000 down payment.<sup>38</sup> She accepted the offer, signed documents to purchase the Camry on credit, and the down payment was withdrawn from her account.<sup>39</sup>

Ms. Galloway and the dealer signed the electronic credit contract, specifically the retail installment sales contract.<sup>40</sup> The credit contract stated that it “is not contingent upon obtaining financing on terms which are satisfactory to the parties.” The contract was final and was not

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<sup>30</sup> Id., at 3.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id., at 4.

<sup>34</sup> Id., at 5.

<sup>35</sup> Id.

<sup>36</sup> Id., at 6.

<sup>37</sup> Complaint, *Renee Galloway v. Priority Imports Richmond LLC*, E.D. Va., Case No. 3:19-cv-00209-JAG (May 8, 2019) and Exhibits F and G.

<sup>38</sup> Id., at 3.

<sup>39</sup> Id., at 3.

<sup>40</sup> Id., at 4.

conditional on other terms. Under the dealer's signature, the credit contract stated that the dealer "sells and assigns (the credit contract) to Toyota Motor Credit Corporation."<sup>41</sup>

Ms. Galloway stated that beginning two weeks after the transaction, the dealer contacted her and falsely told her that she needed to return to sign additional documents regarding the credit transaction. to complete the purchase of the Camry.<sup>42</sup> She returned to the dealer to do so, and was then told that the signed credit contract was not valid. She asserted in her filed complaint that the dealer lured her back to "force her to either pay more money for the Camry or buy a different car."<sup>43</sup> Ms. Galloway returned the car keys and left the dealership without her Camry. So that she would have a car to drive, she then agreed to a second transaction.

The dealer did not record transfer of title or the registration of the lien for the financing with Virginia DMV. Ms. Galloway asserted that the dealer intentionally misrepresented that it had assigned its rights in the contract to a financing company and never intended to provide the Camry on the unconditional terms shown in the credit contract. The dealer, she said, falsely represented its intent to sell the Camry to Ms. Galloway for the terms shown in the credit contract.

Ms. Galloway asserted in her complaint a fraudulent scheme by the dealer against her that violated the federal Truth In Lending Act (TILA), the federal Equal Credit Opportunity Act (ECOA), and the 42 U.S.C. § 1983. The dealer's actions, according to the complaint, also violated the Virginia Consumer Protection Act (VCPA) and the Uniform Commercial Code, and constituted fraud and conversion.<sup>44</sup> After Ms. Galloway filed her lawsuit, the dealer compelled arbitration even though the arbitration clause prohibited the award of punitive damages in arbitration. The arbitration decision is currently on appeal to the Fourth Circuit.

There is no way to reconcile the statements in the first credit contract with how the dealer treated the transaction. As an intended assignee, the financing company would likely claim that it only buys such electronic credit contracts which are fully final and unconditional when they are signed. The form electronic credit contracts are assigned and do not allow for modifications by a separate physical document signed in ink which is not electronically associated with the credit contract.

***Additional allegations as experienced by Virginia residents<sup>45</sup>:***

i) A Virginia consumer pursued claims against in arbitration against a Ford dealership. After driving home with a car and believing a car sale was completed, the consumer reported receiving a notice from the financing company telling him that the credit had been denied. The consumer was confused and thought the deal was canceled. Attached is the electronic credit contract,

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<sup>41</sup> Id., at

<sup>42</sup> Id., at 7, 14.

<sup>43</sup> Id., at 7.

<sup>44</sup> Galloway, at 1.

<sup>45</sup> Exhibits H-K attached.

which was an unconditional extension of credit, that the dealership used when it sold the care to the consumer, as well as the standard delivery form that the dealership also uses. The “Permissive Vehicle Use Agreement And/Or Addendum to Proposed Installment Sale Agreement or Lease” states that the transaction is conditional. The statements in the delivery form that that the dealer is merely granting the consumer use of the dealer’s car while credit is pending, and the credit contract’s unconditional terms are inconsistent and cannot be reconciled. The standard delivery form shows how the dealer considered the transaction conditional while at the same time attempting to sell an unconditional credit contract to an assignee.

ii) A Virginia consumer filed a demand for arbitration against a Chevrolet dealership alleging that after signing a credit contract and completing a transaction to buy a car, he was contacted by the dealer and ordered to return the car to the dealership. He asserted that he was threatened with arrest if he did not return the car. He reported that he was then told that his financing had not been approved. Attached is the credit contract that the dealer used when it sold a Dodge Challenger to the customer. It states that the dealer had assigned the credit contract. The transaction also included a standard delivery form that the dealership uses. This “Addendum to Retail Installment Sale Contract/Lease and Buyer’s Order Conditional Delivery Agreement” states the transaction is conditional on it being assigned. In this transaction, the form was paired with a fully endorsed credit contract that represented it had already been assigned. The statements in the standard form with the statement that the credit contract had already been assigned are irreconcilable. The standard delivery form used by this multi-state dealer shows how the dealer considers the credit transaction conditional on assignment while at the same time telling the customer the credit contract is fully completed.

## **B. Yo-yo Sales Eviscerate Efficacy of Critical Federal Law Requirements, Including Credit Terms and Mileage Disclosures, and Civil Rights Protections**

An FTC rule addressing yo-yo sales would complement and underscore existing federal laws that apply to the sale of a vehicle, including the Truth in Lending Act, the Federal Odometer Act, and the Equal Credit Opportunity Act. The current state of allowing dealers to void a contract if they cannot find a third-party finance company to purchase a credit contract invites abuses and obstructs the protections and public interest purposes of these federal policies.

### ***1. TILA Disclosure Requirements are Illusory in Conditional Credit Contracts***

Consumers’ reasonable reliance on the accuracy of credit terms in the original sales contract is supported by the protections in the federal Truth in Lending Act (TILA).<sup>46</sup> Congress has affirmatively stated:

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<sup>46</sup> 15 U.S.C. § 1601 et seq.

"It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit..."<sup>47</sup>

TILA's purpose is particularly important in the context of auto sales where payment terms are typically the most prominent and consumer-reviewed aspect of a contract to buy a car. Yet, TILA's mission to require proper credit disclosures is completely suppressed when the financing terms negotiated, agreed to, and signed by the buyer are not actually final from the original creditor's (the dealer's) point of view. The evisceration of disclosures and transparency of consumer credit transactions required under TILA is one of the most fundamental and harmful consequences of the conduct this proposal seeks to address.<sup>48</sup>

It remains one of the FTC's important duties to ensure the integrity of requirements under certain consumer financial protection laws, such as those in TILA. In 2010, when Congress passed the Dodd Frank Wall Street Reform and Consumer Protection Act in response to the 2007-2008 financial crisis and created a brand-new federal agency, the Consumer Financial Protection Bureau (CFPB), to oversee the vast financial services market, the FTC retained enforcement authority of numerous financial services laws, including the Truth in Lending Act and Regulation Z. As the FTC has said: "... the [Dodd-Frank] Act gave the Commission the authority to enforce any CFPB rules applicable to entities within the FTC's jurisdiction, which include most providers of financial services that are not banks, thrifts, or federal credit unions."<sup>49</sup>

In annual letters to the CFPB, the FTC reported its enforcement of TILA disclosure requirements in the auto sales market. In 2018, it charged auto dealer Tate's Auto with unlawful practices in its sale, leasing, and financing of cars, including violations of TILA disclosure requirements. The complaint charged Tate's Auto with allegedly deceiving consumers about the terms of financing, and failing to disclose required credit terms, including terms of repayment and annual percentage rate, in advertisements.<sup>50</sup> It is clear that the FTC has an ongoing interest and obligation to combat deceptive auto dealer practices, including when they directly and inherently violate TILA disclosure requirements.

The only way TILA disclosures are an effective tool for comparison shopping is if the disclosures represent the terms of credit the consumer is actually being offered and that the dealer intends to provide to the buyer. The proposal here will allow TILA disclosures to accomplish their

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<sup>47</sup> 15 U.S.C. Sec. 1601(a).

<sup>48</sup> See, Christopher V. Langone & Joel D. Dabisch *Have You Been "Spotted"? Recognizing and Attacking One of the Most Widespread Automobile Dealer Abuses*, 12 Loy. Consumer L. Rev. 108 (2000), available at <http://lawecommons.luc.edu/lclr/vol12/iss2/2>.

<sup>49</sup> Letter from the Federal Trade Commission to the Consumer Financial Protection Bureau, responding to the CFPB's request for information concerning the FTC's enforcement activities related to compliance with Regulation Z (the Truth in Lending Act or TILA); Regulation M (the Consumer Leasing Act or CLA); and Regulation E (the Electronic Fund Transfer Act or EFTA), May 13, 2020, available at [https://www.ftc.gov/system/files/documents/reports/ftc-enforcement-activities-related-compliance-regulation-z-truth-lending-act-regulation-m-consumer/cfpb\\_tila\\_report\\_2019final\\_document\\_word5\\_13\\_20.pdf](https://www.ftc.gov/system/files/documents/reports/ftc-enforcement-activities-related-compliance-regulation-z-truth-lending-act-regulation-m-consumer/cfpb_tila_report_2019final_document_word5_13_20.pdf).

<sup>50</sup> Letter from the Federal Trade Commission to the Consumer Financial Protection Bureau, at 3, May 30, 2019, available at [https://www.ftc.gov/system/files/documents/reports/ftc-enforcement-activities-related-compliance-regulation-z-truth-lending-act-regulation-m-consumer/cfpb\\_2018\\_report\\_re\\_tila\\_and\\_cla\\_and\\_efta.pdf](https://www.ftc.gov/system/files/documents/reports/ftc-enforcement-activities-related-compliance-regulation-z-truth-lending-act-regulation-m-consumer/cfpb_2018_report_re_tila_and_cla_and_efta.pdf).

purposes because the car dealer as the original creditor must truthfully and finally represent the terms in the signed credit contract.

“With one hand, the dealership goes through all of the machinations of creating a binding sales contract: securing personal information from the consumer in order to conduct a credit check and to ascertain what terms would be acceptable to the consumer, shopping the package around in a process that can take hours until the moment when the representative emerges from the back room saying, “We have a deal,” then having the consumer sign the RISC with the terms from the “deal.” But with the other hand, the dealership undoes that deal with the Spot Delivery Agreement. TILA was expressly designed to promote the informed use of credit by ensuring that creditors make meaningful disclosures of the terms upon which they will extend credit, which purpose requires that courts liberally construe the statute in favor of the consumer. This purpose is, in short, frustrated by using a Spot Delivery Agreement in the manner present here to rescind the terms of and undermine the disclosures made in the RISC.”<sup>51</sup>

## ***2. Yo-yo Practices Interfere with the Federal Odometer Act Purposes***

The Motor Vehicle Information and Cost Savings Act (“Odometer Act”), according to its legislative history, states that the Act “makes it unlawful for any person to transfer ownership of a vehicle unless that person enters on a form prescribed by the Secretary or as prescribed by state law, the mileage said motor vehicle has been operated.”<sup>52</sup>

In 1986, Congress amended the Odometer Act to require that the odometer disclosure be made in one place only: on the title to the vehicle.<sup>53</sup> One purpose of the amendment was “to preserve records that are needed for the proper investigation of possible violations of the Motor Vehicle Information and Cost Savings Act and any subsequent prosecutorial, adjudicative or other action.”<sup>54</sup> Also, “[t]he central purpose of [the statute] is to make the title document the sole vehicle for odometer disclosures, thereby completing a years-long movement among the States toward the use of the title for disclosure.”<sup>55</sup> Disclosure on the title was required because “using a separate document for odometer disclosure, which had been common in the early days of the Federal odometer law, had been shown to be too vulnerable to abuse.”<sup>56</sup> In the 1986 amendment, Congress gave the Odometer Act a second “central purpose” by requiring the title document to be the only place for the disclosure under the Act.

Requiring the odometer disclosures on the titles creates records that can be used in prosecuting federal odometer act crimes, and allows car dealers to use title documents in the chain of title to

<sup>51</sup> *Salvagne v. Fairfield Ford, Inc.*, 794 F. Supp. 2d 826, 834 (S.D. Ohio 2010).

<sup>52</sup> 49 U.S.C. §§ 32701-32711. S. Rep. No. 92-413, reprinted in 1972 U.S.C.C.A.N., 3960, 3971.

<sup>53</sup> S. Rep. No. 99-47, at 1-2 (1986), reprinted in 1986 U.S.C.C.A.N., 5620, 5621.

<sup>54</sup> 49 C.F.R. § 580.2.

<sup>55</sup> See Supplementary Information to 1991 Final Rule, 56 Fed. Reg. 47,681, 47,684 (1991).

<sup>56</sup> *Id.*

check the odometer disclosures from previous sales.<sup>57</sup> Furthermore, requiring the odometer disclosure on the title protects the buyer by providing that person information about the odometer disclosures from previous transfers.<sup>58</sup>

Whether paying cash or having signed a credit contract, when a consumer drives a car off a dealer's lot using any license plate tags other than official dealer tags, the consumer should be treated as the car's owner. Before doing so, the dealer is required to make the official federal odometer disclosure on the document assigning title, and the consumer is to sign that document acknowledging receipt of the disclosure. In states that allow the consumer to leave with the car after signing a credit contract, the dealer may later simply revoke it if it is ultimately unsatisfied with the deal, and they will refuse to sign and provide title documents to the consumer until the sale of the credit contract is completed.

Such a practice means that the consumer was not presented with the title document to sign at the time of the purchase and the official federal odometer disclosure was not made on the document assigning title.<sup>59</sup> When these yo-yo practices occur, it is as if the 1986 amendments never happened. For deals that are then completed from the dealer's perspective, dealers employ various tactics, many of them in violation of the federal Odometer Act, to later make the title record appear as if a proper disclosure had been made on the title document at the time the consumer signed the original credit contract and first drove the car off the lot. For many deals canceled by the dealer, odometer disclosures related to the transaction do not appear in the title records.

Compliance with the federal Odometer Act is simple at the time a car dealer intends to make a consumer the owner of the car. Because dealers that engage in these practices may not intend to make the consumer the owner of the car until the dealer is certain that the credit transaction is one it can either sell or is willing to honor, the instant proposal will help dealers comply with the Odometer Act. When the dealer is certain that the transaction is ready, the dealer can prepare the credit contract for signature; after the consumer signs, the dealer can immediately sign the title document over to the buyer, and properly make the odometer disclosure.

### ***3. The Equal Credit Opportunity Act's Anti-Discrimination and Notice Protections are Frequently Violated***

The Equal Credit Opportunity Act (ECOA) bans discrimination in credit transactions, and applies to any extension of credit<sup>60</sup> It prohibits discrimination on the basis of race or color, religion, national origin, sex, marital status, age, income derived from any public assistance program, or the applicant's exercise, in good faith, of any right under the Consumer Credit Protection Act. Among other things, ECOA requires a creditor to notify the credit applicant of actions taken,

<sup>57</sup> See e.g. *United States v. Townsend*, 796 F.2d 158, 161 (6th Cir. 1986) and see *Oettinger v. Lakeview Motors*, 675 F. Supp. 1488, 1495 (E.D. Va. 1988).

<sup>58</sup> See Supplementary Information to Proposed Revisions of Odometer Disclosure Requirements, 52 Fed. Reg. 27,022, 27,025, July 17, 1987.

<sup>59</sup> See, Capt. Tom Wallace, *Spot Delivery Car Sales*, Feb. 28, 2012, available at <https://jag.navylive.dodlive.mil/News/News-View-Page/Article/2614346/spot-delivery-car-sales/>.

<sup>60</sup> 15 U.S.C. §§ 1691-1691f and 12 CFR Part 1002.



including “adverse actions” or counteroffers, related to their credit applications.<sup>61</sup> In addition, ECOA’s prohibition against discrimination applies to disparate treatment as well as disparate impact, which does not require intentional discrimination.<sup>62</sup>

The FTC has a strong interest in ensuring ECOA compliance “regarding most non-bank financial service providers” in the marketplace.<sup>63</sup> In 2020, the FTC settled ECOA claims against a car dealership for unlawfully discriminating “on the basis of race, color, and national origin when acting as a creditor for vehicle financing.”<sup>64</sup> Auto industry sites also note the importance of ECOA compliance in car sales transactions.<sup>65</sup>

Credit contracts in car sales that are not treated as final impede proper enforcement and compliance with ECOA requirements. When a dealer misrepresents that a buyer’s application for credit was approved for the terms shown on the credit contract but the dealer actually did not intend to make credit available to the buyer on those terms, this action frustrates the dealer’s obligation to comply with ECOA, and deprives the buyer of the protections provided under the anti-discrimination statute. When a dealer unilaterally cancels the credit terms in a credit contract that the buyer believed to be final and binding, the dealer also often fails to give proper notice to the buyer of the “adverse action,” as is required under the law.<sup>66</sup> The yo-yo aspect of these transactions leaves open the wide possibility of failure to comply with ECOA by appropriately notifying the consumer each time of why their application was denied.

#### ***4. State Laws That Attempt to Regulate Yo-Yo Sales Face Difficulties and Hamper Enforcement of Existing Federal Laws***

Some states have laws that seek to regulate specific yo-yo abuses that result from allowing dealers to have consumers sign credit contracts and then leave the dealership with the cars, while the credit terms actually are not yet finalized in the dealer’s eyes.<sup>67</sup>

In Oregon, for example, if a dealer does not receive final approval of a third-party agreeing to purchase the signed credit contract within 14 days of delivering the car, the law states that a consumer can unwind the deal.<sup>68</sup> Among other things, Oregon prohibits selling the trade-in vehicle before getting final approval of funding to protect the buyer.

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<sup>61</sup> 12 C.F.R. § 202.9.

<sup>62</sup> Levitin, Adam J., at 1296.

<sup>63</sup> Federal Trade Commission, *FTC Staff Provides Annual Letter to CFPB On 2021 Equal Credit Opportunity Act Activities*, Feb. 23, 2022, available at <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-staff-provides-annual-letter-cfpb-2021-equal-credit-opportunity-act-activities>.

<sup>64</sup> Complaint, *FTC v. Liberty Chevrolet, Inc. d/b/a Bronx Honda*, S.D.N.Y., Case No. 20-CV-3945, May 21, 2020, available at [https://www.ftc.gov/system/files/documents/cases/bronx\\_honda\\_complaint\\_0.pdf](https://www.ftc.gov/system/files/documents/cases/bronx_honda_complaint_0.pdf).

<sup>65</sup> See, <https://www.totaldealercompliance.com/equal-credit-opportunity-act.html>

<sup>66</sup> See, e.g. *Tyson v. Sterling Rental, Inc.*, 836 F.3d 571, 579 (216)(dealer admitting to never giving ECOA notices even when it decides to cancel credit contracts if an assignee refuses to participate in the transaction); See, also *Galloway v. Priority Imports Richmond LLC* referenced in the summaries of allegations in Section A above. See, also, Adam G. Taub, *Yo-Yo Sales: The Predatory Practice of Unscrupulous Car Dealers*, available at <https://higherlogicdownload.s3.amazonaws.com/MICHBAR/3b217bd2-fb65-46ff-86c0-ea1a7b303b13/UploadedImages/pdfs/SpotDeliveryArticle.pdf>.

<sup>67</sup> See, e.g.: Nevada Rev. Stat. § 482.554; New Hampshire Rev. Stat. 361-A:10-b; Oregon, ORS 646A.090; Utah Code Ann. §§ 41-3-401 (sales), 41-3-401.5 (leases); Washington Rev. Code § 46.70.180.

<sup>68</sup> Oregon, ORS 646A.090.

The state of Nevada uses a uniform state Retail Installment Sales Contract where the dealership has a unilateral 20-day right of rescission. Under Nevada's law, for example, it is a deceptive trade practice for a dealership, after exercising its unilateral right of rescission, to fail to return any down payment or other consideration in full, including, returning a trade-in vehicle; and to knowingly make a false representation to the customer that the customer must sign another contract for the sale of the vehicle on less favorable terms.<sup>69</sup>

In Oklahoma, the "Spot Delivery Agreement" is considered a "prelude" to transfer of ownership. The form is approved by a state agency, and it includes terms, such as giving the consumer the right to terminate the contract if the finance contract has not been assigned within 20 days; requiring that the dealer retain the trade-in vehicle in storage, until everything is completed; and requiring that the dealer provide a copy of all signed contracts prior to vehicle delivery.<sup>70</sup> The consumer is asked to acknowledge the following statement "I understand the purpose for signing this spot delivery form is that, as of this date, my loan has not been approved."<sup>71</sup> This assertion creates confusion because every consumer who is financing their car is asked to sign this contract, including customers who have been informed that they are approved.

As consumer advocates in some of these states have noted, despite efforts by state governments, not only do frequent violations of these laws continue unabated, the fundamental issue and consequences still exist. That is, when a consumer signs the RISC with a dealer, consumers believe they have already received financing and will make payments to the assignee on the credit contract or RISC. Meanwhile, even under these anti-yo-yo state statutes, consumers are summoned back to the dealership days, weeks, and even months after the original credit contract was signed because the dealer insists on changing the terms.

### **C. Signed Credit Contract in Car Purchase Being Treated by One Party as Not Final is Unfair And Deceptive**

With exceptions for certain entities such as banks, Congress directed and empowered the FTC to prevent persons, corporations, and partnerships from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.<sup>72</sup> Consumers who enter into credit contracts with dealers to buy a car are inherently subject to unfair and deceptive practices because the transactions can be unilaterally changed or canceled by the dealer. As the examples above show, spot delivery and the accompanying yo-yo financing techniques together constitute an unfair and deceptive practice, which can escalate into abusive conduct and fraud.

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<sup>69</sup> Nevada, NRS 482.554.

<sup>70</sup> 47 OS §563 F, *OMVC Required Criteria for Spot Delivery Agreements or Forms Used by Dealers for Deliveries of Vehicles Pending Final Approval*, available at <https://apps.ok.gov/omvc/documents/1%20pg%20Sp%20Del%20Criteria.pdf>.

<sup>71</sup> *Motor Vehicle Delivery Agreement*, available at

<https://apps.ok.gov/omvc/documents/OMVC%20Sample%20Spot%20Delivery%20Form%20IAN2012.pdf>.

<sup>72</sup> 15 U.S.C. § 45a.

In a yo-yo sale, the representations made to consumers, including the signing of the credit terms, lead them to believe a car deal is complete when, from the seller’s perspective, the deal is not yet final and can be unilaterally changed. The key fact that the seller does not consider the deal as final is not adequately communicated to buyers before they drive off the car lot with their new cars. The fundamental misrepresentation that the deal is complete (when the seller does not consider it so) forces consumers into a “yo-yo” scenario where they are called back to the dealership lot several times with demands to provide more information, potentially pay more upfront, and to change financing terms that were set forth and agreed to in the original contract, or to give up the car completely.<sup>73</sup>

A dealer conditioning a car sale on securing third-party credit while representing to a consumer that the purchase is final also consequentially restricts commerce. A dealer’s decision to engage in yo-yo sales ensnares consumers into signing a credit contract that it later intends to change, but also ensures that buyers are stopped (due to the existence of the contract) from shopping for or comparing other credit terms from additional credit and financing entities, and dealers.

#### **D. Well-Established “Holder Rule” is Model for Providing Notice of Final Terms in Car Sales’ Credit Contracts**

In 1975, the FTC issued the Holder Rule, formally known as the “Trade Regulation Rule Concerning Preservation of Consumers’ Claims and Defenses,” which preserves consumers’ right to assert the same legal claims and defenses against anyone who purchases the credit contract, as they would have against the original seller of goods or services who originally provided the credit.<sup>74</sup> This would apply including if the seller assigns the contract or works with a third-party creditor who finances the sale. The Rule requires sellers that arrange for or offer credit to finance consumers’ purchases to include the following Notice in their contracts:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED . . . WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.<sup>75</sup>

The failure of sellers to include notice in credit contracts constitutes an unfair and deceptive practice under the Rule. The Rule provides a way for harmed or defrauded consumers to obtain relief and allows them to stop payment when the financed product turns out to be defective.

In 2015, the FTC sought public comment “on the overall costs and benefits, and regulatory and economic impact,” of the Holder Rule.<sup>76</sup> The FTC noted in its 2019 confirmation of the Holder Rule, that every commenter, including state attorneys general, consumer and public interest

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<sup>73</sup> See, e.g., Jeff Ehling, *Family’s credit approval story serves as warning to other car buyers*, ABC13, available at <https://abc13.com/credit-approval-car-loan-financing-deals/27777/>.

<sup>74</sup> 16 CFR § 433.2.

<sup>75</sup> 16 CFR § 433.2.

<sup>76</sup> 80 Fed. Reg. 85018 (2015).

groups, financial institutions and auto dealer associations, supported maintaining it.<sup>77</sup> The FTC observed based on the comments that the Rule benefitted consumers, imposed no cost to consumers, and did not impose significant cost to business.<sup>78</sup>

Similarly, amending contracts to include the written notice proposed in this petition would provide proper notice of the parties' obligations regarding the finality of a signed credit contract. It will impose an initial cost to comply, but the FTC can provide reasonable time and notice for compliance in order to alleviate the cost. The benefit of compliance with providing the contractual language and the language itself will far outweigh the costs for consumers, who would no longer face the financial and emotional costs of unfair and deceptive actions related to the unilateral changing or dismissal of terms in signed credit contracts.

#### **IV. THE PROPOSAL'S ANTICIPATED IMPACT ON THE MARKET**

##### **A. The proposal would remove unfairness and deception from final aspects of car sale transactions.**

1. The presentation of a credit contract to a consumer necessarily conveys to the consumer that the consumer has been approved for credit. This proposal would ensure that this representation is true.
2. Under the plain terms of a retail credit contract, auto dealers that present the credit contract and obtain the consumer's signature are the original creditors. Dealers facilitate their customers' signing of the credit terms, while carrying the view that the deal is not necessarily complete. The proposal would ensure that the creditor is providing accurate, complete and final terms at the time of the sale instead of conflicting information in the credit contract and spot delivery agreement.
3. This proposal will take a step towards ending the practice of dealers orally telling a consumer that they are approved for credit while also slipping a separate document in the paperwork stating the consumer has not yet been approved. The proposal would require that consumers are fully approved for the credit extended in the original contract and bring certainty to the marketplace.
4. With the growing percentage of electronic credit contracts, this proposal would ensure that an electronically signed credit contract is not substantially modified by a separate physical document that does not correspond with the electronic credit contract.

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<sup>77</sup> 84 Fed. Reg. 18711 (2019).

<sup>78</sup> Id.

5. The proposal would discourage dealers from offering contracts that they ultimately are unwilling to honor, thereby enhancing competition among competing dealers and financing companies, as explained below, for the benefit of the marketplace.

### **B. The proposal would reward market participants.**

1. It will place honest dealers, that do not misrepresent to buyers that a credit deal is final when it is not, on the same competitive footing with others who have used the practice to arbitrarily bind customers without accurate and adequate information needed to ensure a proper sale.
2. By ensuring that any credit contract once signed by the consumer must be treated as approved by the dealer, this proposal would encourage competition in the market, rewarding auto dealers who are able to more quickly determine whether a consumer's credit application is approved. In addition, it will promote competition among third-party assignees in the marketplace by rewarding those financing entities who can efficiently assure dealers that they will purchase a particular credit contract.
3. Compliance with the proposal promises to be straightforward with minimal cost. During the time the seller considers a buyer's credit application for final approval, the seller will simply refrain from presenting the credit contract for the buyer's signature, until the buyer is finally approved. Following a dealer's final decision to treat the credit transaction as fully approved, the dealer can obtain the consumer's signature to finalize the credit contract. The proposal would not decide when a dealer treats a credit contract as final. The dealer solely makes the decision to approve the credit terms and finalize the credit contract with buyers.
4. The auto industry has asserted that consumers "save money" when they finance through auto dealerships.<sup>79</sup> The instant proposal arguably would support the industry's claim as it would root out a deceptive practice in dealer-financed transactions that raises costs for buyers.

### **C. The proposal would confirm entities' roles and obligations in the market.**

The proposal would hold sellers to their established roles as original creditors with rights and obligations in car sales. As the creditors to whom the credit contract is initially payable, dealers are sellers and original creditors of each sale. As the first creditor, dealers have certain legal obligations, including TILA disclosure requirements discussed above. Assignees of the credit terms are shielded from certain legal obligations because they are not the original creditors of the car sale. The proposal herein would help ensure that misrepresentations regarding an entity's obligations to a car buyer are eliminated, and that the ultimate purpose of TILA is accomplished. Further, it would eliminate confusion among car dealers who incorrectly argue "we did not originate the credit," and assignees who claim, "we are not the original creditors."

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<sup>79</sup> National Automobile Dealers Association, *Dealer-Assisted Financing Benefits Consumers*, available at <https://www.nada.org/auto-financing/>.

This proposal would both ease and enhance the clarity of dealer compliance with applicable disclosure requirements as further explained below.

**D. A bright line rule would facilitate exchange of accurate information in complex car sales transactions.**

The proposal would facilitate transparency and clarity in the transfer of information under several laws and regulations, including:

- (i) Truth in Lending Act disclosures, including the length of time between the date credit is extended and the first payment period;
- (ii) Federal odometer disclosure requirements, requiring accurate disclosure of mileage upon transfer of ownership, including the date for the mileage recording;
- (iii) Insurance coverage, including the dates that a vehicle is no longer covered by the dealer's insurance;
- (iv) Warranty and/or service contract terms, including the dates such coverage begins; and
- (v) Tags and plates, title transfer and state registration.

This clear proposal would allow states to more easily regulate the sale and ease state processes for the transfer of vehicles. The bright line facilitates more straightforward flow of information regarding transfer of title, insurance requirements, mileage and odometer disclosures, commencement of warranty periods, and other legally significant events that occur in vehicle sales. Mere disclosure of “spot delivery” slipped into paperwork stating that a dealer may summon the consumer to change an agreement that the consumer previously had signed and believed was finalized, is not only insufficient, but these documents also incite future harm. As the FTC observed in its own 2020 survey, interviews, and study of car buyer experiences: “(s)ome consumers were unaware that they had signed forms describing spot delivery and potential cancellation.”<sup>80</sup>

There is evidence that documents in some car sales transactions create a conflict in the agreed-upon terms, deceiving consumers as to the finality of the financing obligations, and ultimately the car sale. This proposal would make clear the identity of the actual owner of the car at any point, including during and immediately after the transaction. Currently, many car dealers cannot adequately answer the simple question: “who was the owner when the consumer drove the car off the lot?” because they believe the answer is determined by the future negotiation with a third-party assignee.

**E. FTC's familiarity with spot delivery-related unfair, abusive and deceptive practices should spur a meaningful rule change.**

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<sup>80</sup> Federal Trade Commission, *Staff Report of the Bureau of Consumer Protection*, [https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing_0.pdf) at 12.

The FTC has long been familiar with the yo-yo phenomenon. More than a decade ago, in 2011, the FTC held a series of roundtables on the selling, financing and leasing of motor vehicles, where it heard and received data and information from experts and advocates about the harms and consequences following spot delivery agreements and yo-yo practices in auto sales.<sup>81</sup>

In 2018, the agency announced the mailing of more than 40,000 checks totaling more than \$3.5 million to consumers exposed to far-reaching deceptive and unfair sales and financing tactics, which included spot delivery and yo-yo schemes, by the California-based Sage Auto Group and its owners between 2014 and 2016.<sup>82</sup> In its filed complaint against these sellers, the FTC alleged: “Even after consumers have signed a contract and driven the vehicles off Defendants’ lots, Defendants have used deceptive and unfair tactics to pressure consumers who have financed through Defendants to agree to different financing terms or have otherwise refused to honor the contract... Instead of negotiating terms a third-party financing company would accept, however, Defendants Glendale Nissan and Universal City Nissan have admitted that their dealerships have “approved deals to customers with risky credit before bank financing had been secured in order to increase their sales numbers....knowing that the dealership was not going to be able to secure bank financing on the offered terms.”<sup>83</sup>

In a 2020 report on a study of car sales participants, which included interviews of car buyers, the FTC described buyers’ experiences reviewing and finalizing documents during a car sale transaction as being “long and complex,” while the car buyers’ review of financing documents was “rushed,” and most consumers “focused on the numbers filled in by the dealer representative.”<sup>84</sup> Notably, the report observed that “(s)ome participants in the qualitative study were surprised to learn that financing they expected to be final was not.”<sup>85</sup>

## CONCLUSION

A rule that requires dealers to include specific language in the credit contract, also known as the retail installment sales contract, would ensure that buyers and sellers as parties to a contract setting forth the credit terms of a car sale can reasonably rely on the finality of those terms. The language requiring the terms in the signed retail credit contract between the buyer and commercial seller of a car to be treated as final, would improve clarity and understanding for sellers and buyers in the car market.

Requirements that the consumer be fully approved for the credit terms in the contract before the

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<sup>81</sup> See, e.g. Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, Project No. P104811 #00056, Dec. 29, 2011, <https://www.ftc.gov/policy/public-comments/comment-00056-0> and [https://www.ftc.gov/sites/default/files/documents/public\\_comments/public-roundtables-protecting-consumers-sale-and-leasing-motor-vehicles-project-no.p104811-00066/00066-82564.pdf](https://www.ftc.gov/sites/default/files/documents/public_comments/public-roundtables-protecting-consumers-sale-and-leasing-motor-vehicles-project-no.p104811-00066/00066-82564.pdf).

<sup>82</sup> Federal Trade Commission, *FTC Returns More Than \$3.5 Million to Consumers Subjected to Deceptive and Unfair Sales and Financing Tactics by Los Angeles-Area’s Sage Auto Group*, Dec. 6, 2018, available at <https://www.ftc.gov/news-events/press-releases/2018/12/ftc-returns-more-35-million-consumers-subjected-deceptive-unfair>.

<sup>83</sup> Complaint, *Federal Trade Commission v. Universal City Nissan Inc.*, C.D. Cal., Case 2:16-cv-07329, at 22-23 (Sept. 29, 2016).

<sup>84</sup> FTC Staff Report, [https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing_0.pdf) at 10-11.

<sup>85</sup> *Id.*, at 12-13.

signing, and that the credit terms in the contract are final whether or not the contract is assigned to a third party are necessary to prevent systemic deception and abusive yo-yo practices. The revision would provide a bright line rule, facilitating precision in an often-complex process and ensuring that car buyers will receive accurate, non-conflicting information regarding the final terms of what is one of the largest market transactions for most consumers.

The FTC's use of its exclusive jurisdiction over car dealers and its specific authority to issue a rule to curb unfair and deceptive practices relating to the sale, servicing, and leasing of motor vehicles is appropriate and warranted in this instance.<sup>86</sup>

If you have any questions or would like to discuss these issues further, please contact Christine Hines, Legislative Director, 1215 17th St NW, 5th Floor, Washington, DC 20036, at [christine@consumeradvocates.org](mailto:christine@consumeradvocates.org) or (202) 452-1989. Thank you for considering our views.

**Respectfully submitted,**

*On behalf of the National Association of Consumer Advocates:*

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NACA's Legislative Director

**Organizations:**

Erin E. Witte  
Director of Consumer Protection  
Consumer Federation of America

Michael Calhoun  
President  
Center for Responsible Lending

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<sup>86</sup> 12 U.S.C. 5519(d).



Rosemary Shahan  
President  
Consumers for Auto Reliability and Safety

John Van Alst  
Attorney and Director of NCLC's Working Cars for Working Families Project  
National Consumer Law Center, on behalf of its low-income clients

Edmund Mierzwinski  
Senior Director, Federal Consumer Programs  
U.S. Public Interest Research Group (PIRG)

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

JUL -2 2021

RICK WARREN  
COURT CLERK

125

Case No.: **CJ-2021-2872**

HEIDI MCGILL  
Plaintiff,  
v.  
BOB MOORE DODGE  
CHRYSLER JEEP, LLC  
Defendant.

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)  
)  
)  
)  
)

Case No.:

**PETITION**

COMES NOW the Plaintiff, Heidi McGill (Ms. McGill) by and through their counsel of record, M. Kathi Rawls and Minal Gahlot of Rawls Gahlot, PLLC, and for her cause of action against the Defendant Bob Moore Dodge Chrysler Jeep, LLC, (Bob Moore) states to the Court as follows:

1. On or about November 13, 2020 Ms. McGill began shopping for a replacement automobile, including shopping at the Defendant Bob Moore Dodge Chrysler Jeep, LLC (Bob Moore).
2. Bob Moore reviewed Ms. McGill's credit on 11/13/20 and knew her credit history.
3. On 11/14/20 Bob Moore's salesman showed her several different vehicles but Ms. McGill decided on a Dodge Charger because it was priced within her budget of \$520.00 per month.
4. Based upon its credit review Bob Moore agreed to sell Ms. McGill a new 2020 Dodge Charger VIN 2C3CDXBG7LH228845 (the Charger) with GAP insurance, Package E and a MAPS Extended Warranty.
5. Ms. McGill was not provided copies of Bob Moore's transactional documents.
6. Bob Moore stated the basis for not providing the contract copies to Ms. McGill was because the bank it intended to sell her loan was not available on the weekend.

7. Bob Moore's agents requested Ms. McGill return on Monday 11/16/20 for contract copies, took her \$1500 down payment and her 2018 Ford E100 Van VIN MAJ6P1CLXJC241975 (the Ford) and gave her possession of the Charger.
8. Both Bob Moore and Ms. McGill understood that Bob Moore was obligated to pay off the loan balance on the Ford.
9. On Monday 11/16/20, Bob Moore failed to have contract copies for Ms. McGill and suggested she check back again on Friday 11/20/20.
10. On November 20, 2020, Bob Moore requested Ms. McGill execute a second set of transactional documents; this time with a rate of 3.49 APR and a monthly payment of \$457.31.
11. Ms. McGill was provided partial copies of the Retail Installment Sales Contract but 2 of the 5 pages were missing; including the disclosures.
12. On December 7, 2020 Bob Moore requested Ms. McGill to bring another paystub from her employer which she did; explaining that Covid quarantining had recently reduced her hours at work.
13. A few days later Bob Moore's agents called threatening to repossess the Charger if Ms. McGill did not again provide her W-2 again.
14. Ms. McGill explained she had provided her W-2 to Bob Moore twice already but recently quit her position with her employer.
15. Bob Moore's agent continued with threats of repossession of the Charger but when Ms. McGill requested the return of the Ford she was informed it had been sold.
16. On 12/09/21, 25 days after giving possession of the Charger to Ms. McGill, Bob Moore finally paid off the Ford loan.

17. On 12/10/21 Bob Moore demanded that Ms. McGill get a co-signer for the Charger loan, to which her father agreed; submitting a credit application that day.
18. On 12/15/20 Bob Moore's agents again called for a co-signer, indicating Mr. McGill was not acceptable, but continued to permit more than 10 new banks to review her credit, lowering her credit score even farther.
19. On 12/17/20 Bob Moore's agent, Kendrick, informed Ms. McGill that if no bank would agree to purchase the loan from Bob Moore, Ms. McGill would receive \$15,000.00 back based upon the value of her trade-in.
20. In reliance upon these statements, Ms. McGill returned to Bob Moore with her father and mother to sign a 3<sup>rd</sup> set of contract documents; Bob Moore removed the extended warranty, gap and E plan from the Charger loan.
21. On 12/23/20 Bob Moore agents informed Ms. McGill she would have to find her own financing.
22. In response Ms. McGill offered to return the Charger in exchange for her trade-in and down payment; Bob Moore declined.
23. On or around about the first week of January, Scott Rigney, Bob Moore's manager called and asked that Ms. McGill return the next day so he could return her \$1500 down payment; I informed him I was still under quarantine for Corona.
24. Scott Rigney demanded Ms. McGill's mother come in the next day and threatened to file a stolen vehicle report against her if she didn't return the Charger.
25. The next day Ms. McGill and her mother returned with the Charger but Mr. Rigney refused to give back her down payment unless she executed a release of any and all claims and gave up the Charger.

26. Ms. McGill declined to execute the documents and Bob Moore repossessed the Charger; never filing for Replevin.

Wherefore, premises stated, Ms. McGill brings this lawsuit against Bob Moore for breach of contract, fraud, fraudulent inducement, negligence, credit defamation, failure to accurately disclose loan terms pursuant to state law, deceptive trade practices, intentional infliction of emotional distress, conversion and wrongful repossession. In addition Ms. McGill seeks her actual, consequential, statutory and exemplary damages plus her attorney fees and costs.

  
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Minal Gahlot, OBA 22145  
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Email: [minal@rawlsgahlot.com](mailto:minal@rawlsgahlot.com)  
ATTORNEYS FOR PLAINTIFF

**JURY TRIAL DEMANDED  
ATTORNEY LIEN CLAIMED**

# LAW 553-OK-ARB-eps 7/20

**EXHIBIT A**

**Gahlot - McGill**

## RETAIL INSTALLMENT SALE CONTRACT – SIMPLE FINANCE CHARGE (WITH ARBITRATION PROVISION)

DEAL#: 130415  
CUST#: LH228845

0019495

Buyer Name and Address (Including County and Zip Code) HEIDI MCGILL [REDACTED]	Co-Buyer Name and Address (Including County and Zip Code) N/A	Seller-Creditor (Name and Address) BOB MOORE DODGE CHRYSLER JEEP, LLC 7420 NW EXPRESSWAY OKLAHOMA CITY, OK 73132
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements in this contract. You agree to pay the Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New/Used	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2020	DODGE CHARGER	12	2C3CDXBG7LH228845	Personal, family, or household unless otherwise indicated below <input type="checkbox"/> business <input type="checkbox"/> agricultural <input type="checkbox"/> N/A

### FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate. <b>3.49 %</b>	The dollar amount the credit will cost you. <b>\$ 4425.04</b>	The amount of credit provided to you or on your behalf. <b>\$ 33989.00</b>	The amount you will have paid after you have made all payments as scheduled. <b>\$ 38414.04</b>	The total cost of your purchase on credit, including your down payment of <b>\$ 0.00</b> is <b>\$ 38414.04</b>

**Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

### Your Payment Schedule Will Be: (e) means an estimate

Number of Payments	Amount of Payments	When Payments Are Due
84	\$ 457.31	MONTHLY beginning 01/04/2021
N/A	\$ N/A	N/A
N/A		

**NO COOLING OFF PERIOD**  
State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

**Late Charge.** If payment is not received in full within 10 days after it is due, you will pay a late charge of \$ 26.50 or 5 % of the part of the payment that is late, whichever is greater.

**Prepayment.** If you pay early, you will not have to pay a penalty.

**Security Interest.** You are giving a security interest in the vehicle being purchased.

**Additional Information:** See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

**VENDOR'S SINGLE INTEREST INSURANCE (VSI insurance):** If the preceding box is checked, the Creditor requires VSI insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft, concealment, skip). VSI insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI insurance is obtained. If you elect to purchase VSI insurance through the Creditor, the cost of this insurance is \$ N/A and is also shown in Item 4B of the Itemization of Amount Financed. The coverage is for the initial term of the contract.

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

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

**Agreement to Arbitrate:** By signing below, you agree that, pursuant to the Arbitration Provision on page 5 of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

Buyer Signs X [Signature] Co-Buyer Signs X N/A

Buyer Signs X [Signature] Co-Buyer Signs X N/A

82610\*1\*PAM-FI 11/20/2020 03:19 pm

**1. FINANCE CHARGE AND PAYMENTS**

- a. **How we will figure Finance Charge.** We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- b. **How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose as the law allows.
- c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on page 1 of this contract on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. **You may prepay.** You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- e. **Your right to refinance a balloon payment.** A balloon payment is a scheduled payment that is more than twice as large as the average of your earlier scheduled payments. If you are buying the vehicle primarily for personal, family or household use, you have the right to refinance the balloon payment when due without penalty. The terms of the refinancing will be no less favorable to you than the terms of this contract. This provision does not apply if we adjusted your payment schedule to your seasonal or irregular income.

**2. YOUR OTHER PROMISES TO US**

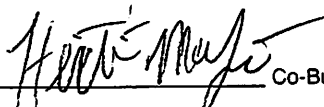
- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. **Security Interest.**  
You give us a security interest in:
  - The vehicle and all parts or goods put on it;
  - All money or goods received (proceeds) for the vehicle;
  - All insurance, maintenance, service, or other contracts we finance for you; and
  - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.
 This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.

**d. Insurance you must have on the vehicle.**

You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. You agree to name us on your insurance policy as an additional insured and as loss payee. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium for the insurance and a finance charge computed at the Annual Percentage Rate shown on page 1 of this contract. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.

**e. What happens to returned insurance, maintenance, service, or other contract charges.** If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.**3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES**

- a. **You may owe late charges.** You will pay a late charge on each late payment as shown on page 1 of this contract. Acceptance of a late payment does not excuse your late payment or mean that you may keep making late payments. If you pay late, we may also take the steps described below.
- b. **You may have to pay all you owe at once.** If you break your promises (default), we may demand that you pay all you owe on this contract at once. Default means:
  - You do not pay any payment on time;
  - You give false, incomplete, or misleading information during credit application;
  - You start a proceeding in bankruptcy or one is started against you or your property; or
  - You break any agreements in this contract.
 The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.
- c. **You may have to pay collection costs.** If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's fee and court costs the law permits. The maximum attorney's fee you will pay will be 15% of the amount you owe, unless a court awards an additional amount.
- d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you if we do so peacefully and if the law allows it. If your vehicle has an electronic tracking device (such as GPS), you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you. If you do not ask for these items back, we may dispose of them as the law allows.
- e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.



- 1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
- 2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
- 3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Provision shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a class action. You may choose the American Arbitration Association ([www.adr.org](http://www.adr.org)) or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor is a party to the claim or dispute, in which case the hearing will be held in the federal district where this contract was executed. We will pay your filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of \$5000, unless the law or the rules of the chosen arbitration organization require us to pay more. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual injunctive relief. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Provision shall be unenforceable.

**The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.**

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding. Buyer Signs  *Heidi McGill* Co-Buyer Signs  *N/A*

If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.

See the rest of this contract for other important agreements.

**NOTICE TO RETAIL BUYER: Do not sign this contract in blank. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.**

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You acknowledge that you have read all pages of this contract, including the arbitration provision above, before signing below. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs  *Heidi McGill* Date 11/20/2020 Co-Buyer Signs  *N/A* Date N/A

Buyer Printed Name HEIDI MCGILL Co-Buyer Printed Name N/A

If the "business" use box is checked in "Primary Use for Which Purchased": Print Name N/A Title N/A

Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here  *N/A* Address N/A

Seller signs BOB MOORE DODGE CHRYSLER JEEP, LLC Date 11/20/2020 By  *[Signature]* Title F&I MGR

Seller assigns its interest in this contract to TRUE SKY CREDIT UNION (Assignee) under the terms of Seller's agreement(s) with Assignee.

Assigned with recourse  Assigned without recourse  Assigned with limited recourse

Seller BOB MOORE DODGE CHRYSLER JEEP, LLC

By  *[Signature]* Title F&I MGR



Dealer BOB MOORE DODGE CHRYSLER JEEP, LLC

Address 7420 NW EXPRESSWAY

City, St, Zip OKLAHOMA CITY OK 73132 Ph 405/720 4000

Consumer HEIDI MCGILL

Address [REDACTED]

City, St, Zip [REDACTED]

Driver License # \_\_\_\_\_ Ph 530/737-3724

This "Spot Delivery Agreement" is executed as a prelude to an exchange of ownership of the vehicle(s) described herein; subject to Dealer finding a lending institution willing to purchase the Retail Installment Contract executed by the parties; based upon accurate credit information provided by the Consumer; with approval of the purchase of said Retail Installment Contract being the sole responsibility of the lending institution; and, this agreement is hereby incorporated by reference to all documents executed by dealer and consumer relating to the purchase of said vehicle(s), including, but not limited to, the Retail Purchase Agreement and the Retail Installment Contract.

**Dealer agrees:**

- (1) That Consumer has a right to terminate the contract if the finance contract has not been funded within 20 days, or within 10 days after all the required documentation has been fulfilled by the Consumer (see item #5 of "Consumer agrees"), whichever is later;
- (2) To retain in storage any trade-in vehicle until the sale is completed, and not expend any money on such trade-in vehicle except upon Consumer's signed approval of a specifically described work agreement and cost estimate;
- (3) To provide Consumer with copies of the signed contract containing all relevant terms prior to delivery of the vehicle;
- (4) That no detail or restocking fees will be charged to Consumer upon return of the vehicle; and,
- (5) To pay off trade-in vehicle(s) within seven calendar days of funding of the contract.

**Consumer agrees:**

- (1) To provide complete credit information as required by prospective lending institution(s);
- (2) To pay the difference on the payoff of the trade-in vehicle if the payoff exceeds the amount stated on the loan contract;
- (3) To provide funds to pay in full and satisfy any check that is written as a part of the vehicle sales agreement;
- (4) To provide a certificate of title, clear of any liens and free of any salvage, rebuilt or insurance loss branding, to any vehicle offered in trade on this sales transaction, or else disclose in writing prior to executing this document that such is not the case;
- (5) To promptly fulfill credit approval requirements of the financial institution; provided such documents are communicated to Consumer within 10 days of contract date; for example these could include such items as documentation of income and/or residency, telephone interview with a representative of the finance company, or other stipulations;
- (6) To provide proof of insurance acceptable to Dealer, unless waived by Dealer;
- (7) To execute, together with Dealer, a physical condition status report on any trade-in vehicle and the vehicle being delivered, prior to taking delivery, and upon return of vehicle to Dealer, to assume liability for restoring vehicle to its pre-agreement physical condition and for any mechanical damage that occurs as a result of abuse of the vehicle during the term of this agreement;
- (8) To return vehicle within 24 hours of any verbal or written notice that the deal cannot be completed and that failure to do so gives Dealer the right of self help repossession with the reasonable cost of such action to be borne by Consumer;
- (9) That if the vehicle is returned for any reason, Consumer will pay to Dealer the sum of thirty-five (35) cents per mile for miles driven in excess of fifty (50) miles per day during the term of this agreement; and,
- (10) To be responsible for payments on the trade-in vehicle(s) prior to completion of the terms of this agreement, unless provided for otherwise by written agreement.

**DISPUTE RESOLUTION:**

Any disputes about this agreement may be brought to the appropriate Motor Vehicle Commission under their respective complaint procedures.

(new car contracts) OK Motor Vehicle Commission 405-607-8227 [omvc.ok.gov](http://omvc.ok.gov)

(used car contracts) Used Motor Vehicle & Parts Commission 405-521-3600 [umvpc.ok.gov](http://umvpc.ok.gov)

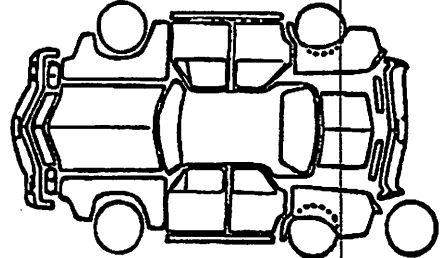
**PURCHASED VEHICLE CONDITION REPORT**

VEHICLE IDENTIFICATION NUMBER

2 C 3 C D X B G 7 L H 2 2 8 8 4 5

MILEAGE (NO TENTHS) | 0 0 0 0 | 1 2 |

Explain in REMARKS any damage to body, glass, or interior, as well as any missing parts or accessories, or other pertinent information.



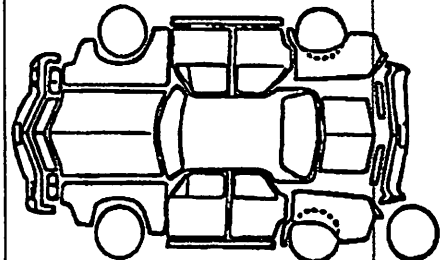
REMARKS: \_\_\_\_\_

**TRADE IN VEHICLE CONDITION REPORT**

VEHICLE IDENTIFICATION NUMBER

M A J 6 P 1 C L X J C 2 4 1 9 7 5

Explain in REMARKS any damage to body, glass, or interior, as well as any missing parts or accessories, or other pertinent information.



REMARKS: \_\_\_\_\_

**I UNDERSTAND THE PURPOSE FOR SIGNING THIS SPOT DELIVERY FORM IS THAT, AS OF THIS DATE, MY LOAN HAS NOT BEEN APPROVED.**

*Heidi McGill*  
CUSTOMER'S Signature (Consumer)

DEALER'S Signature

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

**JUSTIN SACCO**, an individual,  
  
Plaintiffs,  
  
v.  
  
**PARADISE AUTO CENTER LLC**, a  
domestic limited liability company; **HUDSON**  
**INSURANCE COMPANY**, a foreign  
insurance company,  
  
Defendants.

Case No.: 20CV36597  
  
COMPLAINT  
(Unlawful Trade Practices: ORS 646.605;  
Bond Liability: ORS 822.030)  
  
Claim: \$4,040.00  
Filing Fee: \$170 (ORS 21.160)  
  
Subject to Mandatory Arbitration  
Jury Trial Requested

Plaintiffs, by and through their attorney Young Walgenkim, and for their complaint alleges:

1.

At all times material herein, Plaintiff was and is a resident of Jackson County.

2.

At all times material herein, Defendant Paradise Auto Center LLC (Paradise) was and is an Oregon Limited Liability Company with regular and sustained business activities in Josephine County Oregon.

3.

Paradise is an automobile dealership (Dealer Number: DA4173) with multiple locations in Medford and Grants Pass.

1 4.

2 Defendant Hudson Insurance Company (Hudson) is the bond company for Paradise and  
3 Plaintiff has a right of action under ORS 822.030 against the surety on Paradise’s bond.

4 5.

5 Venue is proper in Marion County because Hudson conducts regular, sustained business  
6 activity in Marion County, and because Hudson has a registered agent in Marion County.

7 6.

8 This cause of action arises from Plaintiffs’ August 19, 2020 purchase of a 2017  
9 Mitsubishi Mirage G4 (Mirage), VIN: ML32F4FJXHHF16626, from Paradise for \$10,468.00  
10 plus add-ons and fees. Plaintiff purchased the Mirage for personal or household use.

11 7.

12 Sometime in mid-August 2020, Plaintiff was looking to purchase a new vehicle. Plaintiff  
13 went to Paradise on August 19, 2020 and asked about financing.

14 8.

15 Paradise first had Plaintiff fill out a credit application. After running Plaintiff’s credit,  
16 Paradise picked out the Mirage and told Plaintiff that this was the car that they were willing to  
17 work with him on.

18 9.

19 Paradise and Plaintiff agreed to a loan and signed a Retail Installment Contract (RISC)  
20 with \$3,000 in down payment. Plaintiff signed all the papers that day and drove the car home.

21 10.

22 The next day, Plaintiff went back to Paradise and gave them the \$3,000 in down payment.

23 11.

24 After about two weeks, Paradise called Plaintiff and told him that the bank didn’t approve  
25 the loan with the terms on the RISC and that he needed to come back in.

26 12.

27 Plaintiff went back to Paradise on August 29, 2020 where they discussed new financing

1 options. Paradise and Plaintiff then agreed to a new loan with payments of about \$200 a month  
2 and 16% APR through Unitus Credit Union.

3 13.

4 On September 25, 2020, Paradise called Plaintiff and said that they could not get him the  
5 loan and that Plaintiff needed to bring the Mirage back.

6 14.

7 On September 25, 2020, Plaintiff brought the Mirage back to Paradise and returned the  
8 vehicle, but Paradise refused to return Plaintiff's \$3,000 down payment.

9 15.

10 Paradise told Plaintiff that the reason for keeping the down payment was that it was in the  
11 contract.

12 16.

13 There are no terms in Plaintiff's contract that allows Paradise to keep the \$3,000 down  
14 payment.

15 17.

16 Because Plaintiff did not receive his \$3,000 down payment back, he did not have money  
17 for a down payment to purchase another car.

18 18.

19 Because he did not have a car to drive, Plaintiff was not able to show up to work since  
20 September 27, 2020, and has lost about \$1,040 in wages.

21 **FIRST CLAIM FOR RELIEF: UNLAWFUL TRADE PRACTICES (ORS 646.605)**

22 19.

23 Plaintiff re-alleges the above paragraphs, and incorporates the same herein.

24 20.

25 In the course of its business, and in conjunction with the sale of the vehicle, Paradise  
26 made representations, through assertion by words or conduct, to Plaintiff that Paradise was  
27 entitled to keep the \$3,000 down payment after financing for the Mirage failed.

1 21.

2 Paradise’s representations were false, incomplete, or Paradise did not have sufficient  
3 information upon which a reasonable belief in the truth of the representation could be based.

4 22.

5 In the course of its business, and in conjunction with the sale of the vehicle, Paradise  
6 allowed plaintiff to take possession of the Mirage and executed a purchase order and a retail  
7 installment contract (RISC) prior to plaintiff’s loan being approved by a financial organization.  
8 This practice is called “spot delivery.” See OAR 137-020-0020(2)(dd).

9 23.

10 Plaintiff did not qualify for the terms offered on the RISC.

11 24.

12 Prior to offering or negotiating new financing terms, Paradise failed to inform Plaintiff  
13 that Plaintiff was entitled to have all items of value, including down payment, returned.

14 25.

15 Prior to offering or negotiating new financing terms in person, Paradise failed to return  
16 all items of value received.

17 26.

18 Paradise offered to sell motor vehicle to Plaintiff under a retail installment contract that is  
19 subject to a lender’s agreement to purchase the retail installment contract into which Plaintiff  
20 enters.

21 27.

22 No lender agreed to purchase the retail installment contract on the exact terms that  
23 Paradise and Plaintiff negotiated, and Paradise did not receive final approval of funding from any  
24 lender.

25 28.

26 Plaintiff returned to Paradise all items of value Plaintiff received from Paradise as part of  
27 the transaction.

1 29.

2 Paradise did not return to Plaintiff all items of value Paradise received from Plaintiff as  
3 part of the transaction.

4 30.

5 Therefore, Paradise violated the following provisions of the UTPA:

- 6 a. ORS 646.608(1)(u), OAR 137-020-0020(3)(p): False representations.
- 7 b. ORS 646.608(1)(u), OAR 137-020-0020(3)(z): Anti Bushing.
- 8 c. ORS 646.608(1)(ss): Violation of 646A.090.

9 **Damages**

10 31.

11 As a result of Paradise's violations of the UTPA, Plaintiff suffered ascertainable loss and  
12 economic damages of \$4,040.

13 32.

14 Therefore, Plaintiff is entitled to actual economic damages, reasonable attorney fees, and  
15 costs pursuant to ORS 646.638.

16 **Liability of Hudson**

17 33.

18 Paradise's violations of the UTPA were due to Paradise's fraudulent representations.

19 34.

20 Plaintiff suffered loss because of Paradise's fraudulent representations.

21 35.

22 Hudson is jointly and severally liable as the bond company for Paradise under ORS  
23 822.030, not to exceed \$50,000.

24 36.

25 With the service of this complaint, proof of loss is filed with Hudson. If plaintiff's  
26 recovery exceeds the amount of any tender made by Hudson within six months of the proof of  
27 loss, Plaintiff is entitled to attorney fees against Hudson pursuant to ORS 742.061(1).

**SECOND CLAIM FOR RELIEF: LIABILITY OF THE BOND (ORS 822.030)**

37.

Plaintiff re-alleges the above paragraphs, and incorporates the same herein.

38.

Paradise conducted a vehicle sale transaction with plaintiff through the use of fraudulent representations.

39.

Those representations were material to Plaintiff in that he relied upon them in making the contract.

40.

Plaintiff has been damaged by Paradise’s misrepresentations in the amount of \$4,040.

41.

Plaintiff has also been damaged for reasonable attorney fees in the amount to be determined by the court.

42.

Defendants Paradise and Hudson are jointly and severally liable for these damages pursuant to ORS 822.030 and the DMV-required bond.

43.

With the service of this complaint, Plaintiff has provided proof of loss to Hudson in an action brought against an insurance policy, and is entitled to reasonable attorney fees pursuant to ORS 742.061 if recovery exceeds the amount of tender made by defendant within six months of proof of loss.

**JURY DEMAND**

44.

Plaintiff demands trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment be entered against Defendants for:

- 1 a) An order declaring that Paradise violated the UTPA 646.608;
- 2 b) An award of actual damages of \$4,040;
- 3 c) 9% pre-judgment interest;
- 4 d) An award of reasonable attorney fees and costs; and
- 5 e) Any and all other relief the court deems just and equitable.

6 DATED: October 15, 2020

7  
8 /s/ Young Walgenkim  
9 Young Walgenkim OSB# 124900  
10 Hanson & Walgenkim, LLC  
11 838 Commercial St NE  
12 Salem, OR 97301  
13 Tel. (503) 383-1496 || Fax (503) 766-6477  
14 young@hansonwalgenkim.com  
15 Attorney for Plaintiff  
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Dealer Number, Contract Number, Date, FEDERAL TRADE COMMISSION OFFICE OF THE SECRETARY FILED 05/23/2023 OSCAR NO 607738 PAGE Page 41 of 110 \* -PUBLIC, Buyer Name and Address, Co-Buyer Name and Address, Creditor-Seller Name and Address

EXHIBIT C Walgenkim - Sacco

By signing this contract, I am buying the Property described below from you, the Creditor/Seller indicated above, and I agree to the terms stated on the front and back of this contract, including those stated in the Federal Truth-In-Lending Disclosures.

If the Property is a used vehicle: The information I see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. [La informacion que aparece en la ventanilla de este vehiculo forma parte de este contrato. La informacion contenida en el formulario de la ventanilla anula cualquier prevision que establezca lo contrario y que aparezca en el contrato de venta.]

Table with columns: Model Yr., Make & Model, Body Type, Color, Odometer, Vehicle Identification No., St. & Lic. No., New/Used, No. Cyls.

Use for which purchased: Personal Commercial Agricultural

Insurance and Protection. If any insurance or protection is checked below, the policies or certificates issued by the Companies named will describe the terms and conditions.

Optional Insurance. Credit life insurance, credit disability insurance and other optional insurance are not required to obtain credit and will not be provided unless I sign for them and agree to pay the additional cost.

- Credit Life (Buyer Co-Buyer Both) Term Premium \$ Insurer Insured(s)
Credit Disability, Accident and Health (Buyer only) Term Premium \$ Insurer Insured
(Type of Other Insurance) Term Premium \$ Insurer Insured

I want the insurance coverage(s) checked above, and I know that it is not required to obtain credit:

Buyer Signature Date

Co-Buyer Signature Date

Optional Gap Contract. A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge.

Term Mos. Name of Gap Contract I want to buy a gap contract. Buyer Signs X

Required Physical Damage Insurance. Physical damage insurance is required, but I may obtain it from anyone I choose.

- Insurance Company Term: months
Deductible Collision and either:
Full Comprehensive including Fire, Theft and Combined Additional Coverage
Deductible Comprehensive including Fire, Theft and Combined Additional Coverage
Fire, Theft and Combined Additional Coverage

Optional Service Contract. The cost of this contract is shown in 4c of the Itemization below.

Company Term: \$ Deductible

Optional Mechanical Breakdown Protection. The cost of this protection is shown in 4d of the Itemization of Amount Financed.

Company Term: \$ Deductible

Unless a charge for Liability Insurance is included in the itemization of amount financed, any insurance referred to in this contract does not include coverage for personal liability, bodily injury and property damage caused to others.

ITEMIZATION OF AMOUNT FINANCED

- 1. Cash Sale Price (including any accessories) \$ (1)
2. Downpayment: (If 2d is negative, enter 0 at 2d and enter the negative amount in line 4k below)
a. Cash Downpayment \$
b. Manufacturer's Rebate (if applicable) \$
c. Deferred Downpayment (Pickup Pymt), due , on which there's no finance charge, of \$
d. Trade-in: Value \$ Less owing \$ Net \$
Description of Trade-in: Lien Payoff To:
Total Downpayment (a+b+c+d) (also put this figure on the downpayment line in the Total Sale Price box below) (Do not include 2d if negative) \$ (2)
3. Unpaid Balance of Cash Sale Price (1-2) \$ (3)
4. Charges other than Finance Charge, including Amounts Paid to Others on My Behalf: (\* Seller may be retaining a portion of this amount)
a. Cost of Optional Insurance for the Term of this Contract paid to the Insurance Company(ies) named above.\*
Credit Life \$ Credit Disability, Accident and Health \$ Other \$
b. Cost of required Physical Damage Insurance paid to the Insurance Company named above (covers damage to the vehicle) \* \$
c. Cost of Optional Service Contract paid to the Company named above (covers certain repairs) \* \$
d. Cost of Optional Mechanical Breakdown Protection paid to the Company named above (covers certain repairs) \* \$
e. Cost of Optional Gap Contract\* \$
f. License / Registration Fees paid to government agencies \$
g. Title Fees paid to government agencies \$
h. DEQ Certification fee paid to government agencies \$
i. Title & Registration Processing Fee paid to Seller \$ , Optional Electronic Filing Fee paid to Seller \$
j. Sales Tax / Excise Tax paid to government agencies \$
k. Other Charges (Seller must identify who will receive payment and describe purpose - include negative trade equity here) \*
to for \$
to for \$

[Redacted]

[Redacted]

of 5 % of the payment that is late.

**Prepayment.** If you pay off all your debt early, you will not have to pay a penalty.

**Security Interest.** You are giving a security interest in the vehicle being purchased.

**Additional Information:** See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

**ITEMIZATION OF AMOUNT FINANCED**

1 Cash Price (including \$ \_\_\_\_\_ sales tax) \$ \_\_\_\_\_ (1)

2 Total Downpayment =

Trade-in \_\_\_\_\_

(Year) (Make) (Model)

Gross Trade-In Allowance \$ \_\_\_\_\_

Less Pay Off Made By Seller \$ \_\_\_\_\_

Equals Net Trade In \$ \_\_\_\_\_

+ Cash \$ \_\_\_\_\_

+ Other \$ \_\_\_\_\_

(If total downpayment is negative, enter "0" and see 4H below) \$ \_\_\_\_\_ (2)

3 Unpaid Balance of Cash Price (1 minus 2) \$ \_\_\_\_\_ (3)

4 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):

A Cost of Optional Credit Insurance Paid to Insurance Company or Companies.

Life \$ \_\_\_\_\_

Disability \$ \_\_\_\_\_

B Other Optional Insurance Paid to Insurance Company or Companies \$ \_\_\_\_\_

C Official Fees Paid to Government Agencies

to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_

to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_

to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_

D Optional Gap Contract \$ \_\_\_\_\_

E Government Taxes Not Included in Cash Price \$ \_\_\_\_\_

F Government License and/or Registration Fees \$ \_\_\_\_\_

G Government Certificate of Title Fees \$ \_\_\_\_\_

H Other Charges (Seller must identify who is paid and describe purpose)

to \_\_\_\_\_ for Prior Credit or Lease Balance \$ \_\_\_\_\_

to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_

to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_

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to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_

to \_\_\_\_\_ for \_\_\_\_\_ \$ \_\_\_\_\_

Total Other Charges and Amounts Paid to Others on Your Behalf \$ \_\_\_\_\_ (4)

5 Amount Financed (3 + 4) \$ \_\_\_\_\_ (5)

**Other Optional Insurance**

\_\_\_\_\_ Type of Insurance \_\_\_\_\_ Term \_\_\_\_\_

Premium \$ \_\_\_\_\_

Insurance Company Name \_\_\_\_\_

Home Office Address \_\_\_\_\_

\_\_\_\_\_ Type of Insurance \_\_\_\_\_ Term \_\_\_\_\_

Premium \$ \_\_\_\_\_

Insurance Company Name \_\_\_\_\_

Home Office Address \_\_\_\_\_

Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost.

I want the insurance checked above.

**X** \_\_\_\_\_ Date \_\_\_\_\_  
Buyer Signature

**X** \_\_\_\_\_ Date \_\_\_\_\_  
Co-Buyer Signature

**THIS INSURANCE DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE CAUSED TO OTHERS.**

**Returned Check Charge:** You agree to pay a charge of \$ 35.00 if any check or electronic payment you make is returned unpaid.

**Agreement to Arbitrate:** By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

Buyer Signs X \_\_\_\_\_  
Co-Buyer Signs X \_\_\_\_\_

**OPTION:**  You pay no finance charge if the Amount Financed, item 5, is paid in full on or before \_\_\_\_\_, Year \_\_\_\_\_. SELLER'S INITIALS \_\_\_\_\_

**OPTIONAL GAP CONTRACT.** A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. Your decision to buy or not buy a gap contract will not affect the credit terms or our decision to sell the vehicle or extend credit to you. If you choose to buy a gap contract, the charge is shown in line item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term \_\_\_\_\_ Mos. \_\_\_\_\_ Name of Gap Contract \_\_\_\_\_

I want to buy a gap contract.

Buyer Signs X \_\_\_\_\_

**NO COOLING OFF PERIOD**

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

**The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge**

expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.

**c. Security Interest.**

You give us a security interest in:

- The vehicle and all parts or goods put on it;
- All money or goods received (proceeds) for the vehicle;
- All insurance, maintenance, service, or other contracts we finance for you; and
- All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.

This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.

**d. Insurance you must have on the vehicle.**

You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle.

**WARNING**

Unless you provide us with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract. If the cost is added to your contract, the interest rate on the underlying contract will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.

**e. What happens to returned insurance, maintenance, service, or other contract charges.** If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

**3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES**

**a. You may owe late charges.** You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us, unless the law provides otherwise. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.

**g. What we may do about optional insurance, maintenance, service, or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, you agree that we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

**4. WARRANTIES SELLER DISCLAIMS**

The following paragraph does not affect any warranties covering the vehicle that the vehicle manufacturer may provide. The following paragraph also does not apply at all if the vehicle is a new vehicle you bought primarily for personal, family, or household use.

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.

**5. Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

**6. SERVICING AND COLLECTION CONTACTS**

You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

**7. APPLICABLE LAW**

Federal law and the law of the state of our address shown on the front of this contract apply to this contract.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

**ESTEPHANIA PALACIOS GOMEZ**, an individual,

Plaintiff,

v.

**LOW PRICE AUTO LLC dba SALEM AUTO MARKET**, a domestic limited liability company; **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA**, a foreign insurance company,

Defendants.

Case No.: 21CV37572

COMPLAINT  
(Unlawful Trade Practices: ORS 646.605;  
Truth in Lending: 15 USC § 1601; Bond  
Liability: ORS 822.030)

Claim: \$10,286.16  
Filing Fee: \$283 (ORS 21.160)

Subject to Mandatory Arbitration

Plaintiff, by and through her attorney Young Walgenkim, and for her complaint alleges:

1.

At all times material herein, Plaintiff was and is a resident of Marion County.

2.

At all times material herein, Defendant Low Price Auto LLC dba Salem Auto Market (Salem Auto) was and is an Oregon Limited Liability Company with regular and sustained business activities in Marion County Oregon.

3.

Salem Auto is an automobile dealership (Dealer Number: DA1876) located on 1190 Capitol St. NE, Salem, OR 97301.

4.

Defendant Travelers Casualty And Surety Company Of America (Travelers) is the bond

1 company for Salem Auto (Bond Number: 106629920), with headquarters located at One Tower  
2 Square, Hartford, CT 06183. Plaintiff has a right of action under ORS 822.030 against the surety  
3 on Salem Auto's bond.

4 5.

5 On March 23, 2021, Plaintiff purchased a 2012 Mercedes Benz C250 (C250), VIN  
6 WDDGF4HB6CA616669, from Salem Auto for \$10,995 plus addons and miscellaneous fees.

7 6.

8 Plaintiff purchased the C250 for personal or household use.

9 7.

10 Plaintiff traded in her Honda Fit for \$850, paid \$2,000 in down payment, and agreed to  
11 pay additional \$1,425 in deferred down payment.

12 8.

13 After applying the \$4,275 in down payment, Salem Auto and Plaintiff agreed to a loan  
14 for the remaining \$9,031.58, and signed a Retail Installment Contract (RISC 1) with the  
15 understanding that Salem Auto was to obtain financing for Plaintiff at Lobel Financial Corp.  
16 (Exhibit 1 – RISC 1).

17 9.

18 Plaintiff signed all the purchase paperwork that day and drove the C250 home.

19 10.

20 Plaintiff paid the following amounts on the following days to Salem Auto for her deferred  
21 down payments:

22 a. March 28, 2021: \$260

23 b. April 4, 2021: \$240

24 c. April 11, 2021: \$240

25 d. April 18, 2021: \$240

26 e. May 5, 2021: \$300

27 f. May 9, 2021: \$155.

1 In total, Plaintiff paid \$1,435 in deferred down payments.

2 11.

3 On or about June 2, Salem Auto called Plaintiff and told her that it could not obtain  
4 financing for her and told her to come in to sign a new loan.

5 12.

6 Salem Auto did not inform Plaintiff during that phone call that she had the right to  
7 receive the immediate return of all items of value given to Salem Auto for the purchase of the  
8 C250.

9 13.

10 Plaintiff went in to Salem Auto on or about June 2, and signed a new RISC. (Exhibit 2 –  
11 RISC 2). Salem Auto did not return the down payment to Plaintiff before entering into the new  
12 agreement.

13 14.

14 For the new transaction, Salem Auto increased the price of the C250 by \$1,000.

15 15.

16 Salem Auto also falsely represented the down payment as \$3,775 on RISC 2.

17 16.

18 Salem Auto and Plaintiff signed RISC 2 with the understanding that Salem Auto was to  
19 obtain financing for Plaintiff at Reliable Credit.

20 17.

21 Plaintiff signed all the papers that day and drove the car home.

22 18.

23 A few days later, the C250 lost all power and shut down while Plaintiff was driving.

24 19.

25 Plaintiff called Salem auto, and they told her that it was probably just the fuse.

26 20.

27 Plaintiff paid \$195 to get the C250 towed to her mechanic. The mechanic did a cursory

1 inspection and found that the battery was not compatible and also found many codes on the  
2 vehicle.

3 21.

4 Plaintiff called Salem Auto, informed them of the problems, and Salem Auto came to  
5 Plaintiff's residence and picked up the C250.

6 22.

7 On July 6, 2021 Salem Auto called Plaintiff and informed her that Reliable Credit  
8 rejected the loan and that it was back with Salem Auto. Plaintiff asked if Salem Auto would  
9 carry the loan in house but Salem Auto refused.

10 23.

11 Plaintiff returned her key to Salem Auto and requested Salem Auto to return her down  
12 payment.

13 24.

14 Thereafter, Plaintiff made multiple requests to Salem Auto to return her down payment,  
15 and Salem Auto refused.

16 25.

17 As of the date of this Complaint, Salem Auto has not returned Plaintiff's down payment.

18 **FIRST CLAIM FOR RELIEF: UNLAWFUL TRADE PRACTICES (ORS 646.605)**

19 26.

20 Plaintiff re-alleges the above paragraphs, and incorporates the same herein.

21 27.

22 In the course of its business, Salem Auto made false representation on RISC 2 that the  
23 amount of down payment was \$3,775.

24 28.

25 Salem Auto gave oral and written price quotation of \$10,995 for the C250.

26 29.

27 The final purchase price of the C250 came out to \$11,995 on RISC 2.



1 30.

2 In the course of its business, and in conjunction with the sale of the vehicle, Salem Auto  
3 allowed Plaintiff to take possession of the vehicle and execute a purchase order and/or a retail  
4 installment contract prior to Plaintiff's loan being approved by a financial organization.

5 31.

6 Plaintiff did not qualify for the terms offered on the RISC.

7 32.

8 Prior to offering or negotiating new financing terms, Salem Auto failed to inform plaintiff  
9 that plaintiff was entitled to have all items of value, including down payment, trade-in vehicle  
10 returned.

11 33.

12 Prior to offering or negotiating new financing terms in person, Salem Auto failed to  
13 return all items of value received.

14 34.

15 Salem Auto offered to sell a motor vehicle to Plaintiff under a retail installment contract  
16 (RISC 2) that is subject to a lender's agreement to purchase the retail installment contract into  
17 which Plaintiff entered.

18 35.

19 No lender agreed to purchase the RISC 2 on the exact terms that Salem Auto and Plaintiff  
20 negotiated, and Salem Auto did not receive final approval of funding from any lender within 14  
21 days of Plaintiff taking possession of the C250.

22 36.

23 Plaintiff returned to Salem Auto all items of value Plaintiff received from Salem Auto as  
24 part of the transaction.

25 37.

26 Salem Auto did not return to Plaintiff all items of value Salem Auto received from  
27 Plaintiff as part of the transaction.

1 38.

2 Salem Auto advertised, offered credit, or extended credit related to the purchase of real  
3 estate, goods, or services in violation of the Truth in Lending Act of the Federal Consumer  
4 Leasing Law.

5 39.

6 Therefore, Salem Auto violated the following provisions of the UTPA:

- 7 a. ORS 646.608(1)(k): False representations of the nature of the transaction or the
- 8 obligation incurred.
- 9 b. ORS 646.608(1)(u), OAR 137-020-0020(3)(c): Offering price violation
- 10 c. ORS 646.608(1)(u), OAR 137-020-0020(3)(z): Anti bushing.
- 11 d. ORS 646.608(1)(ss): Violation of 646A.090.
- 12 e. ORS 646.608(1)(u), OAR 137-020-0040(2): Violations of truth in lending.

13 40.

14 Salem Auto’s violations were willful in that Salem Auto knew or should have known it  
15 had committed those violations. Salem Auto knew or should have known that that its above  
16 representations were untrue or deceptive.

17 **Damages**

18 41.

19 As a result of Salem Auto's violations of the UTPA, Plaintiff suffered ascertainable loss  
20 and economic damages of \$4,480.

21 42.

22 Therefore, Plaintiff is entitled to actual economic damages, reasonable attorney fees, and  
23 costs pursuant to ORS 646.638.

24 **Liability of Travelers**

25 43.

26 Salem Auto’s violations of the UTPA were due to Salem Auto’s fraudulent  
27 representations.

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44.

Plaintiff suffered loss because of Salem Auto’s fraudulent representations.

45.

Travelers is jointly and severally liable as the bond company for Salem Auto under ORS 822.030, not to exceed \$50,000.

46.

Proof of loss is filed with Travelers with the service of this Complaint. If Plaintiff’s recovery exceeds the amount of any tender made by Travelers within six months of the proof of loss, Plaintiff is entitled to attorney fees against Travelers under ORS 742.061(1).

**SECOND CLAIM FOR RELIEF: TRUTH IN LENDING (15 USC § 1601)**

47.

Plaintiff re-alleges the above paragraphs, and incorporates the same herein.

48.

Salem Auto offered and extended credit to Plaintiff.

49.

Salem Auto regularly extends consumer credit.

50.

In 2020, Salem Auto signed more than 25 Retail Installment Contracts where credit is extended to the customers for their purchase of vehicles from Salem Auto.

51.

The credit offered to Plaintiff was subject to a finance charge included in a written agreement that involved more than four installment payments.

52.

Plaintiff’s use of the credit was for a personal, family, or household purpose.

53.

Salem Auto failed to comply with the disclosure requirements under the Truth in Lending Act (TILA), including but not limited to: 1) the amount financed, 2) the finance charge, 3) the

1 annual percentage rate, 4) the total of payments, 5) the schedule of payments, and 6) the total  
2 sale price, in violation of 15 U.S.C. § 1638.

3 54.

4 As a result of Salem Auto's violations of the TILA, Plaintiff is entitled to recover  
5 statutory damages of \$6,001.16, which is two times the finance charge, pursuant to 15 U.S.C. §  
6 1640.

7 55.

8 Plaintiff is entitled to her costs and reasonable attorney fees, pursuant to 15 U.S.C. §  
9 1667d and 15 U.S.C. § 1640(a)(3).

10 **Liability of Travelers**

11 56.

12 Salem Auto's violations of the TILA were due to Salem Auto's fraudulent  
13 representations and/or Salem Auto's violations of the vehicle code.

14 57.

15 Plaintiff suffered loss because of Salem Auto's fraudulent representations and/or Salem  
16 Auto's violations of the vehicle code.

17 58.

18 Travelers is jointly and severally liable as the bond company for Salem Auto under ORS  
19 822.030.

20 59.

21 Proof of loss is filed with Travelers with the service of this Complaint. If Plaintiff's  
22 recovery exceeds the amount of any tender made by Travelers within six months of the proof of  
23 loss, Plaintiff is entitled to attorney fees against Travelers under ORS 742.061(1).

24

25 **THIRD CLAIM FOR RELIEF: LIABILITY OF THE BOND (ORS 822.030)**

26 60.

27 Plaintiff re-alleges the above paragraphs, and incorporates the same herein.

1 DATED: September 20, 2021

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/s/ Young Walgenkim  
Young Walgenkim OSB# 124900  
Hanson & Walgenkim, LLC  
838 Commercial St NE  
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young@hansonwalgenkim.com  
Attorney for Plaintiff

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61.

Salem Auto sold the vehicle to Plaintiff through the use of fraudulent representations and violations of the vehicle code.

62.

Those representations were material to Plaintiff in that she relied upon them in making the contract.

63.

Plaintiff has been damaged by Salem Auto’s misrepresentations in the amount of \$4,285.00.

64.

Plaintiff has also been damaged for reasonable attorney fees in the amount to be determined by the court.

65.

Defendants Salem Auto and Travelers are jointly and severally liable for these damages pursuant to ORS 822.030 and the DMV-required bond.

66.

Proof of loss is filed with Travelers with the service of this Complaint. If Plaintiff’s recovery exceeds the amount of any tender made by Travelers within six months of the proof of loss,

Plaintiff is entitled to attorney fees against Travelers under ORS 742.061(1).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment be entered against Defendants for:

- a) An award of actual damages of \$4,285;
- b) An award of statutory damages of \$6,001.16 for violation of Truth in Lending Act;
- c) An order finding Travelers jointly and severally liable up to the bond limit;
- d) 9% pre-judgment interest;
- e) An award of reasonable attorney fees and costs; and
- f) Any and all other relief the court deems just and equitable.

# RETAIL INSTALLMENT CONTRACT

<b>Seller Name and Address</b> SALEM AUTO MARKET 1190 CAPITAL ST. NE. SALEM, OR 97301-1101	<b>Buyer(s) Name(s) and Address(es)</b> ESTEPHANIA PALACIOS GOMOZGOMEZ [REDACTED]	<b>Summary</b> No. <u>2933734Q</u> Date <u>03/23/2021</u>
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Business, commercial or agricultural purpose Contract.  
 If this Contract is for a consumer purpose, then this Contract is consumer paper.

### Truth-In-Lending Disclosure

Annual Percentage Rate	Finance Charge	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid when you have made all scheduled payments.	The total cost of your purchase on credit, including your down payment of
22.99%	\$ 4,758.30	\$ 9,031.58	\$ 13789.88	\$ 2775.00 \$ 16564.88

**Payment Schedule.** Your payment schedule is:

No. of Payments	Amount of Payments	When Payments are Due
45	\$ 299.78	Starting 05/07/2021 and every 7th of the month thereafter
1	\$ 299.78	Estimated final payment on 02/07/2025
N/A	\$ N/A	N/A

**Security.** You are giving us a security interest in the Property purchased.  
**Late Charge.** If all or any portion of a payment is not paid within 10 days of its due date, you will be charged a late charge of 5% of the unpaid amount of the payment due.  
**Prepayment.** If you pay off this Contract early, you will not have to pay a penalty.  
**Contract Provisions.** You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

### Description of Property

Year	Make	Model	Style	Vehicle Identification Number	Odometer Mileage
2012	MERCEDES-BENZ	C-CLASS	C 250 SPORT SED	WDDGF4HB6CA616669	125,223
Other: <input type="checkbox"/> New <input checked="" type="checkbox"/> Used <input type="checkbox"/> Demo					

### Description of Trade-In

0

### Conditional Delivery

**Conditional Delivery.** If checked, you agree that the following agreement regarding securing financing ("Agreement") applies: \_\_\_\_\_  
 The Agreement is part of this Contract. The Agreement will no longer control after the assignment is accepted. If there are any conflicts between the terms of the Agreement and the Contract, the terms of this Contract will apply.

### Sales Agreement

**Payment.** You promise to pay us the principal amount of \$ 9,031.58 plus finance charges accruing on the unpaid balance at the rate of 22.99% per year from the date of this Contract until maturity. After maturity, or after you default and we demand payment, we will

charge finance charges on the unpaid balance at 22.99% per year. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the *Truth-In-Lending Disclosure*. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

**Down Payment.** You also agree to pay or apply to the Cash Price, on or before the date of this Contract, any cash, rebate and net trade-in value described in the *Itemization of Amount Financed*.

You agree to make deferred down payments as set forth in your Payment Schedule.

**Additional Charge.** You agree to pay an additional charge of \$ \_\_\_\_\_ that will be  paid in cash.  financed over the term of the Contract.

Itemization of Amount Financed

Table with 2 columns: Description and Amount. Rows include Cash Price, Trade-in allowance, Net trade-in, Cash payment, Manufacturer's rebate, Deferred down payment, Down Payment, Unpaid balance of Cash Price, Total Other Charges/Amts Paid, Prepaid Finance Charge, and Amount Financed.

We may retain or receive a portion of any amounts paid to others.

[This area intentionally left blank.]

Insurance Disclosures

Credit Insurance. Credit life and credit disability (accident and health) are not required to obtain credit and are not a factor in the credit decision. We will not provide them unless you sign and agree to pay the additional premium.

Credit Life

Single Joint None Premium \$ 0.00 Term N/A Insured N/A

Credit Disability

Single Joint None Premium \$ 0.00 Term N/A Insured N/A

Your signature below means you want (only) the insurance coverage(s) quoted above. If "None" is checked, you have declined the coverage we offered.

Signature of ESTEPHANIA PALACIOS GOMOZGOMEZ, 12/07/1990, DOB

By: DOB

By: DOB

Property Insurance. You must insure the Property. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ 1000.00. If you get insurance from or through us you will pay \$ 0.00 for

of coverage.

This premium is calculated as follows:

- Single-Interest Insurance. You must purchase single-interest insurance as part of this sale transaction. You may purchase the coverage from a company of your choice, reasonably acceptable to us. If you buy the coverage from or through us, you will pay \$ 0.00 for N/A of coverage.

Liability insurance coverage for bodily injury and property damage caused to others is not included in this Contract unless checked and indicated.

Single-Interest Insurance. You must purchase single-interest insurance as part of this sale transaction. You may purchase the coverage from a company of your choice, reasonably acceptable to us. If you buy the coverage from or through us, you will pay \$ 0.00 for N/A of coverage.





Additional Protections

You may buy any of the following voluntary protection plans. They are not required to obtain credit, are not a factor in the credit decision, and are not a factor in the terms of the credit or the related sale of the Vehicle. The voluntary protections will not be provided unless you sign and agree to pay the additional cost.

Your signature below means that you want the described item and that you have received and reviewed a copy of the contract(s) for the product(s). If no coverage or charge is given for an item, you have declined any such coverage we offered.

Service Contract
Term
Price
Coverage

X Gap Waiver or Gap Coverage
Term 46
Price \$ 430.08
Coverage Per GAP Waiver Addendum

Term
Price
Coverage

Handwritten signature of Estephania Palacios Gomo Gomez

03/23/2021

By: ESTEPHANIA PALACIOS GOMOZGOMEZ Date

By: Date

By: Date

Additional Terms of the Sales Agreement

Definitions. "Contract" refers to this Retail Installment Contract and Security Agreement. The pronouns "you" and "your" refer to each Buyer signing this Contract, and any guarantors, jointly and individually. The pronouns "we", "us" and "our" refer to the Seller and any entity to which it may transfer this Contract. "Vehicle" means each motor vehicle described in the Description of Property section. "Property" means the Vehicle and all other property described in the Description of Property and Additional Protections sections.

Purchase of Property. You agree to purchase the Property from Seller, subject to the terms and conditions of this Contract. Seller will not make any repairs or additions to the Vehicle except as noted in the Description of Property section.

You have been given the opportunity to purchase the Property and described services for the Cash Price or the Total Sale Price. The "Total Sale Price" is the total price of the Property if you buy it over time.

General Terms. The Total Sale Price shown in the Truth-In-Lending Disclosure assumes that all payments will be made as scheduled. The actual amount you will pay will be more if you pay late and less if you pay early.

We do not intend to charge or collect, and you do not agree to pay, any finance charge or fee that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that exceeds that maximum amount, we will first apply the excess amount to reduce the principal balance and, when the principal has been paid in full, refund any remaining amount to you.

You understand and agree that some payments to third parties as a part of this Contract may involve money retained by us or paid back to us as commissions or other remuneration.

You agree that the Property will not be used as a dwelling.

Prepayment. You may prepay this Contract in full or in part at any time without penalty. Any partial prepayment will not excuse any later scheduled payments. If we get a refund of any unearned insurance premiums that you paid, you agree that we may subtract the refund from the amount you owe, unless otherwise provided by law.

Returned Payment Charge. If you make any payment required by this Contract that is returned or dishonored, you agree to pay a fee of \$35.00.

Governing Law and Interpretation. This Contract is governed by the law of Oregon and applicable federal law and regulations.

If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract. You authorize us to correct any clerical error or omissions in this Contract or in any related document.

Name and Location. Your name and address set forth in this Contract are your exact legal name and your principal residence. You will provide us with at least 30 days notice before you change your name or principal residence.

Telephone Monitoring and Calling. You agree that we may from time to time monitor and record telephone calls made or received by us or our agents regarding your account to assure the quality of our service. In order for us to service the account or to collect any amounts you may owe, and subject to applicable law, you agree that we may from time to time make calls and send text messages to you using prerecorded/artificial voice messages or through the use of an automatic dialing device at any telephone number you provide to us in connection with your account, including a mobile telephone number that could result in charges to you.

Default. You will be in default on this Contract if you fail to perform any obligation that you have undertaken in this Contract (except as prohibited by law).

If you default, you agree to pay our reasonable costs for collecting amounts owing, including court costs and fees for repossession, repair, storage and sale of the Property securing this Contract. You also agree to pay reasonable attorneys' fees after default and referral to an attorney not a salaried employee of ours.

If an event of default occurs as to any of you, we may exercise our remedies against any or all of you.

Remedies. If you are in default on this Contract, we have all of the remedies provided by law and this Contract. Those remedies include:

- We may require you to immediately pay us, subject to any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. You will repay us that amount immediately. That amount will earn finance charges from the date we pay it at the post-maturity rate described in the Payment section until paid in full.
We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises.
We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward what you owe us.
Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not give up our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above. You may have a right to recover that property.



# EXHIBIT D

If the Property has an electronic tracking device, you agree that we may use the device to find the vehicle.

**Obligations Independent.** Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- ◆ You must pay this Contract even if someone else has also signed it.
- ◆ We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
- ◆ We may release any security and you will still be obligated to pay this Contract.
- ◆ If we give up any of our rights, it will not affect your duty to pay this Contract.
- ◆ If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

**Warranty.** Warranty information is provided to you separately.

## Security Agreement

**Security.** To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessions, attachments, accessories, and equipment placed in or on the Vehicle and in all other Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

**Duties Toward Property.** By giving us a security interest in the Property, you represent and agree to the following:

- ◆ You will defend our interests in the Property against claims made by anyone else. You will keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
- ◆ You will keep the Property in your possession and in good condition and repair. You will use the Property for its intended and lawful purposes.
- ◆ You agree not to remove the Property from the U.S. without our prior written consent.
- ◆ You will not attempt to sell the Property, transfer any rights in the Property, or grant another lien on the Property without our prior written consent.
- ◆ You will pay all taxes and assessments on the Property as they become due.
- ◆ You will notify us with reasonable promptness of any loss or damage to the Property.
- ◆ You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

**Agreement to Provide Insurance.** You agree to provide property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the *Insurance Disclosures* section, or as we will otherwise require. You will name us as loss payee on any such policy. Generally, the loss payee is the one to be paid the policy benefits in case of loss or damage to the Property. In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property. You agree that if the insurance proceeds do not cover the amounts you still owe us, you will pay the difference. You will keep the insurance in full force and effect until this Contract is paid in full.

If you fail to obtain or maintain this insurance, or name us as loss payee, we may obtain insurance to protect our interest in the Property. This insurance may be written by a company other than one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. This amount will earn finance charges from the date paid at the rate described in the *Payment* section until paid in full.

**WARNING.** Unless you provide us with evidence of the insurance coverage as required by this Contract, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere. You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to this Contract. If the cost is added to this Contract, the rate described in the *Payment* section of this Contract will apply to this added amount. The effective date of

coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage. The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law. If the Vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the Vehicle.

**Gap Waiver or Gap Coverage.** In the event of theft or damage to the Vehicle that results in a total loss, there may be a gap between the amount due under the terms of the Contract and the proceeds of your insurance settlement and deductibles. You are liable for this difference. You have the option of purchasing Gap Waiver or Gap Coverage to cover the gap liability, subject to any conditions and exclusions in the Gap Waiver or Gap Coverage agreements.

## Arbitration Provision

**PLEASE READ CAREFULLY!** By agreeing to this Arbitration Provision you are giving up your right to go to court for claims and disputes arising from this Contract:

- ◆ **EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN YOU AND US DECIDED BY ARBITRATION, AND NOT BY A COURT OR BY JURY TRIAL.**
- ◆ **YOU GIVE UP ANY RIGHT THAT YOU MAY HAVE TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER IN ANY CLASS ACTION OR CLASS ARBITRATION AGAINST US IF A DISPUTE IS ARBITRATED.**
- ◆ **IN ARBITRATION, DISCOVERY AND RIGHTS TO APPEAL ARE GENERALLY MORE LIMITED THAN IN A JUDICIAL PROCEEDING, AND OTHER RIGHTS THAT YOU WOULD HAVE IN COURT MAY NOT BE AVAILABLE.**

You or we (including any assignee) may elect to resolve any Claim by neutral, binding arbitration and not by a court action. "Claim" means any claim, dispute or controversy between you and us or our employees, agents, successors, assigns or affiliates arising from or relating to: 1. the credit application; 2. the purchase of the Property; 3. the condition of the Property; 4. this Contract; 5. any insurance, maintenance, service or other contracts you purchased in connection with this Contract; or 6. any related transaction, occurrence or relationship. This includes any Claim based on common or constitutional law, contract, tort, statute, regulation or other ground. To the extent allowed by law, the validity, scope and interpretation of this Arbitration Provision are to be decided by neutral, binding arbitration.

If either party elects to resolve a Claim through arbitration, you and we agree that no trial by jury or other judicial proceeding will take place. Instead, the Claim will be arbitrated on an individual basis and not on a class or representative basis.

The party electing arbitration may choose either of the following arbitration organizations and its applicable rules, provided it is willing and able to handle the arbitration: American Arbitration Association, 1633 Broadway, Floor 10, New York, NY 10019 ([www.adr.org](http://www.adr.org)) or JAMS, 1920 Main Street, Suite 300 Irvine, CA 92614 ([www.jamsadr.com](http://www.jamsadr.com)), or it may choose any other reputable arbitration organization and its rules to conduct the arbitration, subject to the other party's approval. The parties can get a copy of the organization's rules by contacting it or visiting its website. If the chosen arbitration organization's rules conflict with this Arbitration Provision, the terms of this Arbitration Provision will govern the Claim. However, to address a conflict with the selected arbitration organization's rules, the parties may agree to change the terms of this Arbitration Provision by written amendment signed by the parties. If the parties are not able to find or agree upon an arbitration organization that is willing and able to handle the arbitration, then the arbitrator will be selected pursuant to 9 U.S. Code Sections 5 and 6.

The arbitration hearing will be conducted in the federal district where you reside unless you and we otherwise agree. Or, if you and we agree, the arbitration hearing can be by telephone or other electronic communication. The arbitration filing fee, arbitrator's compensation and other arbitration costs will be paid in the amounts and by the parties according to the rules of the chosen arbitration organization. Some arbitration organizations' rules require us to pay most or all of these amounts. If the rules of the arbitration organization do not specify how fees must be allocated, we will pay the filing fee, arbitrator's compensation, and other arbitration costs up to \$5,000, unless the law requires us to pay more. Each party is responsible for the fees of its own attorneys, witnesses, and any related costs, if any, that it incurs to prepare and present its Claim or response. In limited circumstances, the arbitrator may have the authority to award payment of certain



arbitration costs or fees to a party, but only if the law and arbitration organization rules allow it.

An arbitrator must be a lawyer with at least ten (10) years of experience and familiar with consumer credit law or a retired state or federal court judge. The arbitration will be by a single arbitrator. In making an award, an arbitrator shall follow governing substantive law and any applicable statute of limitations. The arbitrator will decide any dispute regarding the arbitrability of a Claim. An arbitrator has the authority to order specific performance, compensatory damages, punitive damages, and any other relief allowed by applicable law. An arbitrator's authority to make awards is limited to awards to you or us alone. Claims brought by you against us, or by us against you, may not be joined or consolidated in arbitration with claims brought by or against someone other than you, unless agreed to in writing by all parties. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration.

Any arbitration award shall be in writing, shall include a written reasoned opinion, and will be final and binding subject only to any right to appeal under the Federal Arbitration Act ("FAA"), 9 U.S. Code Sections 1, et seq. Any court having jurisdiction can enforce a final arbitration award. You and we agree that this Arbitration Provision is governed by the FAA to the exclusion of any different or inconsistent state or local law.

You or we can do the following without giving up the right to require arbitration: seek remedies in small claims court for Claims within the small claims court's jurisdiction, or seek judicial provisional remedies. If a party does not exercise the right to elect arbitration in connection with any particular Claim, that party still can require arbitration in connection with any other Claim.

This Arbitration Provision survives any (i) termination, payoff, assignment or transfer of this Contract, (ii) any legal proceeding by you or us to collect a debt owed by the other, and (iii) any bankruptcy proceeding in which you or we are the debtor. With but one exception, if any part of this Arbitration Provision is deemed or found to be unenforceable for any reason, the remainder of this Arbitration Provision will remain in full force and effect. The one exception is that if a finding of partial unenforceability would allow arbitration to proceed on a class-wide basis, then this Arbitration Provision will be unenforceable in its entirety.

**PROCESS TO REJECT THIS ARBITRATION PROVISION.** You may reconsider and reject your approval of this Arbitration Provision by sending a written notice to the Assignee (identified in the Assignment section) or if there is no Assignee, then to Seller. The notice must be postmarked within 30 days of the date you signed this Contract. It simply needs to state your decision to reject the Arbitration Provision in this Contract and include your signature. It must also provide your name, Seller's name and the date of this Contract. **Rejecting this Arbitration Provision will NOT affect the terms under which we will finance and sell the Property to you or any other terms of this Contract, except that the Arbitration Provision will not apply.**

**CAUTION: It is important that you read this Arbitration Provision thoroughly before you sign this Contract. By signing this Contract, you acknowledge that you read, understand and agree to this Arbitration Provision. If you do not understand this Arbitration Provision, do not sign this Contract; instead ask your lawyer. If you approve this Arbitration Provision, you have an additional 30 days after signing to reconsider and reject your approval, as described above. If you use that process to reject, this Arbitration Provision will not be a part of this Contract, but the rest of this Contract will still be binding and effective.**

*[This area intentionally left blank.]*

**Notices**

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

**If you are buying a used vehicle: The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.**

**Si compra un vehículo usado: La información que ve adherida en la ventanilla forma parte de este contrato. La información contenida en el formulario de la ventanilla prevalece por sobre toda otra disposición en contrario incluida en el contrato de compraventa.**

**Third Party Agreement**

(This section applies ONLY to a person who will have an ownership interest in the Property but is NOT a Buyer obligated to pay this Contract ("Third Party Owner".))

In this section only, "you" means only the person signing this section.

By signing below you agree to give us a security interest in the Property described in the *Description of Property* section. You also agree to the terms of this Contract except that you will not be liable for the payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend or change this Contract, or release any party or Property without releasing you from this Contract. We may take these steps without notice or demand upon you.

**You acknowledge receipt of a completed copy of this Contract.**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Third Party Owner (NOT the Buyer)

*[This area intentionally left blank.]*



**Arbitration Provision and Process to Remove**

This Contract contains an Arbitration Provision that affects your rights. By signing this Contract, you agree that either of us may request and require the other to resolve disputes or claims through arbitration instead of a lawsuit. The Arbitration Provision includes a process you can follow in the next 30 days if you reconsider and want to reject the Arbitration Provision.

By initialing this section, you confirm that you read, understand and agree to the Arbitration Provision in this Contract, including the process to reject it.

Buyer initials: EPG

**Acknowledgment for Electronic Signatures**

Electronic Signature Acknowledgment. You agree that (i) you viewed and read this entire Contract before signing it, (ii) you signed this Contract with one or more electronic signatures, (iii) you intend to enter into this Contract and your electronic signature has the same effect as your written ink signature, (iv) you received a paper copy of this Contract after it was signed, and (v) the authoritative copy of this Contract shall reside in a document management system held by Seller in the ordinary course of business. You understand that Seller may transfer this Contract to another company in the electronic form or as a paper version of that electronic form which would then become the authoritative copy. Seller or that other company may enforce this Contract in the electronic form or as a paper version of that electronic form. You may enforce the paper version of the Contract copy that you received.

**Signature Notices**

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this Contract and retain its right to receive a part of the Finance Charge.

**Notice Regarding Assignment**

NOTICE: The seller intends to sell this Contract to \_\_\_\_\_ (name and mailing address) which, if it buys the Contract, will become the owner of the Contract and your creditor. After the sale of this Contract, all questions concerning either the terms of the Contract or payments should be directed to the buyer of the Contract at the address indicated above.

**Signatures**

Entire Agreement. Your and our entire agreement is contained in this Contract. There are no unwritten agreements regarding this Contract. Any change to this Contract must be in writing and signed by you and us.

By: ESTEPhANIA PALACIOS GOMOZGOMEZ 03/23/2021  
Date

By: \_\_\_\_\_ Date

By: \_\_\_\_\_ Date

**NOTICE TO THE BUYER.** Do not sign this Contract before you read it or if it contains any blank space, except that: (1) If delivery of the motor vehicle or mobile home is to be made to you after this Contract is signed, the serial number or other identifying information and the due date of the first installment may be filled in at the time of delivery; and (2) If the name of the financing agency is not known at the time the Contract is executed, the name of the financing agency may be inserted in the Contract on or about the date the name of the financing agency is known. You are entitled to a copy of this Contract. You have the right to pay in advance the full amount due and if you do so you may save a portion of the finance charge.

By signing below, you agree to the terms of this Contract. You received a copy of this Contract and had a chance to read and review it before you signed it.

**RETAIL INSTALLMENT CONTRACT**

Buyer [Signature] 03/23/2021  
By: ESTEPhANIA PALACIOS GOMOZGOMEZ Date

By: \_\_\_\_\_ Date

By: \_\_\_\_\_ Date

Seller SALEM AUTO MARKET

[Signature] 03/23/2021  
By: ERIC RODRIGUEZ Date

Assignment. This Contract and Security Agreement is assigned to Lobel Financial Corp  
PO BOX 3000 ANAHEIM, CA 92803  
the Assignee, phone 714-995-3333. This assignment is made under the terms of a separate agreement made between the Seller and Assignee.  
 This Assignment is made with recourse.  
Seller SALEM AUTO MARKET  
[Signature] 03/23/2021  
By: ERIC RODRIGUEZ Date



**EXHIBIT E Walgenkim - Gomez**

CONTRACT DATE: 6/02/2021

**RETAIL INSTALLMENT CONTRACT**

**FZ-OR-RIC-SI**

ACCOUNT #: 10772

SIMPLE INTEREST

CONSUMER PAPER

Buyer Name and Address <b>ESTEPHANIA PALACIOS GOMEZ</b> [REDACTED] County: <b>MARION</b>	Seller Name and Address <b>SALEM AUTO MARKET</b> <b>1190 CAPITOL ST NE</b> <b>SALEM, OR 97301</b> County: <b>MARION</b>
Co-Buyer Name and Address	

In this contract, "you" and "your" refer to the Buyer or Buyers signing below. "Seller," "we" and "us" refer to the Seller shown above. "Holder" is the Seller, or, if this contract has been assigned, the party who has been assigned this contract. "Vehicle" refers to the vehicle described below. "Buyer," "you" and "your" shall include the plural. You promise to pay to the order of the Holder (at its office or at such other place as the Holder may designate and instruct you) the Amount Financed and the Finance Charge (see below) as outlined in the schedule of payments below and as described in this contract.

New/Used	Year	Make	Model	Vehicle Identification Number	Mileage	<input checked="" type="checkbox"/> Personal, Family or Household Use	<input type="checkbox"/> Business Use
Used	2012	MERCEDES-BENZ	C-CLASS	WDDGF4HB6CA616669	125223		

Description of Trade-In(s): N/A

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

**FEDERAL TRUTH IN LENDING DISCLOSURES**

<b>ANNUAL PERCENTAGE RATE</b> THE COST OF YOUR CREDIT AS A YEARLY RATE.	<b>FINANCE CHARGE</b> THE DOLLAR AMOUNT THE CREDIT WILL COST YOU.	<b>AMOUNT FINANCED</b> THE AMOUNT OF CREDIT PROVIDED TO YOU OR ON YOUR BEHALF.	<b>TOTAL OF PAYMENTS</b> THE AMOUNT YOU WILL HAVE PAID AFTER YOU HAVE MADE ALL PAYMENTS AS SCHEDULED.	<b>TOTAL SALE PRICE</b> THE TOTAL COST OF YOUR PURCHASE ON CREDIT, INCLUDING YOUR DOWN PAYMENT OF
19.99 %	\$ 3,000.58	\$ 8,601.50	\$ 11,602.08	\$ 3,775.00 is \$ 15,377.08

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments are Due
36	\$ 322.28	MONTHLY beginning July 17, 2021

**Late Charge:** If payment is not received in full within 10 days after it is due, you will pay a late charge in the amount of 5% of the scheduled payment in default.  
**Prepayment:** If you pay off all or any part of your debt early, you will not have to pay a penalty.  
**Security Interest:** You are giving a security interest in the vehicle being purchased.  
**Additional Information:** See this contract for more information including information about nonpayment, default, our right to accelerate the maturity of this obligation, any required repayment in full before the scheduled date, prepayment refunds and penalties, and our security interest.

HOW THIS CONTRACT CAN BE CHANGED. This contract and the related documents that you sign contemporaneously with this contract contain the entire agreement between you and us relating to the sale and financing of the motor vehicle. Any change to this contract must be in writing and we must sign it. If any part of this contract is not valid, all other parts stay valid.

Buyer Signs X \_\_\_\_\_ Co-Buyer Signs X \_\_\_\_\_ N/A \_\_\_\_\_

**NOTICE TO THE BUYER**

Do not sign this contract before you read it or if it contains any blank space, except that: (1) If delivery of the motor vehicle or mobile home is to be made to you after the contract is signed, the serial number or other identifying information and the due date of the first installment may be filled in at the time of delivery; and (2) If the name of the financing agency is not known at the time the contract is executed, the name of the financing agency may be inserted in the contract on or about the date the name of the financing agency is known. You are entitled to a copy of this contract. You have the right to pay in advance the full amount due and if you do so you may save a portion of the finance charge.

Buyer hereby acknowledges receipt of a completed copy of this contract and agrees to its terms.

**RETAIL INSTALLMENT CONTRACT**

Buyer Signs X \_\_\_\_\_ Date 6/02/2021 Co-Buyer Signs X \_\_\_\_\_ N/A \_\_\_\_\_ Date \_\_\_\_\_

Buyers and Other Owners - A buyer is a person who is responsible for paying the entire debt. An "other owner" is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X \_\_\_\_\_ Date \_\_\_\_\_ Address \_\_\_\_\_

Seller Signs X \_\_\_\_\_ Date 6/02/2021 Printed Name \_\_\_\_\_ Title \_\_\_\_\_

NOTICE: The seller intends to sell this contract to **RELIABLE CREDIT; 2157 LANCASTER DR NE; SALEM, OR 97305** which, if it buys the contract, will become the owner of the contract and your creditor. After the sale of this contract, all questions concerning either terms of the contract or payments should be directed to the buyer of the contract at the address indicated above.

Be sure to initial pages 2 through 4 as indicated.

INSURANCE: CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COST. WE MAY RETAIN OR RECEIVE A PORTION OF THIS AMOUNT.

Credit life insurance pays the unpaid part of the amount financed if you die. This insurance pays only the amount you would owe if you paid all your payments on time. Credit disability insurance pays the scheduled payments due under this contract while you are disabled. This insurance does not cover any increase in your payment or in the number of payments. The policies or certificates issued by the providing insurance companies may further limit the coverage that Credit Life or Credit Disability insurance provides. See the policies or certificates for coverage limits and other terms and conditions.

Table with 3 columns: TYPE OF CREDIT INSURANCE, ORIGINAL TERM, COST FOR THE ORIGINAL TERM. Rows for CREDIT LIFE and CREDIT DISABILITY.

CHOICE OF COVERAGE AS SPECIFIED IS ACKNOWLEDGED BY BUYER'S SIGNATURE

Buyer Signs X N/A
Date N/A Date of Birth N/A
Co-Buyer Signs X N/A
Date N/A Date of Birth N/A

COMPREHENSIVE AND COLLISION INSURANCE IS REQUIRED: You may obtain or provide through an existing policy, or a policy you independently obtain and pay for, the required insurance through any duly licensed agent or broker, subject to our right to refuse to accept an insurer you offer for reasonable cause.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT PROVIDED UNDER THIS CONTRACT.

OPTIONAL GAP WAIVER (DEBT CANCELLATION AGREEMENT).

A Guaranteed Asset Protection ("GAP") Waiver or Debt Cancellation Agreement is not required to obtain credit and will not be provided unless you sign below and agree to pay the additional cost. If you agree to buy a GAP Waiver, the charge is shown below and in item of the Itemization of Amount Financed. Your GAP Waiver Agreement is a part of this contract. See your GAP Waiver Agreement for details on the protection it provides.

Name of GAP Waiver Agreement N/A
Price: \$ N/A Term: N/A

You want to purchase the optional GAP Waiver:

X N/A
Signature of Buyer Requesting Coverage Date
X N/A
Signature of Co-Buyer Requesting Coverage Date

VENDOR'S SINGLE INTEREST (VSI) INSURANCE. If the preceding box is checked, you are required to purchase VSI insurance as part of this sale. VSI insurance is for the sole protection of the Holder against loss of or damage to the vehicle. You may purchase VSI insurance through any insurance company or agency you choose who is reasonably acceptable to us. If you choose to finance the insurance as part of this contract, you will pay \$ N/A. The coverage is for the initial term of the contract. Any insurer issuing VSI insurance waives its rights of subrogation against the Buyer.

ITEMIZATION OF AMOUNT FINANCED

Table with 2 columns: Description, Amount. Rows include CASH PRICE (11,995.00), DOWN PAYMENT (3,775.00), UNPAID BALANCE OF CASH PRICE (8,220.00), OTHER CHARGES (381.50), and AMOUNT FINANCED (8,601.50).

\*Seller May Retain A Portion of These Amounts

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**RENEE GALLOWAY**

**Plaintiff,**

v.

**CIVIL ACTION NO. 3:19-cv-209**

**PRIORITY IMPORTS RICHMOND, LLC  
d/b/a Priority Toyota Richmond**

**Defendant.**

**FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, **RENEE GALLOWAY**, by counsel (herein “Plaintiff”), and for her First Amended Complaint against Defendant, **PRIORITY IMPORTS RICHMOND, LLC, d/b/a Priority Toyota Richmond**, alleges as follows:

**INTRODUCTION**

1. This case arises from a fraud committed against an African-American woman who bought a car on credit and then was lured back to the dealership under false pretenses where the dealer took the car from her. The dealer denied her the terms of the credit contract she signed, and as a result, she suffered stress, lost time, and inconvenience. The fraudulent scheme violated the federal Truth In Lending Act (TILA), the federal Equal Credit Opportunity Act (ECOA), and also violated 42 U.S.C. § 1983. The dealer’s actions also violated the Virginia Consumer Protection Act (VCPA) and the Uniform Commercial Code, and constituted fraud and conversion. Plaintiff brings this action to recover actual damages, statutory damages, punitive damages, and attorneys’ fees and costs.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to the TILA, 15 U.S.C. § 1640, the ECOA, 15 U.S.C. § 1691e(f), and 28 U.S.C. §§ 1331, 1343(a)(3). Supplemental jurisdiction of the state law claims regarding the same transactions and events is provided under 28 U.S.C § 1367. This Court has venue over this action because the transaction occurred in Chester, Virginia.

## **PARTIES**

3. Plaintiff Renee Galloway (Ms. Galloway), is a natural person, who negotiated a car sale on credit for consumer purposes as governed by the TILA, ECOA, and the VCPA.

4. Priority Imports Richmond, Inc., doing business as Priority Toyota, was a Virginia corporation and a retail automobile dealer doing business at 2000 Walthall Center Drive, Chester, Virginia. In the transaction with Plaintiff, Priority was a “creditor” as defined by the TILA, 15 U.S.C. § 1602(g), and the ECOA, 15 U.S.C. §1691a(e).

5. On December 5, 2014, Priority Imports Richmond, Inc. was converted to Priority Imports Richmond, LLC (Priority) when the Virginia State Corporation Commission issued a Certificate of Entity of Conversion. As the successor to Priority Imports Richmond, Inc., Priority Imports Richmond, LLC apparently continued to use some documents which referred to it as Priority Imports Richmond, Inc. Priority Imports Richmond, LLC’s registered agent is David Perno, 2000 Walthall Center Drive, Chester, VA 23831.

## **FACTS**

6. In May 2018, Plaintiff’s 2007 Toyota Camry had been totaled in accident and had been towed to Priority.

7. On May 12, 2018, Plaintiff went to Priority to collect her belongings from that car, and while at Priority began to look at buying a new car.



8. That day, Plaintiff test-drove a 2018 Toyota Camry with Vehicle Identification Number: 4T1B11HK5JU050545 (Camry).

9. The Priority salesman, Elwood Burrow (Mr. Burrow) reviewed her credit and told her that she qualified for credit at 8.49%, with 72 payments of \$572.68.

10. Priority regularly extends credit to consumers that is payable in four or more installments or for which interest is charged and does so through retail installment sale contracts initially payable to it.

11. As a creditor, on May 12, 2018, Priority should have provided Plaintiff with TILA disclosures about the credit terms it was offering, but it provided none.

12. When Plaintiff was not sure if she wanted to buy the Camry, Priority, through its agent, told her she could keep the Camry on a test drive until Wednesday, May 16, 2018.

13. Plaintiff signed the documents that were presented to her as necessary for her to take the Camry on the extended test drive and left with the Camry.

14. She signed no documents to buy the Camry that day and left no down-payment.

15. On May 16, 2018, Plaintiff returned the Camry and did not buy it.

16. On Friday, May 18, 2018, Plaintiff returned to Priority to see if the Camry was still available for sale.

17. An agent of Priority told Plaintiff that with a \$3,000.00 down payment, she could buy the car on credit at 8.49% interest, with 72 payments of \$572.68.

18. Plaintiff accepted this offer of credit and signed the documents to purchase the Camry on credit.

19. Priority also withdrew \$3000 from Ms. Galloway's bank account for a down payment on the Camry.

20. The retail installment sales contract (the Credit Contract) to purchase the Camry was an electronic credit contract. (A true and accurate copy of the Credit Contract is attached as Exhibit A).

21. The Credit Contract specifically states that it “is not contingent upon obtaining financing on terms which are satisfactory to the parties.”

22. The Credit Contract was not a proposed or conditional contract but was a fully binding and executed contract.

23. Priority signed the Credit Contract on page 6 of that document and underneath that signature, the Credit Contract states that Priority “sells and assigns to Toyota Motor Credit Corporation” the Credit Contract according to the terms of a separate agreement between Priority and that entity.

24. As part of the transaction, Priority charged \$17.00 for its online systems filing fee.

25. Once signed by both parties, the Credit Contract was a binding credit contract pursuant to its terms.

26. All of Priority’s rights in the Credit Contract should have been assigned to Toyota Motor Credit Corporation (TMCC).

27. Under the terms of the Credit Contract, the interest rate started running that day, on May 18, 2018.

28. Under the terms of the transaction, the Camry was given an “In Service” date of May 18, 2018.

29. Under the terms of the transaction, Ms. Galloway was required to insure the Camry as of May 18, 2018, under her own name.

30. Ms. Galloway accepted the offer and did everything she was asked to do by Priority to make her the owner of the Camry, including signing every document they asked her to sign.

31. After signing the contract documents, Priority gave possession of the Camry to Plaintiff and Plaintiff left with the Camry.

32. After Ms. Galloway signed all the documents and took possession of the Camry, she reasonably believed that the deal was final.

33. Plaintiff was happy with her new purchase.

34. As part of that process, Priority should have signed over to Ms. Galloway the manufacturer's Certificate of Origin for the Camry.

35. As part of the transaction, Priority acted pursuant to authority granted to it by the Commonwealth of Virginia to issue registration cards, metal license plates, decals and other official documents for the Camry.

36. Pursuant to that authority, Priority had the authority, through online connections, to electronically update DMV's vehicle files for the Camry.

37. Pursuant to that authority, Priority is required to send daily reports to the DMV. All such documentation for submitted transactions are sent to the DMV via DMV's courier service; the courier service is provided at no cost to the dealer.

38. As part of the transaction, Priority charged and received \$17.00 for its "online systems filing fee" so that the transaction could be recorded with the DMV that day.

39. Through its contract with DMV, Priority acted as the agent of the state so that Ms. Galloway's title ownership of the Camry would be recorded without her having to go to a DMV customer service center.

40. Priority actions regarding the title recording were taken under color of state law because Priority was the agent of the state with whom Ms. Galloway interacted.

41. Priority should have recorded with the DMV the transfer of the vehicle to Ms. Galloway that day.

42. Pursuant to that authority, Priority should have registered TMCC's lien on the Camry.

43. When Ms. Galloway left with her new car, Priority had everything it needed to record her ownership with the Commonwealth of Virginia.

44. Instead of completing the title work for Ms. Galloway's ownership, Priority withheld that title work for its own benefit.

45. Priority withheld the title work because it had not yet decided whether it wanted to enter into a binding credit contract with Ms. Galloway.

46. Priority did not want Ms. Galloway to know about its secret intent because it wanted her to think the transaction was done.

47. As part of its plan, Priority intentionally misrepresented that it had assigned its rights in the contract to TMCC.

48. To implement that plan, Priority had to ensure that Ms. Galloway's title ownership was not registered with the DMV.

49. Priority never intended to provide the Camry on the unconditional terms shown in the Credit Contract.

50. Priority never intended to provide Ms. Galloway credit on the unconditional terms shown in the Credit Contract.

51. Two weeks after the transaction, a Finance Manager at Priority, Annette Jean Pierre (Ms. Pierre), called Ms. Galloway and told Plaintiff that she needed to come sign additional documents about her credit transaction.

52. That statement was not true because no other documents were required to be signed.

53. That statement was an effort to lure Ms. Galloway into the dealership and force her to either pay more money for the Camry or buy a different car.

54. When Ms. Galloway did not come to Priority, Ms. Pierre called again on June 6 and again told her that she needed to come to Priority to sign additional documents.

55. That statement was not true because no other documents were required to be signed.

56. That statement was a second effort to lure Ms. Galloway into the dealership and force her to either pay more money or buy a different car.

57. Unfortunately, Ms. Galloway did not know of Priority's secret plan and she used her Camry on June 6, 2018, to drive to Priority.

58. When Ms. Galloway went into the finance manager's office, she was told that the Credit Contract was not valid.

59. She was told that she could not drive her Camry off the lot unless she agreed to a much higher interest rate and higher payments.

60. Ms. Galloway did not want to pay more money and wanted the terms that had originally been agreed.

61. Ms. Galloway did not know that Priority had withheld recording her title ownership and did not know this had been Priority's secret plan the entire time.

62. Additional Priority employees came into the office to explain to Ms. Galloway that she could not leave with her Camry unless she agreed to pay more money.

63. They made perfectly clear that under no circumstances would they let her leave with the Camry unless she agreed to pay more money.

64. Because Ms. Galloway would not pay more for the car, she was given no choice but to give Priority the keys to her Camry.

65. Ms. Galloway left Priority without her Camry.

66. Priority never recorded Ms. Galloway's ownership interest in her Camry with the DMV.

67. Ms. Galloway does not know whether Priority targeted Ms. Galloway, as an African-American woman, to threaten or bully her, or if Priority actually treats all its customers in the manner described above, regardless of race and sex.

68. Priority authorized and ratified the actions of its employees who implemented its secret plan.

69. Priority created and implemented its secret plan in conscious or reckless disregard of Ms. Galloway's rights sufficient to justify a punitive damages award against it.

70. As more fully set forth below, after Ms. Galloway filed this lawsuit, Defendant demanded that she drop the lawsuit and instead use a two-step dispute resolution process that would deny her substantive rights under both state and federal law.

71. Defendant's demand that Ms. Galloway use a two-step dispute resolution process that would deny her substantive rights under both state and federal law was part of an intentional effort by Defendant to suppress claims that Ms. Galloway might bring about Defendant's conduct.

72. Defendant began this effort by first creating a two-step dispute resolution process that would deny her substantive rights under both state and federal law, and then placing language that purported to require her to use that process in one of the many documents it asked her to sign.

73. Defendant knew or should have known that it could not require Ms. Galloway to waive substantive rights under state or federal law as part of buying a car to meet her transportation needs.

74. Specifically, Defendant sought to suppress claims that could be brought against it by denying Ms. Galloway the right to recover attorneys' fees for obtaining necessary legal advice about her claims and their value, and denying her the right to recover punitive damages under both state and federal law.

75. On May 18, 2019, Defendant implemented the first part of its plan by placing language about such waivers in one of the many other documents that it prepared for Ms. Galloway to sign about the Camry other than the Credit Contract.

76. Defendant did not want these waivers included in the Credit Contract because it knew that including unlawful waivers in the Credit Contract would make it more difficult for it to sell the Credit Contract.

77. One of the many documents that Defendant prepared was an order form for the Camry which in Virginia is called a Buyer's Order and is required by Va. Code § 46.2-1530.

78. Under Va. Code § 46.2-1530(A)(13), a Buyer's Order form signed by both parties may constitute a bill of sale.

79. A true and accurate copy of the Buyer's Order form that Defendant prepared and that Ms. Galloway signed on May 18, 2018 (Buyer's Order) is attached as Exhibit B.

80. The Buyer's Order includes the two-step dispute resolution process that Defendants intended to use to deny Ms. Galloway her rights under both state and federal law.

81. As the first step, it contains a provision, “AGREEMENT TO MEDIATE DISPUTES,” that purports to require going through the Better Business Bureau mediation process prior to raising any legal claim.

82. This provision also states that each party would be responsible to pay for its own attorney’s fees in that process.

83. Defendant intended this mediation process to act as a barrier to Ms. Galloway pursuing her claims by denying Ms. Galloway the ability to ask for and recover the legal fees necessary to understand and value her many statutory claims under both state and federal law.

84. It is necessary to obtain legal counsel about the value of those claims in order to properly participate in the mediation process, and to resolve other issues raised by such a process, including whether the statute of limitations is tolled during the process.

85. Without the benefit of legal counsel in that process, Ms. Galloway could easily be lulled into continuing forward with the process while the statute of limitations simply ran out on her claims.

86. Because both state and federal law allow Ms. Galloway to recover her reasonable attorneys’ fees from Defendant for its violation of clear statutory mandates, Defendant’s mediation process constitutes an invalid waiver of that right.

87. As the second step of the two-step process, the Buyer’s Order also contains a purported mandatory binding arbitration provision, which states “The arbitrator may not award punitive damages” in any disputes regarding the Buyer’s Order, in violation of federal law. (See second to last sentence of Para. 15 on second page of Exhibit B.)

88. Notwithstanding the mandatory nature of arbitration provision, the Buyer’s Order also states “Any dispute within the jurisdictional limits of a General District Court of Virginia shall



be filed in such court, but if it is removed to a Circuit Court or federal court this arbitration agreement applies.”

89. The current jurisdictional limits of General District Court in Virginia are \$25,000.00, exclusive of attorney’s fees, under Va. Code § 16.1-77.

90. This provision would allow Defendant to bring almost any claim it might have against Plaintiff in the legal system and outside of arbitration while denying Plaintiff any ability to bring any federal claims any place other than arbitration.

91. Furthermore, it necessarily caps any punitive damages that could be sought within the legal system while prohibiting such damages at all in the arbitration process.

92. Defendant included this waiver of punitive damages in the Buyer’s Order because it knowingly engages in fraudulent behavior on a regular basis and seeks to evade liability for such fraudulent practices.

93. Defendant knows that if its victims cannot sue for punitive damages then its victims are less likely to bring a fraud claim in the first instance.

94. The two-steps of this dispute resolution process work together and are part of the same effort to suppress claims

95. On April 16, 2019, Defendant’s counsel contacted Plaintiff’s counsel with a demand that Plaintiff dismiss her action and mediate this matter.

96. On April 17, 2019, Plaintiff’s counsel informed Defendant’s counsel that Plaintiff was willing to mediate this matter but stated the mediation provision in the Buyer’s Order was invalid. Plaintiff’s counsel also provided an order to stay the matter in this Court while mediation proceeded (Proposed Order).

97. If Defendant really wanted to mediate this matter, it needed only to agree to the Proposed Order and this matter would be in mediation at this time.

98. Defendant did not agree to stay this matter and pursue mediation because Defendant seeks to use the mediation process to prohibit Plaintiff from recovering the attorney's fees necessary to make an informed choice in the mediation process.

99. On April 18, 2019, counsel for Plaintiff and Defendant spoke by phone to discuss mediation and the claims. Plaintiff's counsel again agreed to mediate the dispute provided that Defendant agreed to pay all attorney's fees. This conversation was confirmed in an email from Plaintiff's counsel to Defendant's counsel following this call (A true and accurate copy of the email exchange referenced in Paragraphs 96-97 and 100 and associated attachments are attached as Exhibit C).

100. On April 24, 2019, Defendant's counsel emailed Plaintiff's counsel to notify Plaintiff that Defendant would still be filing a motion to dismiss. (A true and accurate copy of the email is attached as Exhibit D).

101. On April 24, 2019, Defendant filed its Motion to Dismiss which seeks to enforce the attorney's fee waiver in the mediation process and the punitive damages waiver in the arbitration process. (ECF 8.)

## **CLAIMS FOR RELIEF**

### **FIRST CAUSE OF ACTION**

#### **Violation of the Truth in Lending Act- 15 U.S.C. § 1638(a)**

102. As the creditor in the transaction, Priority was required to provide Ms. Galloway with accurate TILA disclosures in writing about the credit it was offering before asking Ms. Galloway to agree to a credit transaction.

103. Priority should have provided TILA disclosures to Ms. Galloway on May 12, 2018, instead of making its credit offer orally.

104. Priority violated the TILA and Regulation Z because it did not provide any TILA disclosures to Ms. Galloway in a form she could keep until after Ms. Galloway agreed to buy the car on credit.

105. Furthermore, regarding the disclosures in the Credit Contract, these disclosures did not represent the actual credit terms that Priority intended to provide Ms. Galloway if she agreed to buy the Camry on credit.

106. Consequently, the TILA disclosures on the Credit Contract were of absolutely no value to Ms. Galloway about the credit she would necessarily receive and keep, and these terms were fraudulent on their face.

107. Priority violated the TILA and Regulation Z because the material TILA disclosures it provided were false.

108. Ms. Galloway suffered actual damages as a result of this violation.

## **SECOND CAUSE OF ACTION**

### **Violation of the Equal Credit Opportunity Act- 15 U.S.C. § 1691(d)**

109. Priority violated the ECOA and Regulation B by not providing Ms. Galloway with proper notice of the action taken regarding Ms. Galloway's credit application as required by 15 U.S.C. § 1691(d) and 12 C.F.R. § 202.9.

110. Priority misrepresented that Ms. Galloway's application for credit was approved for the terms shown on the Credit Contract when Priority actually did not intend to make credit available to her on those terms.

111. Ms. Galloway was harmed by this violation because she believed she had been approved on the terms shown in the Credit Contract.

112. Priority also violated the ECOA by not providing Ms. Galloway proper notice of the adverse action taken by it when it unilaterally canceled the credit account created by Credit Contract.

113. Priority acts on a sufficient number of credit transactions each year such that its adverse action notice should have been in writing.

114. As a result of these ECOA violations, Ms. Galloway suffered substantial actual damages, including but not limited to, the loss of her rights to information about the actions taken on her credit application and the reasons for those actions, the loss of the terms that she accepted, the loss of time, and inconvenience and other distress.

### **THIRD CAUSE OF ACTION**

#### **Fraud**

115. Priority falsely represented its intent to sell the Camry to Ms. Galloway for the terms shown in the Credit Contract.

116. Priority falsely represented that it was making Ms. Galloway the owner of the car after she signed the documents to buy the Camry.

117. Priority falsely represented that the Credit Contract had been assigned to TMCC.

118. Priority falsely represented to Ms. Galloway that it needed her to come back and sign a few more documents to complete the purchase of the Camry.

119. Once she was back at Priority, Priority falsely represented to her that the Credit Contract was no longer valid.

120. Each of these representations concerned a material fact about the transaction.

121. Priority knowingly and intentionally made these false representations and intended that Ms. Galloway would rely upon them.

122. Ms. Galloway relied on these false representations and suffered harm as a result of that reliance.

123. As a result of her reliance on Priority's misrepresentations, Ms. Galloway suffered substantial actual damages, including but not limited to, the loss of the terms that she accepted, the loss of the Camry, lost time, and inconvenience and other distress.

124. Additionally, Priority falsely represented to Ms. Galloway that it would be recording her ownership of the car with DMV on the terms provided in the Credit Contract.

125. Priority charged Ms. Galloway for the services of recording that ownership immediately through an electronic usage agreement with the Commonwealth of Virginia.

126. Priority knew it would not be recording that ownership under the unconditional terms in the Credit Contract.

127. In making these misrepresentations, Priority acted as an agent of the Department of Motor Vehicles by virtue of authority it receives from the Commonwealth of Virginia to record title transfers for consumers just as if the consumers went to a window at the Department of Motor Vehicles.

128. Under its contracts regarding its electronic link to the Commonwealth's database and by contracting with Ms. Galloway pursuant to the terms in the Credit Contract, Priority owed her a fiduciary duty to properly and quickly document and transmit Ms. Galloway's information and fees about Ms. Galloway's transaction to the Department of Motor Vehicles.

129. This additional duty owed to Ms. Galloway was separate and apart from the ordinary duties of a car seller, and existed because Priority has been given special permission to

act as an agent of the Department of Motor Vehicle and represented to Ms. Galloway that it was doing so in this transaction.

130. By charging the online fee, a \$699.00 consumer services processing fee, and over \$120.00 in taxes, and \$65.75 in title fees, Priority represented to Ms. Galloway that her ownership of the Camry was being recorded with the Commonwealth.

131. Ms. Galloway reasonably relied on these representations and believed that her ownership was being recorded with the Department of Motor Vehicles pursuant to the terms of the Credit Contract.

132. Pursuant to its secret plan, Priority did not send any documents or fees to the Department of Motor Vehicles regarding the Credit Contract.

133. As a result of her reliance on Priority's misrepresentation about her ownership being recorded with the Department of Motor Vehicles, Ms. Galloway suffered substantial actual damages, including but not limited to, the loss of the terms that she accepted, the loss of her car, lost time, and inconvenience and other distress.

#### **FOURTH CAUSE OF ACTION**

##### **Violation of the Virginia Consumer Protection Act, Va. Code § 59.1-200**

134. Pursuant to Va. Code § 59.1-200, Plaintiff is entitled to pursue a VCPA claim against Priority.

135. Against Ms. Galloway, Priority violated the prohibition contained in Va. Code § 59.1-200(A)(14) against using any misrepresentation in connection with a consumer transaction in several different ways, including misrepresenting its intent to sell the car for the terms shown in the Credit Contract, misrepresenting that it was making Ms. Galloway the owner of the car after she signed the documents to buy the Camry, misrepresenting that it would process her ownership

with DMV, misrepresenting that the Credit Contract had been assigned to TMCC, misrepresenting that it needed her to come back and sign a few more documents about her transaction, and then misrepresenting that the Credit Contract was no longer valid.

136. Priority also violated the prohibition contained in Va. Code § 59.1-200(A)(8) against advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised, and the prohibition contained in Va. Code § 59.1-200(A)(5) against misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits.

137. Priority also violated the prohibition contained in Va. Code § 59.1-200(A)(14) by including in the Buyer's Order an improper provision waiving the right to receive attorneys' fees in a mediation process and also by including an unenforceable provision waiving all punitive damages in the arbitration clause. Priority engineered the arbitration clause in the Buyer's Order in such a manner that it effectively allowed Priority to avail itself of the judicial system to resolve any disputes it may have had regarding the car sale, while effectively barring Ms. Galloway from asserting her federal statutory rights or full punitive damages in a judicial system. Priority used this two-step process to suppress claims against it. Such actions, and its attempt to enforce those provisions, are deceptive.

138. Priority committed these VCPA violations deliberately and willfully, or in the alternative did so negligently as a result of not maintaining procedures reasonably adopted to avoid the violations.

139. As a result of the VCPA violations against her, Ms. Galloway suffered substantial actual damages, including but not limited to, the loss of the terms that she accepted, the loss of her car, lost time, and inconvenience and other distress.

## **FIFTH CAUSE OF ACTION**

### **Violation of 42 U.S.C. § 1983**

140. Ms. Galloway's right to have her ownership of the Camry recorded with the Commonwealth's DMV pursuant to the Credit Contract is clearly established in law.

141. The United States Constitution protects citizens from deprivation of such a right without due process of law.

142. Priority deprived Ms. Galloway of her right to have her ownership recorded with the DMV.

143. Priority acted under color of state law when it denied her this right, and it did so in intentional, reckless, or conscious disregard of her rights.

144. As a result of the violation of 42 U.S.C. §1983, Ms. Galloway suffered substantial actual damages, including but not limited to, the loss of the terms that she accepted, the loss of her car, lost time, and inconvenience and other distress.

## **SIXTH CAUSE OF ACTION**

### **Conversion**

145. At the point the Credit Contract was executed, Ms. Galloway became the lawful owner of the Camry and was legally entitled to possession. Indeed, Priority delivered possession of the Camry to Ms. Galloway at this point with no further indication that any other documents needed to be executed.

146. Priority's actions in luring Plaintiff into a room at its dealership and then telling her that she could not leave with her car unless she agreed to pay more money were a wrongful exercise and/or assumption of authority over her Camry and deprived Ms. Galloway of her lawful possession of and legal rights to her Camry.



147. These actions by Priority constituted the tort of conversion, entitling Plaintiff to recover, among other things, the value of her vehicle at the time and the place of the taking.

148. As a direct and proximate result of Priority's conversion, Plaintiff has suffered actual damages and injury, including but not limited to, the loss of her car, lost time, and inconvenience and other distress.

### **SEVENTH CAUSE OF ACTION**

#### **Violation of Uniform Commercial Code- Va. Code § 8.9A-625**

149. In this consumer transaction, Priority was a secured creditor with the right to receive \$572.56 per month starting July 2, 2018.

150. Ms. Galloway was not in default of her obligations under the Credit Contract.

151. Priority's actions in luring Plaintiff into a room at its dealership and then telling her the Credit Contract was invalid were not commercially reasonable.

152. Priority telling Plaintiff that she could not leave with her car unless she agreed to pay more money was not commercially reasonable.

153. Priority's actions in cornering Ms. Galloway in a room and telling her she had to pay more money or give up the car constituted a self-help repossession of the Camry.

154. Even if Ms. Galloway had been in default under the terms of the Credit Contract, she objected to Priority taking the car from her.

155. If the debtor is present at a self-help repossession and makes an objection, a "breach of the peace" comes into play, and the creditor must desist and resort to appropriate legal proceedings to enforce its right under Va. Code § 8.9-503 to take possession of the collateral. *Wallace v. Chrysler Credit Corporation*, 743 F.Supp. 1228, 1232-34 (W.D. Va. 1990).

156. By treating the Credit Contract as invalid when it was not, by seizing the car in a commercially unreasonable manner, and by seizing it through a breach of the peace, Priority violated Part 6 of Title 9A of the UCC.

157. Additionally, after having repossessed the car, Priority was required to provide her notice of its disposition. *Cappo Mgmt. v. Britt*, 282 Va. 33, 711 S.E.2d 209 (2011).

158. Priority never provided any notice of any kind, including notice required under the UCC, to Ms. Galloway about its disposition of the vehicle.

159. Priority is liable to Plaintiff for any loss caused by its failure to comply with Title 9A and Part 6, and, in any event, for an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price, as provided by Va. Code § 8.9A-625.

160. The minimum statutory recovery is therefore \$12,336.30.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that this Court:

1. Assume jurisdiction of this case;
2. Award actual damages to Ms. Galloway under the TILA, ECOA, Fraud, VCPA, 42 U.S.C. § 1983, conversion, and UCC claims, in a manner so as to avoid a double recovery for the same harm;
3. Award statutory damages in the amount of \$2,000.00, in accordance with the Truth in Lending Act, 15 U.S.C. § 1640(a)(2)(A)(i);
4. Award statutory punitive damages in the amount of \$10,000.00 against Defendant Priority for violations of the Equal Credit Opportunity Act, 15 U.S.C. § 1691e(b);

5. Award three times the actual damages or \$1,000.00, whichever is greater, for each willful violation of the Virginia Consumer Protection Act pursuant to Va. Code § 59.1-204(A), against Priority;

7. Award punitive damages against Priority based upon its fraud and also its conversion, up to the amount allowed under Virginia law;

8. Award punitive damages against Priority for its violation of 42 U.S.C. § 1983;

9. Award minimum damages under the UCC of \$12,336.30 if the actual damages award under this claim is not greater;

10. Award Plaintiff's costs and reasonable attorney's fees in accordance with the Truth in Lending Act, the Equal Credit Opportunity Act, the Virginia Consumer Protection Act, 42 U.S.C. § 1983, and Virginia common law;

11. Award pre-judgment and post-judgment interest;

12. Declare the mediation and arbitration clauses in the Buyer's Order void and unenforceable; and

13. Award such other relief as the Court deems appropriate.

**TRIAL BY JURY IS DEMANDED**

Respectfully Submitted,

**RENEE GALLOWAY,**

By: /s/Kevin A. Dillon

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*Counsel for Plaintiff*

**RETAIL INSTALLMENT SALES CONTRACT  
 SIMPLE INTEREST – VIRGINIA**



Dealer Number: 0000045082 Contract Date: 05/18/2018

Buyer (and Co-Buyer) - Name(s) and Address(es) (Include County and Zip Code)  
 RENE E GALLOWAY

Creditor (Seller) - Name and Business Address  
 PRIORITY IMPORTS RICHMOND, INC.  
 2000 WALTHALL CENTER DRIVE  
 CHESTER, VA 23831

**Meaning of Words.** In this contract, the words "you," "your" and "yours" refer to the Buyer and Co-Buyer, if any. The word "Creditor" refers to the Creditor (Seller) named above and, after assignment, to Toyota Motor Credit Corporation ("TMCC") and any subsequent assignee.

**Who is Bound.** You may buy the vehicle described below for cash or on credit. The cash price is shown on page two as "Cash Price." The credit price is shown below as "Total Sale Price." By signing this contract, you choose to buy the vehicle on credit under the terms on all pages of this contract and you are individually liable to the Creditor for any amount due. This contract is not contingent upon obtaining financing on terms which are satisfactory to the parties.

**Description of Vehicle.** You agree to buy and the Creditor agrees to sell the following vehicle:

Vehicle	Vehicle Identification Number	Primary Purpose	Odometer Mileage
2018 Toyota Camry	4T1B11HK5JU050545	Personal	1490
<b>New, Used, or Demo</b>			
New			
<b>Trade-In Vehicle</b>			
N/A			

**FEDERAL TRUTH-IN-LENDING DISCLOSURES**

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your downpayment of
8.49 %	\$ 9,125.56	\$ 32,107.40	\$ 41,232.96	\$ 3,000.00 is \$ 44,232.96

Your Payment Schedule Will Be:

Number of Payments:	Amount of Each Payment:	When Payments Are Due:
72 Regular Payments of	\$572.68	Monthly, beginning 07/02/2018
One Final Payment of	\$N/A	N/A

**Late Charge.** If a payment is not paid in full within 7 days after it is due, you will pay a late charge of 5% of the unpaid amount of the late payment.

**Prepayment.** If you pay off all of your debt early, you will not have to pay a penalty.

**Security.** You are giving a security interest in the vehicle being purchased.

**Other Terms.** Please read all pages of this contract for additional information about security interests, nonpayment, default, any required repayment in full before the scheduled date and penalties.

**THE ANNUAL PERCENTAGE RATE MAY BE NEGOTIATED WITH THE DEALER.  
 THE DEALER MAY ASSIGN THIS CONTRACT AND RETAIN ITS RIGHT  
 TO RECEIVE A PART OF THE FINANCE CHARGE.**

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**EXHIBIT F**

**RETAIL INSTALLMENT SALES CONTRACT  
SIMPLE INTEREST - VIRGINIA**



**Itemization of Amount Financed**

1. Cash Price (including any accessories, services and taxes)		\$	<u>29,835.65</u> (1)
2. TOTAL DOWNPAYMENT			
A. Agreed Value of Trade-in Vehicle	\$		N/A
B. Less Creditor's Payoff of Existing Lien or Lease Balance on Trade-in Vehicle	\$		N/A
C. Net Trade-in Value (A - B) (indicate if negative number)	\$		N/A
D. Manufacturer's Rebate or Other Credit	\$		N/A
E. Remaining Cash Downpayment (including deferred downpayment of \$ _____ N/A payable before the due date of the first regularly scheduled payment)	\$	3,000.00	
F. Subtotal (C + D + E) (indicate if negative number)	\$	3,000.00	
TOTAL DOWNPAYMENT (If (F) is zero or more, enter that amount on line (2). If (F) is a negative number, enter zero on line (2).)			\$ <u>3,000.00</u> (2)
3. Unpaid Balance of Cash Price (1 minus 2)			\$ <u>26,835.65</u> (3)
4. A. Amounts Paid to Others on Your Behalf (the Creditor may be retaining or receiving a portion of these amounts):			
(i) Price of Optional Credit Insurance Purchased from the Insurance Company or Companies Named Below - Life \$ _____ N/A Disability, Accident and Health \$ _____ N/A	\$		N/A
(ii) Price of Optional Mechanical Breakdown Protection or Service Contract Purchased from the Creditor -Covering Certain Mechanical Repairs	\$	3,495.00	
(iii) Other Charges (Creditor must identify who will receive payment and describe purpose)			
To TMIS ForGAP	\$	995.00	
To PRIORITY TOYOTA For Documentation Fee	\$	699.00	
To N/A For N/A	\$	N/A	
To N/A For N/A	\$	N/A	
To N/A For N/A	\$	N/A	
To N/A For N/A	\$	N/A	
To N/A For N/A	\$	N/A	
To N/A For N/A	\$	N/A	
B. Other Amounts Paid to Others on Your Behalf			
(i) Lien Notation Fee Paid to Public Officials	\$	N/A	
(ii) Government License Fees	\$	17.00	
(iii) Government Registration Fees	\$	45.75	
(iv) Government Certificate of Title Fees	\$	20.00	
(v) Other (describe) N/A	\$	N/A	
Total Other Charges and Amounts Paid to Others on Your Behalf			\$ <u>5,271.75</u> (4)
5. Amount Financed - Unpaid Balance (3 plus 4)			\$ <u>32,107.40</u> (5)

True and Accurate Completed Copy - UCC Non-Authoritative Copy

True and Accurate Completed Copy - UCC Non-Authoritative Copy

**EXHIBIT F**

**RETAIL INSTALLMENT SALES CONTRACT  
SIMPLE INTEREST - VIRGINIA**



**REQUIRED PHYSICAL DAMAGE INSURANCE**

Physical damage insurance is required, but you may provide the required insurance coverage through an existing policy of insurance owned or controlled by you or through anyone you want who is reasonably acceptable to the Creditor. If you buy it through the Creditor and are accepted by the insurance company, the policies or certificates issued by the insurance company will describe the terms and conditions. The purchase price of this insurance is not financed as part of this contract. If purchased through the Creditor, the following will apply:

Premium \$       N/A       Insurance Company       N/A       Term:       N/A       months

\$       N/A       Deductible Collision AND

\$       N/A       Deductible Other than Collision, including Fire, Theft and Combined Additional Coverage

**OPTIONAL INSURANCE AND OTHER OPTIONAL PRODUCTS**

Optional Credit Insurance. Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign below and agree to pay the purchase price, which is shown below and in 4A(i) of the Itemization Section.

Credit Life -  Single Coverage (Buyer Only)  Joint Coverage Term (Months)       N/A       Premium \$       N/A      

I want the specified credit life coverage.

Buyer Signature	Date	Co-Buyer Signature	Date
<u>      N/A      </u>	<u>      A      </u>	<u>      N/A      </u>	<u>      A      </u>

Credit Disability - Single Coverage (Buyer Only)  Joint Coverage Term (Months)       N/A       Premium \$       N/A      

I want the specified credit disability coverage.

Buyer Signature	Date	Co-Buyer Signature	Date
<u>      N/A      </u>	<u>      B      </u>	<u>      N/A      </u>	<u>      B      </u>

If you elect optional credit insurance coverage and are accepted by the insurance company, the terms and conditions will be as described in the policies or certificates issued by the insurance company. The original amount of the decreasing term credit life insurance will not exceed \$       N/A      . Credit disability insurance payments will equal the monthly payment amount but will not be more than \$       N/A      .

Insurance Company       N/A      

Optional Mechanical Breakdown Protection ("MBP"): Mechanical breakdown protection is not required to obtain credit and you may purchase it from anyone you want who is reasonably acceptable to the Creditor. You may purchase MBP under this contract by signing below and agreeing to pay the purchase price which is shown in 4A(ii) of the Itemization above.

The terms of this protection are provided in the separate contract describing the protection. If you purchase this protection, you have reviewed the terms of the contract which describes this protection and you understand that a copy of your completed contract will be sent to you by the MBP company.

MBP Company       TMIS       \$       0.00       Deductible

**APPROVAL: YOU WANT TO OBTAIN THE OPTIONAL MECHANICAL BREAKDOWN PROTECTION.**

Buyer Signature	Date	Co-Buyer Signature	Date
<u>Renel Valley</u>	<u>      C      </u> 05/18/2018	<u>      N/A      </u>	<u>      C      </u>

**NO LIABILITY INSURANCE INCLUDED.**

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**EXHIBIT F**

# RETAIL INSTALLMENT SALES CONTRACT SIMPLE INTEREST – VIRGINIA



## Other Important Agreements

**1. Payments Before or After the Scheduled Due Date.** This is a simple interest contract. This means that the amount of the Finance Charge may vary. The Finance Charge and Total of Payments shown on page one of the contract are based on the assumption that all payments are made when due. The Creditor credits each payment first to accrued Finance Charge, then to the unpaid balance of the Amount Financed and the remainder to unpaid charges. The Creditor computes your Finance Charge each day on the unpaid balance of the Amount Financed. The earlier you make payments before their due dates, the less Finance Charge you will owe. The Creditor will send you a check for any amount owed to you after you make your last payment. The later you make payments after they are due, the greater the Finance Charge. The Creditor will advise you of any additional amount you owe at the end of the contract term. You understand that payment of any installment after it is due will be a default on your part as stated below.

**2. Ownership, Location and Risk of Loss.** You agree to pay the Creditor all you owe under this contract even if the vehicle is damaged, destroyed or missing. You agree not to sell, transfer, rent, lease or remove the vehicle from the state in which you reside on the date of this contract without the prior written permission of the Creditor. The vehicle will be kept at the address you specify in this contract unless another address is provided to the Creditor in writing. You will notify the Creditor in writing of any change in your address or the address where the vehicle is regularly located. Under no circumstances will you be permitted to remove the vehicle from the United States, except to Canada and then only for a period of 30 days or less. You agree to keep the vehicle properly maintained. You agree not to expose the vehicle to misuse or confiscation. You will make sure the Creditor's security interest (lien) on the vehicle is shown on the title.

**3. Taxes and Other Charges.** You are responsible for and will pay when due all taxes, repair bills, storage bills, fines, assessments and other charges in connection with the vehicle. If you fail to pay these amounts the Creditor may do so for you. If the Creditor does so, you agree to repay the amount when the Creditor asks for it. You agree to comply with all registration, licensing, tax and title laws applicable to the vehicle.

**4. Security Interest.** You hereby grant the Creditor a security interest in: (i) the vehicle being purchased, any accessories, equipment, accessories and replacement parts installed in the vehicle; (ii) insurance premiums and charges for mechanical breakdown protection or service contracts returned to the Creditor; (iii) proceeds of any insurance policies, mechanical breakdown protection or service contracts on the vehicle; and (iv) proceeds of any insurance policies on your life or health which are financed in this contract. This secures payment of all amounts you owe in this contract and in any transfer, renewal, extension, refinancing or assignment of this contract. This also secures your other agreements in this contract.

**5. Required Physical Damage Insurance.** You agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The physical damage insurance must name the Creditor as loss payee and must require 10 days advance written notice to the Creditor before any cancellation or reduction in the insurance coverage. You agree to deliver promptly to the Creditor whatever written proof of insurance coverage the Creditor may reasonably request. At any time during the term of this contract, if you do not have physical damage insurance which covers both the interest of you and the Creditor in the vehicle, then the Creditor may buy it for you. If the Creditor does not buy physical damage insurance which covers both interests in the vehicle, it may, if it decides, buy insurance which covers only the Creditor's interest.

The Creditor is under no obligation to buy any insurance, but may do so if it desires. If the Creditor buys either of these coverages, it will let

you know what type it is and the charge you must pay. The charge will consist of the cost of the insurance and a finance charge at the Annual Percentage Rate applicable to this contract or, if that rate is not authorized, the highest lawful contract rate. You agree to pay the charge in equal installments along with the payments shown on the payment schedule.

If the vehicle is lost or damaged, you agree that the Creditor can use any insurance settlement either to repair the vehicle or to apply to your debt.

**6. Late Charge.** If any payment is not paid in full within 7 days after it is due, you agree to pay a late charge of 5% of the unpaid amount of the late payment. Acceptance of a late payment or late charge does not excuse your late payment or mean that you can keep making payments after they are due. The Creditor may also take the steps set forth below if there is any late payment.

**7. Insurance or Optional Contracts.** This contract may contain charges for insurance or mechanical breakdown protection or service contracts. If you default under this contract, you agree that the Creditor may claim benefits under these contracts and terminate them to obtain refunds for unearned charges. You agree to cooperate with the Creditor in collecting any proceeds or cancellation refunds, including executing all necessary papers.

**8. Insurance or Optional Contract Charges Returned to Creditor.** If any charge for required insurance is returned to the Creditor, it may be credited to the final maturing installments of your account, or used to buy similar insurance or insurance which covers only the Creditor's interest in the vehicle. Any refund on optional insurance, mechanical breakdown protection or service contracts obtained by the Creditor will be credited to your account. Credits to your account will include both the amounts received by the Creditor and the unearned finance charge on those amounts. These credits will be applied to as many of your installments as they will cover, beginning with the final installment.

**9. Default and Required Repayment in Full Before the Scheduled Date.** You will be in default under this contract if you fail to pay any payment within 10 days after it is due according to the payment schedule; if bankruptcy or insolvency proceedings are initiated by or against you; if any person tries to take any of your property by legal proceedings while it is in your possession or control; or if you break any of the agreements in this contract. If you default under this contract, the Creditor can demand that you pay all you owe on this contract at once. The Creditor may also take the steps set forth below if you default under this contract.

**10. Repossession of the Vehicle for Failure to Pay.** If you default under this contract, the Creditor can take the vehicle from you (repossession). To take the vehicle the Creditor can enter your property, or the property where it is stored, so long as it is done peacefully and lawfully. If there is any personal property in the vehicle, such as clothing, the Creditor can store it for you. Any accessories, equipment accessories or replacement parts will remain with the vehicle.

**11. Getting the Vehicle Back After Repossession.** If the Creditor repossesses the vehicle, you have the right to get it back (redeem) by paying the entire amount you owe on the contract (not just past due payments), plus any late charges, the cost of taking and storing the vehicle and other expenses that the Creditor has had. Your right to redeem will end when the vehicle is sold or when the Creditor enters into a contract for its disposition, whichever occurs first.

**12. Sale of the Repossessed Vehicle.** The Creditor will send you a written notice of sale at least 10 days before selling the vehicle. If you do not redeem the vehicle by the date on the notice, the Creditor can sell it. The Creditor will use the net proceeds of the sale to pay all or part of your debt.

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**EXHIBIT F**

**RETAIL INSTALLMENT SALES CONTRACT  
SIMPLE INTEREST – VIRGINIA**



To the extent permitted by law, the net proceeds of sale will be figured this way: Any late charges and any charges for taking, storing, cleaning, advertising, leasing and/or selling the vehicle and any reasonable attorney's fees and court costs will be subtracted from the selling price.

If you owe the Creditor less than the net proceeds of sale, the difference is owed you unless the Creditor is required to pay it to someone else. For example, the Creditor may be required to pay a lender who has given you a loan and also taken a security interest in the vehicle.

If you owe more than the net proceeds of sale, you agree to pay the difference between the net proceeds of sale and what you owe, when the Creditor asks for it. If you do not pay this amount when asked, you may also be charged interest at the Annual Percentage Rate applicable to this contract, not to exceed the highest lawful rate, until you do pay all you owe.

**13. Collection Costs.** If this contract is referred for collection to any attorney who is not a salaried employee of the Creditor, you agree to pay the attorney's reasonable fee and any court costs.

**14. Credit Information.** You hereby authorize the Creditor to investigate your creditworthiness and credit capacity in connection with the establishment, maintenance and collection of your account and to furnish information concerning your account, including insurance information, to credit reporting agencies and others who may lawfully receive such information.

**15. Interest after Maturity.** You further agree to pay interest at the Annual Percentage Rate applicable to this contract, not to exceed the highest lawful rate, on any amounts which remain unpaid after the maturity of this contract.

**16. Delay in Enforcing Rights** The Creditor can delay or refrain from enforcing any of its rights under this contract without losing them. For example, the Creditor can extend the time for making some payments without extending others. If any part of this contract is not valid, all other parts will remain enforceable.

**17. Changes In This Contract.** Any change in the terms of this contract must be in writing and signed by the Creditor. No oral changes are binding.

**18. Warranties Seller Disclaims.** You understand that the Seller is not offering any express warranties unless: (i) the Seller extends a written warranty; or (ii) the window form for a used or demonstration vehicle indicates that the Seller is giving express warranties.

**In addition, there are no implied warranties of merchantability or fitness for a particular purpose or any other implied warranties by the Seller covering the vehicle unless: (i) the Seller extends a written warranty; (ii) within 90 days from the date of this contract, you enter into a service contract with the**

**Seller which applies to the motor vehicle being purchased; or (iii) the window form for a used or demonstration vehicle states that the Seller is giving implied warranties. To the extent permitted by applicable law, the Seller shall have no responsibility to you or to any other person with respect to any interruption of service, loss of business or anticipated profit or consequential damages.**

An implied warranty of merchantability generally means that the vehicle is fit for the ordinary purpose for which such vehicles are generally used. A warranty of fitness for a particular purpose is a warranty that may arise when the Seller has reason to know the particular purpose for which you require the vehicle and you rely on the Seller's skill or judgment to furnish a suitable vehicle.

This provision does not affect any warranties covering the vehicle which may be provided by the vehicle manufacturer.

**19. Governing Law.** This contract will be governed by the laws of the State of Virginia.

**20. Used and Demonstration Car Buyer's Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in this contract of sale. The preceding NOTICE applies only to a used or demonstration vehicle sale.

**Guía Para Compradores de Vehículos Usados o Demostraciones.** La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto todas las disposiciones en contrario contenida en el contrato de venta. El AVISO anterior se aplica solamente a la venta de vehículo usado o demostración.

**21. Electronic Contracting and Signature Acknowledgement.** You agree that (i) this contract is an electronic contract executed by you using your electronic signature, (ii) your electronic signature signifies your intent to enter into this contract and that this contract be legally valid and enforceable in accordance with its terms to the same extent as if you had executed this contract using your written signature and (iii) the authoritative copy of this contract ("Authoritative Copy") shall be that electronic copy that resides in a document management system designated by us for the storage of authoritative copies of electronic records, which shall be deemed held by us in the ordinary course of business. Notwithstanding the foregoing, if the Authoritative Copy is converted by printing a paper copy which is marked by us as the original (the "Paper Contract"), then you acknowledge and agree that (1) your signing of this contract with your electronic signature also constitutes issuance and delivery of such Paper Contract, (2) your electronic signature associated with this contract, when affixed to the Paper Contract, constitutes your legally valid and binding signature on the Paper Contract and (3) subsequent to such conversion, your obligations will be evidenced by the Paper Contract alone.

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

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, you will not assert against any subsequent holder or assignee of this contract any claims or defenses you may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

**EXHIBIT F**

**RETAIL INSTALLMENT SALES CONTRACT  
SIMPLE INTEREST – VIRGINIA**



Receipt of Goods and Promise to Pay. You agree that you have received the vehicle and/or services described above, and have accepted delivery of the vehicle in good condition. You promise to pay to the Creditor the Total Sale Price shown above by making the Total Downpayment and paying the Creditor the Total of Payments in accordance with the Payment Schedule shown above and all other amounts due as set forth in this contract.

**IMPORTANT: THE TERMS AND CONDITIONS ON ALL PAGES OF THIS DOCUMENT ARE PART OF THIS CONTRACT. READ THESE TERMS AND CONDITIONS BEFORE SIGNING BELOW.**

**NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank spaces. 2. You are entitled to an exact copy of the contract you sign.**

You signed this contract and received a completely filled in copy.

Buyer Signature Renée Galloway D Date 05/18/2018

Name: RENEE GALLOWAY

Co-Buyer Signature N/A D Date N/A

Name: N/A

Creditor Signature [Signature] D Date 05/18/2018

Name: PRIORITY IMPORTS RICHMOND, INC.

**SELLER'S ASSIGNMENT**

Seller sells and assigns to Toyota Motor Credit Corporation ("TMCC") all of its rights, title and interest in this Contract in accordance with the terms of the Retail Sales Financing Agreement between Seller and TMCC.

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**EXHIBIT F**

**PRIORITY TOYOTA RICHMOND**  
2000 WALTHALL CENTER DR.  
CHESTER, VA 23831  
www.prioritytoyota.com  
(804) 796-1800

**DELIVERY AGREEMENT**

This delivery agreement is incorporated into the Retail Installment Sales Contract (the Contract) dated this date between: **PRIORITY TOYOTA RICHMOND**, as Seller and:

\_\_\_\_\_  
RENEE GALLOWAY, as Buyer(s) for

purchase of a: 2018 TOYOTA CAMRY under the following condition.

1. Buyer acknowledges and represents that he/she possesses a valid driver's license, current motor vehicle liability insurance and assumes the risk of loss of the vehicle while in his/her possession. Buyer understands that all financing decisions are made by a financing source not affiliated with Dealer and that financing source is the credit reporting agency in accordance with the Fair Credit Reporting Act. Seller will attempt to sell the Contract on terms satisfactory to the Seller. If the Seller is successful in so doing, the Contract (and all other documents executed by Buyer) shall be deemed delivered and fully binding.
2. If Seller does not receive approval from a lending source for the Contract on terms acceptable to Dealer, Buyer agrees that upon notice from Seller, Buyer shall return the vehicle in good condition without excess mileage and the sales transaction may be rescinded. Seller retains a priority security interest in the vehicle and upon Buyer's failure to return the vehicle, Seller shall be entitled to all remedies provided by Title 8.2 of the Code of Virginia, 1950, as amended, and all other statutory and common law remedies including, but not limited to, the right to self-help, repossession, collection/repossession costs, reasonable interest and reasonable attorney's fees.
3. Buyer agrees that if a financing source other than the one originally contemplated agrees to purchase the contract on the same terms and conditions as the original lending source, Buyer will execute a replacement Contract and related documents on the same terms and conditions as the original Contract.
4. Buyer acknowledges receipt, in good condition, of the vehicle described in the attached Contract.
5. Any notice from Seller to Buyer shall be deemed given when deposited in the United States mail, postage prepaid, addressed to Buyer at the address shown in the attached Contract.

Date 05/12/18

*Renée Galloway*  
Buyer RENE GALLOWAY

\_\_\_\_\_  
Co-Buyer

**Domonoske - Galloway**

**RETAIL INSTALLMENT SALE CONTRACT  
 SIMPLE FINANCE CHARGE**

Dealer Number \_\_\_\_\_ N/A \_\_\_\_\_ Contract Number \_\_\_\_\_

Buyer Name and Address (Including County and Zip Code)	Co-Buyer Name and Address (Including County and Zip Code)	Seller-Creditor (Name and Address)
[REDACTED]		PRIORITY TOYOTA RICHMOND 2000 Walthall Center Dr Chester, VA 23831

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements in this contract. You agree to pay the Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New/Used/Demo	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2018	TOYOTA COROLLA	2T1BURHE3JC090558	<input type="checkbox"/> Personal, family, or household unless otherwise indicated below <input type="checkbox"/> business <input type="checkbox"/> agricultural

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your down payment of
14.99 %	\$ 12,057.85	\$ 23,096.87	\$ 35,154.72	\$ 4,500.00 is
				\$ 39,654.72

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

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

**Your Payment Schedule Will Be:**

Number of Payments	Amount of Payments	When Payments Are Due
72	488.26	Monthly beginning 07/06/18
N/A	N/A	N/A

Or As Follows: N/A

**Late Charge.** If payment is not received in full within 7 days after it is due, you will pay a late charge of 5 % of the part of the payment that is late.

**Prepayment.** If you pay off all your debt early, you will not have to pay a penalty.

**Security Interest.** You are giving a security interest in the vehicle being purchased.

**Additional Information:** See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

**WARRANTIES SELLER DISCLAIMS**  
 Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. Any implied warranties arising from a written warranty or service contract are limited to the duration of such written warranty or service contract. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

**VSI AND OPTIONAL INSURANCE**  
 Choice of Insurer. If vendor's single interest insurance is required (as indicated below), or if you desire optional insurance, such as credit life insurance or credit disability insurance, you have the right to use alternative coverage or to buy insurance elsewhere from the agent or insurer of your choice. You may also buy required physical damage insurance from the agent or insurer of your choice. Your choice of agent or insurer will not affect our decision to extend credit or your credit terms.

**VENDOR'S SINGLE INTEREST INSURANCE (VSI insurance):** If the preceding box is checked, the Creditor requires VSI insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft). VSI insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI insurance is obtained. If you elect to purchase VSI insurance through the Creditor, the cost of this insurance is \$ \_\_\_\_\_ N/A \_\_\_\_\_ and is also shown in Item 4B of the Itemization of Amount Financed. The coverage is for the initial term of the contract. See above for more information.

Buyer Signs X Renee Galloway Co-Buyer Signs X \_\_\_\_\_

**EXHIBIT G**

**ITEMIZATION OF AMOUNT FINANCED**

1 Cash Price (including \$ 972.73 sales tax) \$ 23,967.73 (1)

2 Total Downpayment =

Trade-in N/A

(Year) (Make) (Model)

Gross Trade-In Allowance \$ N/A

Less Pay Off Made By Seller \$ N/A

Equals Net Trade in \$ N/A

+ Cash \$ 3,000.00

+ Other REBATE \$ 1,500.00

(If total downpayment is negative, enter "0" and see 4I below) \$ 4,500.00 (2)

3 Unpaid Balance of Cash Price (1 minus 2) \$ 19,467.73 (3)

4 Other Charges Including Amounts Paid to Others on Your Behalf

(Seller may keep part of these amounts):

A Cost of Optional Credit Insurance

Paid to Insurance Company or Companies.

Life \$ N/A

Disability \$ N/A \$ N/A

B Vendor's Single Interest Insurance

Paid to Insurance Company(ies). \$ N/A

C Other Optional Insurance Paid to Insurance Company or Companies \$ N/A

D Optional Gap Contract \$ 850.00

E Official Fees Paid to Government Agencies \$ N/A

1) to STATE OF VA for GROSS REC TAX \$ 47.39

2) to N/A for N/A \$ N/A

3) to N/A for N/A \$ N/A

F Government Taxes Not Included in Cash Price \$ N/A

G Government License and/or Registration Fees

LICENSE AND/OR REG FEES \$ 62.75

H Government Certificate of Title Fees \$ 20.00

I Other Charges (Seller must identify who is paid and describe purpose.)

1) to N/A for Prior Credit or Lease Balance \$ N/A

2) to PRIORITY TOYOTA RICHMOND for PROCESSING FEE \$ 699.00

3) to TOYOTA MOTOR for SERVICE CONTRACT \$ 1,950.00

4) to N/A for N/A \$ N/A

5) to N/A for N/A \$ N/A

6) to N/A for N/A \$ N/A

7) to N/A for N/A \$ N/A

8) to N/A for N/A \$ N/A

9) to N/A for N/A \$ N/A

10) to N/A for N/A \$ N/A

Total Other Charges and Amounts Paid to Others on Your Behalf \$ 3,629.14 (4)

5 Amount Financed (3 + 4) \$ 23,096.87 (5)

OPTION:  You pay no finance charge if the Amount Financed, item 5, is paid in full on or before \_\_\_\_\_ N/A, Year \_\_\_\_\_ N/A, SELLER'S INITIALS \_\_\_\_\_ N/A

**NO COOLING OFF PERIOD**  
**State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.**

**OPTIONAL GAP CONTRACT.** A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term 72 Mos. TOYOTA MOTOR CREDIT CORP  
 Name of Gap Contract

I want to buy a gap contract.

Buyer Signs X Renee Holloway

Buyer Signs X Renee Holloway Co-Buyer Signs X \_\_\_\_\_

Insurance. You may buy the physical damage insurance this contract requires from anyone you choose who is authorized to sell such insurance in Virginia. Your choice will not affect our decision to extend credit or the terms of this contract. You are not required to buy any other insurance to obtain credit unless the box indicating Vendor's Single Interest insurance is required is checked on Page 1.

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

**Check the insurance you want and sign below:**  
**Optional Credit Insurance**

Credit Life:  Buyer  Co-Buyer  Both

Credit Disability:  Buyer  Co-Buyer  Both

Premium:

Credit Life \$ \_\_\_\_\_ N/A

Credit Disability \$ \_\_\_\_\_ N/A

Insurance Company Name \_\_\_\_\_

N/A

Home Office Address \_\_\_\_\_

N/A

Credit life insurance and credit disability insurance are not required to obtain credit. You have the right to use alternate coverage or buy such insurance elsewhere. Your choice of insurer will not affect our decision to extend credit or the terms of this contract. Your decision to buy or not to buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. If you choose this insurance, the cost is shown in Item 4A of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit Disability Insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

**Other Optional Insurance**

\_\_\_\_\_ N/A \_\_\_\_\_ N/A

Type of Insurance \_\_\_\_\_ Term

Premium \$ \_\_\_\_\_ N/A

Insurance Company Name \_\_\_\_\_

Home Office Address \_\_\_\_\_

N/A

\_\_\_\_\_ N/A \_\_\_\_\_ N/A

Type of Insurance \_\_\_\_\_ Term

Premium \$ \_\_\_\_\_ N/A

Insurance Company Name \_\_\_\_\_

Home Office Address \_\_\_\_\_

N/A

Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost. Your choice of insurer will not affect our decision to extend credit or the terms of this contract.

I want the insurance checked above.

Buyer Signature \_\_\_\_\_ N/A \_\_\_\_\_ Date

Co-Buyer Signature \_\_\_\_\_ N/A \_\_\_\_\_ Date

**THIS INSURANCE DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE.**

**Returned Payment Charge:** If any check you give us is dishonored or electronic payment you make is returned unpaid, we may, at our option, charge you \$ 50

**1. FINANCE CHARGE AND PAYMENTS**

- a. **How we will figure Finance Charge.** We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- b. **How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose.
- c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on page 1 of this contract on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. **You may prepay.** You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- e. **Your right to refinance a balloon payment.** A balloon payment is any payment other than a down payment that is more than 10% greater than the regular or recurring installment payments. If you use the vehicle primarily for consumer purposes, you have the right to refinance a balloon payment over an extended period with additional payments. The additional periodic payments will not be more than 10% greater than the regularly scheduled installment payments.

**2. YOUR OTHER PROMISES TO US**

- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. **Security Interest.** You give us a security interest in:
  - The vehicle and all parts or goods put on it;
  - All money or goods received (proceeds) for the vehicle;
  - All insurance, maintenance, service, or other contracts we finance for you; and
  - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.

This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.

**d. Insurance you must have on the vehicle.**

You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium of the insurance and a finance charge computed at the Annual Percentage Rate shown on page 1 of this contract or, at our option, the highest rate the law permits.

If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.

**e. What happens to returned insurance, maintenance, service, or other contract charges.** If we obtain a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.**3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES****a. You may owe late charges.** You will pay a late charge on each late payment as shown on page 1 of this contract. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

If you pay late, we may also take the steps described below.

**b. You may have to pay all you owe at once.** If you break your promises (default), we may demand that you pay all you owe on this contract at once. Default means:

- You pay any payment (plus any late charges) more than 10 days late or not at all;
- You give us false, incomplete, or misleading information on a credit application;
- You start a proceeding in bankruptcy or one is started against you or your property; or
- You break any agreements in this contract.

The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.

**c. You may have to pay collection costs.** If we hire an attorney to collect what you owe, you will pay the attorney's fee and court costs as the law allows. You will also pay any collection costs we incur as the law allows.**d. We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.**e. How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.

# EXHIBIT G

**We will sell the vehicle if you do not get it back.** If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle.

We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.

**g. What we may do about optional insurance, maintenance, service or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

**4. Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.  
**Spanish Translation:** Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

**5. SERVICING AND COLLECTION CONTACTS**  
You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

**6. APPLICABLE LAW**  
Federal law and the law of the state of our address shown on page 1 of this contract apply to this contract.

**The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.**

**HOW THIS CONTRACT CAN BE CHANGED.** This contract, along with all other documents signed by you in connection with the purchase of the vehicle, comprise the entire agreement between you and us affecting this purchase. No oral agreements or understandings are binding. Upon assignment of this contract: (i) only this contract and addenda to this contract comprise the entire agreement between you and the assignee relating to this contract; (ii) any change to this contract must be in writing and the assignee must sign it; and (iii) no oral changes are binding. Buyer Signs X Renee Halloway Co-Buyer Signs X  
If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.

**See the rest of this contract for other important agreements.**

## NO LIABILITY INSURANCE INCLUDED

**NOTICE TO RETAIL BUYER:** Do not sign this contract in blank. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.

**You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You confirm that you received a completely filled-in copy when you signed it.**

Buyer Signs X Renee Halloway Date 06/06/18 Co-Buyer Signs X Date 06/06/18

Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X N/A Address N/A  
Seller signs PRIORITY TOYOTA RICHMOND Date 06/06/18 By X [Signature] Title Be Manager

Seller assigns its interest in this contract to FLAGSHIPCREDIT ACCEPTANCE (Assignee) under the terms of Seller's agreement(s) with Assignee.  
 Assigned with recourse  Assigned without recourse  Assigned with limited recourse

Seller PRIORITY TOYOTA RICHMOND By \_\_\_\_\_ Title \_\_\_\_\_

**EXHIBIT C**

**PRIORITY TOYOTA RICHMOND**  
2000 WALTHALL CENTER DR.  
CHESTER, VA 23831  
www.prioritytoyota.com  
(804) 796-1800

**DELIVERY AGREEMENT**

This delivery agreement is incorporated into the Retail Installment Sales Contract (the Contract) dated this date between: **PRIORITY TOYOTA RICHMOND**, as Seller and:

\_\_\_\_\_ RENE E GALLOWAY \_\_\_\_\_, as Buyer(s) for purchase of a: 2018 TOYOTA COROLLA under the following condition.

1. Buyer acknowledges and represents that he/she possesses a valid driver's license, current motor vehicle liability insurance and assumes the risk of loss of the vehicle while in his/her possession. Buyer understands that all financing decisions are made by a financing source not affiliated with Dealer and that financing source is the credit reporting agency in accordance with the Fair Credit Reporting Act. Seller will attempt to sell the Contract on terms satisfactory to the Seller. If the Seller is successful in so doing, the Contract (and all other documents executed by Buyer) shall be deemed delivered and fully binding.
2. If Seller does not receive approval from a lending source for the Contract on terms acceptable to Dealer, Buyer agrees that upon notice from Seller, Buyer shall return the vehicle in good condition without excess mileage and the sales transaction may be rescinded. Seller retains a priority security interest in the vehicle and upon Buyer's failure to return the vehicle, Seller shall be entitled to all remedies provided by Title 8.2 of the Code of Virginia, 1950, as amended, and all other statutory and common law remedies including, but not limited to, the right to self-help, repossession, collection/repossession costs, reasonable interest and reasonable attorney's fees.
3. Buyer agrees that if a financing source other than the one originally contemplated agrees to purchase the contract on the same terms and conditions as the original lending source, Buyer will execute a replacement Contract and related documents on the same terms and conditions as the original Contract.
4. Buyer acknowledges receipt, in good condition, of the vehicle described in the attached Contract.
5. Any notice from Seller to Buyer shall be deemed given when deposited in the United States mail, postage prepaid, addressed to Buyer at the address shown in the attached Contract.

Date 06/06/18

*Renee Galloway*  
Buyer RENE E GALLOWAY

\_\_\_\_\_  
Co-Buyer



**EXHIBIT H**

Buyer (and Co-Buyer) Name and Address (Including County and Zip Code) [REDACTED] Charlottesville, VA 22901-4305 ALBEMARLE  N/A	<b>CREDITOR (Seller Name and Address)</b> KOONS FORD INC 1051 EAST BROAD STREET FALLS CHURCH, VA 22044
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle described in this contract for cash or on credit. The cash price is shown on Page 2 as "Cash Price." The credit price is shown below as "Total Sale Price." By signing this contract, you choose to buy the vehicle on credit under the agreements in this contract.

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate  3.99 %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you  \$ 3,348.37	<b>Amount Financed</b> The amount of credit provided to you or on your behalf  \$ 26,165.15	<b>Total of Payments</b> The amount you will have paid when you have made all scheduled payments  \$ 29,513.52	<b>Total Sale Price</b> The total cost of your purchase on credit, including your downpayment  of \$ 344.00 \$ 29,857.52

1-800-727-7000



www.fordcredit.com

**Your Payment Schedule will be:**

Number of Payments	Amount of Payments	When Payments are Due
72	\$ 409.91	Monthly unless otherwise checked <input type="checkbox"/> Semi-Annually <input type="checkbox"/> Annually Starting: 04/27/2020

**Prepayment:** If you pay off your debt early, you will not have to pay a penalty.  
**Late Payment:** You must pay a late charge on the portion of each payment received more than 7 days late. The charge is 5 percent of the late amount.  
**Security Interest:** You are giving a security interest in the vehicle being purchased.  
**Contract:** Please see this contract for additional information on security interest, nonpayment, default, the right to require repayment of your debt in full before the scheduled date, and prepayment penalty.

**BALLOON CONTRACT PROVISIONS**

Your last scheduled payment under this contract is a balloon payment.

**EXCESS WEAR, USE AND MILEAGE CHARGES**

If the box directly above is checked, this section, Paragraph B, and Paragraph C of this contract apply. You may be charged for excessive wear based upon our standards for normal use. If you exercise the option to transfer ownership of the vehicle to Creditor under Paragraph B, you must pay the Creditor \$0. N/A per mile for each mile in excess of N/A miles shown on the odometer.

**The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and may retain its right to receive a portion of the Finance Charge.**

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**EXHIBIT H**

New/Used	Mileage	Year and Make	Model	Vehicle Identification Number	Use For Which Purchased
Used	21783	2017 Ford	Escape	1FMCU9J96 [REDACTED]	Personal use unless otherwise checked below <input type="checkbox"/> Commercial <input type="checkbox"/> Agricultural
Trade-in <u>2012 Honda</u> Year and Make \$ <u>11,000.00</u> Gross Allowance \$ <u>16,300.00</u> Amount Owing					

ITEMIZATION OF AMOUNT FINANCED	
<b>1. Cash Price</b> .....	\$ <u>20,846.16</u> (1)
<b>2. Down Payment</b>	
Third Party Rebate Assigned to Creditor.....	\$ <u>N/A</u>
Cash Down Payment.....	\$ <u>5,644.00</u>
N/A.....	\$ <u>N/A</u>
Trade-in (description above).....	\$ <u>-5,300.00</u>
<b>Total Down Payment</b> .....	<b>\$ <u>344.00</u> (2)</b>
<b>3. Unpaid Balance of Cash Price</b> (1 minus 2) .....	<b>\$ <u>20,502.16</u> (3)</b>
<b>4. Amounts paid on your behalf (Seller may be retaining a portion of these amounts)</b>	
<b>To Public Officials</b>	
(i) for license, title & registration fees \$ <u>124.10</u> ;	
(ii) for official fees \$ <u>N/A</u> ;	
(iii) for taxes (not in Cash Price) \$ <u>N/A</u>	\$ <u>124.10</u>
<b>To Insurance Companies for:</b>	
Credit Life Insurance.....	\$ <u>N/A</u>
Credit Disability Insurance.....	\$ <u>N/A</u>
N/A.....	\$ <u>N/A</u>
N/A.....	\$ <u>N/A</u>
<b>To Ford Extended Service Coverage</b> <u>for Service Plan</u>	\$ <u>2,599.00</u>
<b>To Toyota Motor Insurance Service</b> <u>for GAP Waiver</u>	\$ <u>950.00</u>
<b>To Commonwealth of VA</b> <u>for Gross Receipts Lic. Tax.</u>	\$ <u>16.89</u>
<b>To Automotive Warranty Services,</b> <u>for Tire &amp; Wheel Prot.</u>	\$ <u>599.00</u>
<b>To Ford Extended Service Coverage</b> <u>for Maintenance Plan</u>	\$ <u>575.00</u>
<b>To KOONS FORD INC</b> <u>for Processing Fee</u>	\$ <u>799.00</u>
<b>To N/A</b> <u>for N/A</u>	\$ <u>N/A</u>
<b>To N/A</b> <u>for N/A</u>	\$ <u>N/A</u>
<b>To N/A</b> <u>for N/A</u>	\$ <u>N/A</u>
<b>Total</b> .....	<b>\$ <u>5,662.99</u> (4)</b>
<b>5. Amount Financed</b> (3 plus 4).....	<b>\$ <u>26,165.15</u> (5)</b>

**Debt Cancellation Waiver Addendum (Optional)**

Purchase of the debt cancellation waiver is optional and is not required to obtain credit. The terms and conditions of the debt cancellation waiver are set forth in the attached Addendum which is incorporated into the contract. By signing below you agree to purchase the debt cancellation waiver for the price set forth on this contract in the Itemization of Amount Financed under section 4.

Buyer Signs **A Transmitted - 3/13/20 7:07:20pm**

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**EXHIBIT H**

**INSURANCE**

**YOU ARE REQUIRED TO INSURE THE VEHICLE. YOU MAY OBTAIN VEHICLE INSURANCE FROM A PERSON OF YOUR CHOICE. LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED. CREDIT LIFE, CREDIT DISABILITY AND OTHER OPTIONAL INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE PREMIUM.**

<b>Credit Life</b>	_____ Insurance Company	\$	_____ Premium	_____ Insured(s)	
	You want Credit Life Insurance.				
	<b>B</b> _____ Buyer Signs	N/A	<b>B</b> _____ Co-Buyer Signs	N/A	
<b>Credit Disability</b>	_____ Insurance Company	\$	_____ Premium	_____ Insured(s)	
	You want Credit Disability Insurance.				
	<b>C</b> _____ Buyer Signs	N/A	<b>C</b> _____ Co-Buyer Signs	N/A	
<b>Other Optional Insurance</b>	<b>Coverage</b>	<b>Insurance Company</b>	<b>Premium</b>	<b>Term in Months</b>	
	N/A	N/A	N/A	N/A	
	N/A	N/A	N/A	N/A	
	You want the optional insurance for which premiums are included above.				
	_____ Buyer Signs	N/A	_____ Co-Buyer Signs	N/A	

**Credit Life and Credit Disability insurance are for the term of the contract. The amount and coverages are shown in a notice or agreement given to you today.**

**Anti-Theft Product (Optional)**

The purchase of anti-theft product(s) is optional and not required to obtain credit, even if the product(s) is already installed on the vehicle you selected. You may purchase anti-theft product(s) from the person of your choice. By signing below, you agree to purchase the anti-theft product(s) at the price disclosed.

_____	N/A	\$	_____	N/A	Term _____	N/A
_____	N/A	\$	_____	N/A	Term _____	N/A
_____	N/A	\$	_____	N/A	Term _____	N/A

**D** \_\_\_\_\_  
 Buyer Signs                      N/A

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**ADDITIONAL AGREEMENTS**

**A. Payments:** You must make all payments in U.S. funds when they are due. You may prepay your debt at any time without penalty. This is a simple finance charge contract. The actual finance charge you agree to pay will depend on your payment patterns. The actual finance charge may exceed the disclosed Finance Charge if you make your payments later than the scheduled dates or in less than the scheduled amount. Your payment will be applied first to the earned and unpaid part of the Finance Charge and then to the unpaid Amount Financed. The Finance Charge is earned by applying the Annual Percentage Rate to the unpaid Amount Financed for the actual time that the unpaid Amount Financed is outstanding.

**B. Balloon Payment Contracts:** If your last scheduled payment under this contract is a balloon payment as indicated on Page 1 of this contract, you have three options to handle the balloon payment.

First, you may pay all that you owe, and keep your motor vehicle.

Second, you may refinance all that you owe unless you are in default under this contract. If the Creditor has advanced funds to cure any default, you must pay back the Creditor before the refinancing. You also must provide proof of insurance acceptable to Creditor before the refinancing. The Annual Percentage Rate (APR) for the refinancing will be the lower of the APR agreed to by you and the Creditor or the maximum APR permitted by law. The term of the refinancing will be based on the amount refinanced, the rate, and the amount of the monthly payment. The refinanced monthly payment will be 10 percent greater than the amount of the monthly payment in this contract. If you wish to refinance, you must notify the Creditor in writing no later than 30 days prior to the balloon payment due date.

Third, you may transfer ownership of the vehicle to the Creditor, and an amount equal to your originally scheduled balloon payment will be applied toward the satisfaction of all that you owe. Creditor will add a \$475 Disposal Fee to the amount that you owe and, if applicable, will add any excess mileage charges (as described on Page 1 of this contract) and any estimated costs of vehicle repairs that are the result of excess wear and use (as described in Paragraph C). If the amount of your originally scheduled balloon payment does not satisfy all that you owe, you will pay the difference. You must take the vehicle to a place selected by the Creditor for inspection no later than 15 days prior to the balloon payment due date. After the inspection, if you decide to transfer ownership of the vehicle to the Creditor, you must give the vehicle to the Creditor no later than the balloon payment due date. At that time, you must provide the Creditor a title, which shows no liens other than the Creditor's lien, transferring ownership to the Creditor or a person selected by the Creditor. You must also provide other documents as needed. If you decide not to transfer ownership of the vehicle after inspection, you must immediately inform the Creditor if you want to refinance under the second option above.

**C. Damage Repair:** If your last scheduled payment under this contract is a balloon payment and you transfer ownership of the vehicle to the Creditor under Paragraph B, you are responsible for all repairs to the vehicle that are not the result of normal wear and use. These repairs include, but are not limited to those necessary to repair or replace: (a) tires that have sidewall damage/plugs, exposed cords/belts, or are unmatched for vehicle or unsafe; (b) electrical or mechanical defects or malfunctions; (c) glass, paint, body panels, trim and grill work that are broken, mismatched, chipped, scratched, pitted, cracked, or if applicable, dented; (d) interior rips, stains, burns or damaged areas; (e) replacement of any missing equipment or parts that were in or on the vehicle when delivered; and (f) all damage which would be covered by collision or comprehensive insurance whether or not such insurance is actually in force. Replacement of sheet metal and all other repairs must be made with Original Equipment Manufacturer parts. Your use or repair of the vehicle must not invalidate any warranty. You will owe the estimated costs of such repairs unless repairs are made at your expense prior to the transfer of ownership of the vehicle to the Creditor. You will maintain the odometer of the vehicle so that it always reflects the vehicle's actual mileage. If the odometer is at any time inoperative, you will provide reasonable evidence of the vehicle's actual mileage. If you are unable to do so, you will pay us our estimate of any reduction of the vehicle's wholesale value caused by the inability to determine the vehicle's actual mileage.

**D. Security Interest:** You give the Creditor a security interest in:

1. The vehicle and all parts or other goods put on the vehicle;
2. All money or goods received for the vehicle; and
3. All insurance premiums and service contracts financed for you.

This secures payment of all amounts you owe under this contract. It also secures your other agreements in this contract.

**E. Use of Vehicle - Warranties:** You must take care of the vehicle and obey all laws in using it. You may not sell or rent the vehicle, and you must keep it free from the claims of others. You will not use or permit the use of the vehicle outside of the United States, except for up to 30 days in Canada or Mexico, without the prior written consent of the Creditor. **If the vehicle is of a type normally used for personal use and the Creditor, or the vehicle's manufacturer, extends a written warranty or service contract covering the vehicle within 90 days from the date of this contract, you get implied warranties of merchantability and fitness for a particular purpose covering the vehicle. Otherwise, you understand and agree that there are no such implied warranties, except as otherwise provided by law.**

**F. Vehicle Insurance:** You must insure the vehicle against loss or damage from collision, fire or theft. You must name Creditor as the loss payee under the insurance policy. The Creditor must approve the type and amount of insurance. **If the vehicle is lost, damaged or destroyed, you must pay the Creditor what is still owed.**

You agree that the Creditor can make a claim under the insurance policy. You authorize the insurance company to provide Creditor any information Creditor believes necessary to make a claim. You must use insurance proceeds to repair the vehicle, unless the damage to the vehicle is considered a total loss. If the damage to the vehicle is considered a total loss, you must use the insurance proceeds to pay what you owe the Creditor. If your insurance on the vehicle doesn't pay all you owe, you must pay what is still owed.

**G. Returned Insurance Premiums and Service Contract Charges:** This contract may contain charges for insurance, service contracts, or other contracts. You agree that the Creditor can claim benefits under these contracts and unless prohibited by law, terminate them to obtain refunds of unearned charges to reduce what you owe. If the Creditor gets a refund on insurance, service contracts, or other contracts, the Creditor will subtract it from what you owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to you.

**EXHIBIT H**

**H. Default:** You will be in default if:

1. You do not make a payment when it is due; or
2. You gave false or misleading information on your credit application relating to this contract; or
3. Your vehicle is seized by any local, state, or federal authority and is not promptly and unconditionally returned to you; or
4. You file a bankruptcy petition or one is filed against you; or
5. You do not keep any other promise in this contract.

If you default, Creditor can exercise Creditor's rights under this contract and Creditor's other rights under the law.

**I. Repossession:** If you default, the Creditor may require you to pay at once the unpaid Amount Financed, the earned and unpaid part of the Finance Charge and all other amounts due under this contract. Creditor may repossess (take back) the vehicle, too. Creditor may also take goods found in the vehicle when repossessed and hold them for you.

**J. Your Right To Redeem:** If the vehicle is taken back, Creditor will send you a notice. The notice will say that you may redeem (buy back) the vehicle and will explain how to redeem the vehicle. You may redeem the vehicle up to the time the Creditor sells it or agrees to sell it. If you do not redeem the vehicle, it will be sold.

**K. Disposition of Motor Vehicle:** If the vehicle is taken back and sold, the money from the sale, less allowed expenses, will be used to pay the amount still owed on the contract. Allowed expenses include those paid as a direct result of having to retake the vehicle, hold it, prepare it for sale, and sell it. Reasonable lawyer's fees and legal costs are allowed, too. If there is any money left a (surplus), it will be paid to you. If the money from the sale is not enough to pay off this contract and costs, you will pay what is still owed to the Creditor. If you do not pay this amount when the Creditor asks, the Creditor may charge you interest at the highest lawful rate until you pay.

**L. Collection Costs:** Except as otherwise provided by law, you must pay any and all expenses related to enforcing this contract, including collection expenses, lawyers' fees and other legal expenses.

**M. Consumer Reports:** You authorize the Assignee to obtain consumer credit reports from consumer reporting agencies (credit bureaus) for any reason and at any time in connection with this contract.

**N. Servicing and Collection:** You agree that Creditor, Creditor's affiliates, agents and service providers may monitor and record telephone calls regarding your account to assure the quality of our service or for other reasons. You also expressly consent and agree that Creditor, Creditor's affiliates, agents and service providers may use written, electronic or verbal means to contact you. This consent includes, but is not limited to, contact by manual calling methods, prerecorded or artificial voice messages, text messages, emails and/or automatic telephone dialing systems. You agree that Creditor, Creditor's affiliates, agents and service providers may use any email address or any telephone number you provide, now or in the future, including a number for a cellular phone or other wireless device, regardless of whether you incur charges as a result.

**O. Applicable Law:** You agree that this contract will be governed by the laws of the state of Virginia.

**P. General:** This contract contains the entire agreement between Creditor and you relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid. If Creditor doesn't enforce Creditor's rights every time, Creditor can still enforce them later. Creditor will exercise all of Creditor's rights in a lawful way. Buyer acknowledges and accepts assignment of this contract to the Assignee (and any successor to Assignee). Buyer also consents to any subsequent assignment of this contract, and accepts this provision as notice of any such assignment, by Assignee or anyone else without further notice to Buyer. This consent and notice specifically includes any assignment of the security interest in the vehicle financed pursuant to this contract.

**Q. Electronic Records and Signatures and Conversion to Paper:** You agree to use electronic records and electronic signatures to document this contract. Your electronic signatures will have the same effect as signatures on a paper contract. There will be one authoritative copy of this contract. It will be the electronic copy in a document management system the Creditor designates for storing it. The Creditor may convert that authoritative copy to a paper original. The Creditor will do so by printing one paper copy marked "Original." This paper original will have your electronic signature on it. It will have the same effect as if you had signed it originally on paper.

True and Accurate Review Copy - UCC Non-Authoritative Copy

True and Accurate Review Copy - UCC Non-Authoritative Copy

**FTC NOTICES**

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

**Used Motor Vehicle Buyers Guide.** If you are buying a used vehicle with this contract, federal regulations may require a special Buyers Guide to be displayed on the window of the vehicle. **THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.**

**Spanish Translation: Guia para compradores de vehiculos usados. LA INFORMACION QUE APARECE EN LA VENTANILLA DE ESTE VEHICULO FORMA PARTE DE ESTE CONTRATO. LA INFORMACION CONTENIDA EN EL FORMULARIO DE LA VENTANILLA ANULA CUALQUIER PREVISION QUE ESTABLEZCA LO CONTRARIO Y QUE APAREZCA EN EL CONTRATO DE VENTA.**

\*Does not apply if purchased for commercial or agricultural use. In that case, you (debtor) will not assert against any assignee or subsequent holder of this Contract any claims, defenses, or setoffs which you may have against the Seller or manufacturer of the vehicle.

**EXHIBIT H**

**GUARANTY**

To cause the Seller to sell the vehicle described in this contract to the Buyer on credit, the person who signs below as a "Guarantor" guarantees the payment of this contract. This means that if the Buyer fails to pay any money that is owed on this contract, the person who signs as a guarantor will pay it when asked. The Guarantor who signs below agrees to be liable for the whole amount owed. The Guarantor also agrees to be liable even if the Creditor does one or more of the following: (a) gives the Buyer more time to pay one or more payments or (b) releases any security. The Guarantor will receive a completed paper copy of this contract and this Guaranty at the time of electronically signing.

Guarantor \_\_\_\_\_ N/A \_\_\_\_\_

Address \_\_\_\_\_ N/A \_\_\_\_\_

Guarantor Signs **E** \_\_\_\_\_ N/A \_\_\_\_\_

**READ THIS ARBITRATION PROVISION CAREFULLY AND IN ITS ENTIRETY**  
**ARBITRATION**

Arbitration is a method of resolving any claim, dispute, or controversy (collectively, a "Claim") without filing a lawsuit in court. Either you or Creditor ("us" or "we") (each, a "Party") may choose at any time, including after a lawsuit is filed, to have any Claim related to this contract decided by arbitration. Neither party waives the right to arbitrate by first filing suit in a court of law. Claims include but are not limited to the following: 1) Claims in contract, tort, regulatory or otherwise; 2) Claims regarding the interpretation, scope, or validity of this provision, or arbitrability of any issue except for class certification; 3) Claims between you and us, your/our employees, agents, successors, assigns, subsidiaries, or affiliates; 4) Claims arising out of or relating to your application for credit, this contract, or any resulting transaction or relationship, including that with the dealer, or any such relationship with third parties who do not sign this contract.

**RIGHTS YOU AND WE AGREE TO GIVE UP**

If either you or we choose to arbitrate a Claim, then you and we agree to waive the following rights:

- **RIGHT TO A TRIAL, WHETHER BY A JUDGE OR JURY**
- **RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER IN ANY CLASS CLAIM YOU MAY HAVE AGAINST US WHETHER IN COURT OR IN ARBITRATION**
- **BROAD RIGHTS TO DISCOVERY AS ARE AVAILABLE IN A LAWSUIT**
- **RIGHT TO APPEAL THE DECISION OF AN ARBITRATOR**
- **OTHER RIGHTS THAT ARE AVAILABLE IN A LAWSUIT**

**RIGHTS YOU AND WE DO NOT GIVE UP:** If a Claim is arbitrated, you and we will continue to have the following rights, without waiving this arbitration provision as to any Claim: 1) Right to file bankruptcy in court; 2) Right to enforce the security interest in the vehicle, whether by repossession or through a court of law; 3) Right to take legal action to enforce the arbitrator's decision; 4) Right to request that a court of law review whether the arbitrator exceeded its authority; and (5) Right to seek remedies in small claims court for disputes or claims within that court's jurisdiction.

You or we may choose the American Arbitration Association, ([www.adr.org](http://www.adr.org)), or any other organization subject to our approval, to conduct the arbitration. The applicable rules (the "Rules") may be obtained from the selected organization. If there is a conflict between the Rules and this contract, this contract shall govern. This contract is subject to the Federal Arbitration Act (9 U.S.C. § 1 et seq.). The arbitration decision shall be in writing with a supporting opinion. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. To the extent that the total of your filing, administration, service or case management fee and your arbitrator or hearing fee exceeds \$200, we will pay the amount in excess of \$200, unless you choose to pay one-half of the total or unless the fees are reallocated in the award under applicable law or the organization's rules.

Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. Any portion of this arbitration provision that is unenforceable shall be severed, and the remaining provisions shall be enforced. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this arbitration provision shall be unenforceable. The validity and scope of the waiver of class action rights shall be decided by the court and not by the arbitrator.

True and Accurate Review Copy - UCC Non-Authoritative Copy

True and Accurate Review Copy - UCC Non-Authoritative Copy

**EXHIBIT H**

Any change in this contract must be in writing and signed by you and the Creditor.

Buyer: **F** Transmitted - 3/13/20 7:07:22pm  
Signs

Co-Buyer: **F** N/A  
Signs

**YOU ACKNOWLEDGE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE ARBITRATION PROVISION IN THIS CONTRACT.**

The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and may retain its right to receive a portion of the Finance Charge.

**NOTICE TO THE BUYER**

Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign.

Buyer (and Co-Buyer) acknowledge that (i) before electronically signing this contract, Buyer (and Co-Buyer) received and reviewed a true and completely filled in paper copy of this contract and (ii) at the time of electronically signing this contract, Buyer (and Co-Buyer) received a true and completely filled in paper copy of this contract.

**G** Transmitted - 3/13/20 7:07:24pm

Buyer Signs

**G**

Co-Buyer Signs

N/A

Seller                     KOONS FORD INC                     By **H** Transmitted - 3/13/20 7:07:27pm Title                     N/A                    

**THIS CONTRACT IS NOT VALID UNTIL YOU AND SELLER SIGN IT.**

**ASSIGNMENT**

Seller will assign this contract electronically to Ford Motor Credit Company LLC ("Assignee"). That Assignee will then have all the Seller's rights, privileges, and remedies.

Seller                     KOONS FORD INC                    

By **I** Transmitted - 3/13/20 7:07:29pm

Title                     N/A                    

True and Accurate Review Copy - UCC Non-Authoritative Copy

True and Accurate Review Copy - UCC Non-Authoritative Copy



**EXHIBIT I**

**PERMISSIVE VEHICLE USE AGREEMENT AND/OR  
ADDENDUM TO PROPOSED INSTALLMENT SALE AGREEMENT OR LEASE**

The undersigned customer(s) (collectively "Customer"), having requested use and possession of a 2017 FORD  
ESCAPE, VIN 1FMCU9J96 motor vehicle ("Vehicle") from  
KOONS FORD INC. ("Dealer") and/or having executed a buyer's order ("Buyer's Order") and/or a proposed retail  
installment sale agreement ("Installment Sale Agreement") or proposed lease ("Lease") for the purchase or lease of the Vehicle, hereby enter into this  
agreement (the Agreement").

1. This Agreement shall be either an addendum to the Installment Sale Agreement or the Lease or a separate agreement permitting Customer to use the Vehicle, or both, as the case may be. If any provision of this Agreement shall conflict with a provision of the Installment Sale Agreement or the Lease, the provision of this Agreement shall control. Customer agrees to execute or provide such other documents as Dealer may request in connection with the Lease, the Sale, or the financing thereof.

2. In the event Customer intends to obtain financing for the purchase of the Vehicle through Customer's own sources, Dealer hereby grants Customer use of the Vehicle while Customer seeks such financing, subject to the provisions and conditions hereof.

3. If Customer has tendered payment to Dealer for the Vehicle and Dealer has not received cleared funds for the full purchase price, this Agreement shall entitle Customer to possession of the Vehicle, while Dealer awaits clearance of Customer's funds in full and final payment for the Vehicle, subject to the provisions and conditions hereof.

4. Customer represents that he/she possesses a valid driver's license and current motor vehicle liability and collision insurance coverage and assumes risk of loss of the Vehicle while in Customer's possession. Customer agrees that Dealer retains a security interest in the Vehicle and Dealer shall be entitled to all statutory and common law remedies available to a seller or holder, including without limitation, the right to repossess the Vehicle. Notwithstanding anything herein to the contrary, Customer immediately shall return the Vehicle to Dealer upon Dealer's verbal or written request, for any reason or no reason at all.

5. Customer shall be in default under this Agreement upon the happening of any of the following (hereafter referred to as "default"): Customer's failure to immediately return the Vehicle upon Dealer's oral or written request or Customer's failure to comply with any request of Dealer not inconsistent herewith; Customer's failure to make any payment or perform any obligation under this Agreement, the Buyer's Order or any other agreement between the parties; if any representation made or information provided by Customer or any guarantor is false, inaccurate, incomplete, or misleading in any respect; loss, theft, damage to or destruction of the Vehicle or the making of any levy, seizure, or attachment thereof or thereon; death, dissolution, insolvency of Customer; the application for, or appointment of, a receiver of Customer, or an assignment for the benefit of creditors by Customer; the filing of a petition of bankruptcy by or against Customer; or should Dealer in good faith determine itself insecure.

6. In the event of default (as defined above), Dealer shall be entitled to recover from Customer any sums, expenses or losses caused thereby, including any costs relating to recovering or restoring the Vehicle to the condition in which it was received by Customer and Dealer's reasonable attorney's fees. In addition to other remedies provided herein, Dealer may offset and deduct any such loss or damage from Customer's cash deposit, if any, and sell any motor vehicle traded in by Customer in order to reduce Customer's obligation to Dealer.

7. If Customer is financing this transaction or leasing the Vehicle, any Installment Sale Agreement or Lease shall remain conditional until a third party lender or lessor approves the Installment Sale Agreement or Lease. If the Installment Sale Agreement or the Lease or Customer's attempt to finance is not approved by a lending institution, either party may cancel the transaction, in which event the permissive use hereunder shall terminate. Notwithstanding anything in Paragraph 5 to the contrary, in the event of such cancellation, any downpayment and/or trade in vehicle Customer submitted will be returned to the Customer, provided that the Vehicle is returned to the Dealer in the same condition as delivered to Customer, normal wear and tear excepted, withing twenty-four hours of written or verbal notice of cancellations.

8. This Agreement shall be governed by and construed under the laws of the state where the dealership is located, without regard to conflicts of laws principles. Whenever possible, each provision of this Agreement shall be interpreted so that it is effective and valid under applicable law, however if any portion of this Agreement shall be determined by a court of competent jurisdiction to be invalid under or prohibited by applicable law, then only such portion shall be ineffective without invalidating any other provision hereof. The exclusive forum for any dispute relating to this Agreement shall be in the state and county where Dealer is located. Customer hereby waives presentment, demand, protest, notice of dishonor and all exemptions.

**CUSTOMER UNDERSTANDS THAT THE SALE OR THE LEASE OF THE VEHICLE WILL ONLY BE EFFECTIVE IF A LENDING INSTITUTION APPROVES THE INSTALLMENT SALE AGREEMENT OR THE LEASE AND DEALER RECEIVES PAYMENT OF THE PURCHASE PRICE.**

MARCH 13, 2020  
Date

 (SEAL)  
Customer

\_\_\_\_\_  
Customer (SEAL)

 (SEAL)  
Dealer



Buyer Name and Address (Including County and Zip Code) [REDACTED]	Co-Buyer Name and Address (Including County and Zip Code) N/A	Seller-Creditor (Name and Address) RICK HENDRICK CHEVROLET 6252 VIRGINIA BEACH BLVD NORFOLK VA 23502 NORFOLK
---	---	--

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New/Used/ Demo	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
USED	2015	DODGE CHALLENGER	2C3CDZBT5FH [REDACTED]	Personal, family, or household unless otherwise indicated below <input type="checkbox"/> business <input type="checkbox"/> agricultural

**FEDERAL TRUTH-IN-LENDING DISCLOSURES**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your down payment of
17.95 %	\$ 17345.69	\$ 26587.27	\$ 43932.96	\$ <del>1000.00</del> is \$ 44932.96

Your Payment Schedule Will Be: (e) means an estimate

Number of Payments	Amount of Payments	When Payments Are Due
72	\$ 610.18	MONTHLY beginning 2/23/2019
N/A	\$ N/A	N/A

N/A

**Late Charge.** If payment is not received in full within 7 days after it is due, you will pay a late charge of 5 % of the part of the payment that is late.  
**Prepayment.** If you pay early, you will not have to pay a penalty.  
**Security Interest.** You are giving a security interest in the vehicle being purchased.  
**Additional Information:** See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

**ITEMIZATION OF AMOUNT FINANCED**

1 Cash Price (including \$ <u>991.73</u> sales tax)	\$ <u>24189.73</u> (1)
2 Total Downpayment =	
Trade-In <u>N/A</u>	
(Year) (Make) (Model)	
Gross Trade-In Allowance	\$ <u>N/A</u>
Less Pay Off Made By Seller to <u>N/A</u>	\$ <u>N/A</u>
Equals Net Trade In	\$ <u>N/A</u>
+ Cash	\$ <u>1000.00</u>
+ Other <u>N/A</u>	\$ <u>N/A</u>
+ Other <u>N/A</u>	\$ <u>N/A</u>
+ Other <u>N/A</u>	\$ <u>N/A</u>
(If total downpayment is negative, enter "0" and see 4I below)	\$ <u>1000.00</u> (2)
3 Unpaid Balance of Cash Price (1 minus 2)	\$ <u>23189.73</u> (3)
4 Other Charges Including Amounts Paid to Others on Your Behalf	
(Seller may keep part of these amounts):	
<b>A</b> Cost of Optional Credit Insurance	
Paid to Insurance Company or Companies:	
Life	\$ <u>N/A</u>
Disability	\$ <u>N/A</u>

Insurance. You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is authorized to sell such insurance in Virginia. You may also provide the physical damage insurance through an existing policy owned or controlled by you that is acceptable to us. Your choice will not affect our decision to extend credit or the terms of this contract. You are not required to buy any other insurance to obtain credit unless the box indicating Vendor's Single Interest insurance is required is checked below.

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

**Check the insurance you want and sign below:**

**Optional Credit Insurance**

Credit Life:  Buyer  Co-Buyer  Both  
 Credit Disability:  Buyer  Co-Buyer  Both  
 Premium:  
 Credit Life \$ N/A  
 Credit Disability \$ N/A  
 Insurance Company Name N/A

Home Office Address N/A

Credit life insurance and credit disability insurance are not required to obtain credit (see back). You have the right to use alternate coverage or buy such insurance elsewhere. Your choice of insurer will not affect our decision to extend credit or the terms of this contract. Your decision to buy or not to buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. If you choose this insurance, the cost is shown in Item 4A of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit Disability Insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

**Other Optional Insurance**

N/A N/A  
 Type of Insurance Term  
 Premium \$ N/A  
 Insurance Company Name N/A  
 Home Office Address N/A

4 Other Charges Including Amounts Paid to Others on Your Behalf

(Seller may keep part of these amounts):

**EXHIBIT J**

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 05/29/2023 OSCAR NO 007738 PAGE Page 100 of 110 \* -PUBLIC

Cost of Optional Credit Insurance			
Paid to Insurance Company or Companies.			
Life	\$	N/A	
Disability	\$	N/A	\$ N/A
B Vendor's Single Interest Insurance Paid to Insurance Company(ies)	\$	N/A	\$ N/A
C Other Optional Insurance Paid to Insurance Company or Companies	\$	N/A	\$ N/A
D Optional Gap Contract	\$	N/A	\$ N/A
E Official Fees Paid to Government Agencies	\$	N/A	\$ N/A
1) to N/A for N/A	\$	N/A	\$ N/A
2) to STATE OF VA for GROSS REC TAX	\$	47.79	\$ 47.79
3) to STATE OF VA for TEMP TAG	\$	3.00	\$ 3.00
F Government Taxes Not Included in Cash Price	\$	75.00	\$ 75.00
G Government License and/or Registration Fees			
LICENSE			
ONLINE REG	\$	55.75	\$ 55.75
H Government Certificate of Title Fees	\$	17.00	\$ 17.00
I Other Charges (Seller must identify who is paid and describe purpose.)			
1) to N/A for Prior Credit or Lease Balance	\$	N/A	\$ N/A
2) to SELLER for LR PROC CHG	\$	699.00	\$ 699.00
3) to HENDAG INC for SC OUT OF WARRANT	\$	2500.00	\$ 2500.00
4) to N/A for N/A	\$	N/A	\$ N/A
5) to N/A for N/A	\$	N/A	\$ N/A
6) to N/A for N/A	\$	N/A	\$ N/A
7) to N/A for N/A	\$	N/A	\$ N/A
8) to N/A for N/A	\$	N/A	\$ N/A
9) to N/A for N/A	\$	N/A	\$ N/A
10) to N/A for N/A	\$	N/A	\$ N/A
11) to N/A for N/A	\$	N/A	\$ N/A
12) to N/A for N/A	\$	N/A	\$ N/A
13) to N/A for N/A	\$	N/A	\$ N/A
Total Other Charges and Amounts Paid to Others on Your Behalf	\$	3397.54	\$ 3397.54 (4)
5 Amount Financed (3 + 4)	\$	26587.27	\$ 26587.27 (5)

Type of Insurance	Term
Premium \$	N/A
N/A	
Home Office Address	N/A
N/A	
<input type="checkbox"/> N/A	N/A
Type of Insurance	Term
Premium \$	N/A
Insurance Company Name	N/A
N/A	
Home Office Address	N/A
N/A	
Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost. Your choice of insurer will not affect our decision to extend credit or the terms of this contract.	
I want the insurance checked above.	
<input checked="" type="checkbox"/> N/A	N/A
Buyer Signature	Date
<input checked="" type="checkbox"/> N/A	N/A
Co-Buyer Signature	Date
<b>THIS INSURANCE DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE.</b>	
<b>Returned Payment Charge:</b> If any check you give us is dishonored or electronic payment you make is returned unpaid, we may, at our option, charge you \$ 50.	

OPTION:  You pay no finance charge if the Amount Financed, item 5, is paid in full on or before N/A Year N/A. SELLER'S INITIALS N/A

VENDOR'S SINGLE INTEREST INSURANCE (VSI insurance): If the preceding box is checked, the Creditor requires VSI insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft, concealment, skip). VSI insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI insurance is obtained. If you elect to purchase VSI insurance through the Creditor, the cost of this insurance is \$ N/A and is also shown in Item 4B of the Itemization of Amount Financed. The coverage is for the initial term of the contract. See back of this contract for more information.

**OPTIONAL GAP CONTRACT.** A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term N/A Mos. N/A Name of Gap Contract \_\_\_\_\_

I want to buy a gap contract.

Buyer Signs  N/A

**Agreement to Arbitrate.** By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

Buyer Signs X \_\_\_\_\_ Co-Buyer Signs  N/A

**NO COOLING OFF PERIOD**

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

**The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.**

**HOW THIS CONTRACT CAN BE CHANGED.** This contract, along with all other documents signed by you in connection with the purchase of the vehicle, comprise the entire agreement between you and us affecting this purchase. No oral agreements or understandings are binding. Upon assignment of this contract: (i) only this contract and Addenda to this contract comprise the entire agreement between

4B of the Itemization of Amount Financed. The coverage is for the initial term of the contract. See back of this contract for more information.

**EXHIBIT J**

**OPTIONAL GAP CONTRACT:** A gap contract (debt cancellation benefit) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term N/A Mos. N/A Name of Gap Contract \_\_\_\_\_

I want to buy a gap contract.

Buyer Signs X/N/A

**Agreement to Arbitrate:** By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

Buyer Signs X Co-Buyer Signs X/N/A

**NO COOLING OFF PERIOD**

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

*The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.*

**HOW THIS CONTRACT CAN BE CHANGED.** This contract, along with all other documents signed by you in connection with the purchase of the vehicle, comprise the entire agreement between you and us affecting this purchase. No oral agreements or understandings are binding. Upon assignment of this contract: (i) only this contract and addenda to this contract comprise the entire agreement between you and the assignee relating to this contract; (ii) any change to this contract must be in writing and the assignee must sign it; and (iii) no oral changes are binding. Buyer Signs X Co-Buyer Signs X/N/A

If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.

See back for other important agreements.

**NO LIABILITY INSURANCE INCLUDED**

**NOTICE TO RETAIL BUYER:** Do not sign this contract in blank. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You acknowledge that you have read both sides of this contract, including the arbitration provision on the reverse side, before signing below. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X Date 10/15/19 Co-Buyer Signs X/N/A Date N/A

Buyer Printed Name \_\_\_\_\_ Co-Buyer Printed Name N/A

If the "business" use box is checked in "Primary Use for which purchased". Print Name N/A Title N/A

**Co-Buyers and Other Owners** — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X/N/A Address N/A

Seller signs \_\_\_\_\_ Date 10/15/19 By X Title Seller

Seller assigns its interest in this contract to GLOBAL LENDING SERVICES LLC (Assignee) under the terms of Seller's agreement(s) with Assignee.

Assigned with recourse  Assigned without recourse  Assigned with limited recourse

Seller TRICE HENDRICK CHEVROLET

By X Title Seller



FORM NO. 553-VA-ARB (REV. 11/13)

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CUSTOMER/TRUTH IN LENDING COPY

- a. **How we will figure the Finance Charge.** We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- b. **How we will apply payments.** We may apply your payments first to finance and unpaid part of the Finance Charge on the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose in the law allows.
- c. **How late payments or early payments change what you must pay.** We will change the Finance Charge, Total of Payments, and Total Sale Price shown on the front of the assumption that you will make every payment on the scheduled floor Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or of changing more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. **You may prepay.** You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- e. **Your right to refinance a balloon payment.** A balloon payment is any payment other than a down payment that is more than 10% greater than the regular or recurring installment payments. If you use the vehicle primarily for consumer purposes, you have the right to refinance a balloon payment over an extended period with additional payments. The additional periodic payments will not be more than 10% greater than the regularly scheduled installment payments.

## 2. YOUR OTHER PROMISES TO US

- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. **Security Interest.**  
You give us a security interest in:
- The vehicle and all parts or goods put on it
  - All money or goods received (proceeds) for the vehicle
  - All insurance, maintenance, service, or other contracts we finance for you; and
  - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.

This secures payment of all you owe on this contract. It also secures your other agreements in this contract and will make sure the title shows our security interest in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.

- d. **Insurance you must have on the vehicle.**  
You agree to buy physical damage insurance covering both other damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. You agree to make its only or its primary policy as an additional insured and as loss payee. If you do not have this insurance, we may buy physical damage insurance for you. If you decide to buy physical damage insurance, you may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you what type and what you must pay. The charge will be the premium for the insurance and a finance charge computed at the Annual Percentage Rate shown on the front of this contract or at the highest, the highest rate, the law permits.  
If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what we owe or repair the vehicle.

You may have to pay collection costs. If we bring an attorney to collect what we are owed, you will pay the attorney's fee and court costs as the law allows. You will also pay any collection costs we may incur if we sue you.

- d. **We may take the vehicle from you.** If you default, we may take possession of the vehicle from you. If you do so peacefully and the vehicle has an electronic tracking device, such as GPS, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you. If you do not ask for them, when we may make a claim against the law allows.
- e. **How you can get the vehicle back if we take it.** If we take possession of the vehicle, you may sue to get it back immediately. We will tell you how much to pay to get it back. Your right to sue is not affected if you use the vehicle.
- f. **We will sell the vehicle if you do not get it back.** If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left over, we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.
- g. **What we may do about optional insurance, maintenance, service or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

## 4. WARRANTIES SELLER DISCLAIM

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. Any implied warranties arising from a written warranty or service contract are limited to the duration of such written warranty or service contract.

This disclaimer does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

5. **Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

## 6. VSI AND OPTIONAL INSURANCE

Optional insurance. If optional single interest insurance is required (as indicated on a front), and you also buy optional insurance, you may buy the insurance from us. If you buy insurance elsewhere, you have the right to file a claim with the insurer or to buy insurance elsewhere from the agent or partner of your choice. You may also buy required physical damage insurance from the agent or insurer of your choice. The agent or insurer will not affect our decision to extend credit or your credit terms.

## 7. SERVICING AND COLLECTION CONTACTS

You agree that we may contact you by direct mail, e-mail, or using pre-recorded, artificial voice messages, text messages, and automatic

and a finance charge computed at the Annual Percentage Rate shown on the front of this contract or, if no rate is shown, the highest rate the law permits.

If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.

e. **What happens to returned insurance, maintenance, service, or other contract charges.** If we obtain a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

a. **You may owe late charges.** You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your later payment or mean that you may keep making late payments.

If you pay late, we may also take the steps described below.

b. **You may have to pay all you owe at once,** if you break your promises (default), we may demand that you pay all you owe on this contract at once. Default means:

- You pay any payment (plus any late charges) more than 10 days late or not at all;
- You give us false, incomplete, or misleading information during credit application;
- You start a proceeding in bankruptcy or one is started against you or your property; or
- You break any agreements in this contract.

The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaired part of the Finance Charge, any late charges, and any amounts due because you defaulted.

7. SERVICING AND COLLECTION CONTACTS

We and our servicer may try to contact you automatically by e-mail or using prerecorded artificial voice messages, text messages, and automatic keep-and-dialing systems, as the law allows. You also agree that we may try to protect you in other and other ways, at any address or telephone number you provide us. Even if the telephone number you provide is wrong or the contact results in a charge to you.

8. APPLICABLE LAW

Both state and the law of the state of Virginia apply to this contract.

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

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

**ARBITRATION PROVISION  
PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS**

- 1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.**
- 2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.**
- 3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.**

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, and the availability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Provision shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a class action. You may choose the American Arbitration Association, JAMS, or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal judicial district in which you reside unless the Seller-Creditor is a party to the claim or dispute, in which case the hearing will be held in the federal judicial district where this contract was executed. We will pay your filing and arbitration, service or case management, at fee and your arbitrator or hearing fee, all up to a maximum of \$6000, unless the law or the rules of the chosen arbitration organization require us to pay more. The arbitrator fee may be reimbursed in whole or in part by decision of the arbitrator, if it is that arbitrator's claim is frivolous under applicable law. Each party shall be responsible for his or her own expert and other fees, costs, and expenses.

**CONDITIONAL DELIVERY AGREEMENT**

Date: 10/19/2019

The Dealership (also called "we" and "us") is permitting you to take possession of the below-described vehicle prior to your Retail Installment Sales or Lease Contract (as applicable, your "Contract") being assigned to a third party. **Although you are being permitted to take possession of such vehicle, you understand that such assignment has not been made and that if not so made, the sale/lease transaction we have entered with you may be terminated.** You and we intend that the Contract will be assigned to a third party. You acknowledge and agree that at our discretion we may submit your application for credit to one or more institutions of Dealership's own selection if the first such institution to whom your application for credit was submitted declines to purchase your Contract. Nothing contained in this paragraph, however, shall be deemed to require that we submit your application for credit to any such institution subsequent to the first such institution to which your application for credit was submitted.

If no such lending institution purchases your Contract, we shall notify you and you shall immediately return the vehicle or, for purchases, pay us the balance due as reflected in your Buyer's Order. Such notice to you shall be deemed sufficient if given by telephone, in person, or if it is deposited in the custody of the U.S. Postal Service, first class postage prepaid, addressed to your last known address. Upon such notice, any purchase/lease agreements between you and us for the vehicle, including the Contract, shall be void and of no effect, and except as expressly provided in this instrument and otherwise required by law, neither party to this agreement shall have any further obligation to the other. If the vehicle should become immobilized or impounded while in your possession, you agree to take whatever steps are necessary to ensure the return of the vehicle to us. **If the vehicle is not returned within 24 hours, you agree that we have the right to reacquire the vehicle by all peaceable and lawful means and that you will reimburse us for our reasonable expenses we incur in connection with retaking the vehicle, including, without limitation, attorneys' fees and other expenses to the extent permitted by law.**

When you return the vehicle, we will refund all deposits made by you, less any amounts owed to us by you. **You will (1) pay us the cost of repairing any damage occurring to the vehicle while it is in your possession, (2) hold us harmless from any expenses, costs and fees arising out of any act pertaining to the vehicle while it is in your possession and (3) pay us the greater of \$.42 per mile or \$30 per day for your use of the vehicle.** Upon our receipt of the payments owed to us under this agreement, the Contract, and your Buyer's Order, we will return to you your trade-in, if applicable.

In the event an institution agrees to purchase your Contract, you agree to immediately return the vehicle to us upon our request so that we may, if applicable, remove a dealer tag and replace it with your tag or a temporary marker, and at that time any temporary permit or renewal previously given to you shall be rescinded.


You hereby irrevocably appoint us as your attorney-in-fact for us to act in your name in any way which you could act for yourselves as if personally present. We shall only act in a capacity for the limited purpose of executing such documents as may be necessary to avoid any transaction between you and us in the event that financing is declined or for any other purpose necessary to void the subject transaction if required by the circumstances. This is a power of attorney coupled with an interest and is irrevocable.

In the event of any inconsistency or ambiguity between any of the terms or provisions of this agreement and those of any other instrument executed prior to or contemporaneously with this agreement regarding the purchase/lease of the vehicle, the terms and provisions of this agreement shall be controlling. The terms of this agreement are hereby incorporated by reference into and made a part of the Contract.

You acknowledge and agree that you are a bailee and not an agent of the Dealership and that once we give you control of the vehicle, you and not the Dealership will be responsible to third parties for your actions.

**Each party hereto hereby irrevocably and unconditionally waives, to the extent permitted by law, trial by jury in any legal action or proceeding relating to this agreement.**

  
\_\_\_\_\_  
Dealership Representative's Signature

  
\_\_\_\_\_  
Buyer's Signature

\_\_\_\_\_  
Co-Buyer's Signature

Vehicle Year: 2015 Model: CHALLENGER

Mileage: 56596 VIN: 2C3CDZBT 

