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IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

	TIMELESS ENTERTAINMENT, INC.,)	
	vs. Plaintiff, 1045 1049)	Docket No. 172039-3
	Serve: 519953	
	ALBERT BAAH, individually and d/b/a AMERICAN EXCHANGE	
	526 North Gay Street Knoxville, Tennessee 37917,	4 E
	Defendant.	
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COMPLAINT

Comes the plaintiff, Timeless Entertainment, Inc., (hereinafter "the Plaintiff"), and files this Complaint against Albert Baah, both individually and doing business as American Exchange (collectively referred to herein as "the Defendant"), and for his cause of action would show the following:

- 1. Timeless Entertainment, Inc. is a corporation organized and existing under the laws of the State of Nevada, and can be served with process in the State of Tennessee through its President, Donald Reynolds, whose address is 1001 Crooked Spring Road, Knoxville, Tennessee 37932.
- 2. Defendant, Albert Baah, is an individual and adult resident of Knox County, Tennessee, with his principal residence located at 1536 Cliffside Lane, Knoxville, Tennessee 37914.
- 3. Defendant, Albert Baah d/b/a American Exchange, is a sole proprietorship organized and existing under the laws of the State of Tennessee, engaging in business as a motor

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vehicle dealer, with its principal place of business located at 526 N. Gay Street, Knoxville, Tennessee 37917.

- 4. On or about March of 2007, Defendant approached Plaintiff's President, Donald Reynolds (hereinafter "Reynolds"), about borrowing \$24,000 from the Plaintiff, with the entire amount of the loan to be paid back within a few days.
- 5. Thereafter, Plaintiff and Defendant orally agreed that Plaintiff would loan Defendant \$24,000.00, with Defendant fully repaying the loan within a matter of days. Thereafter, Plaintiff gave \$24,000.00 in cash to Defendant.
- 6. After the time had passed for payment and Defendant had not repaid the amounts borrowed from Plaintiff, Reynolds repeatedly contacted Defendant and demanded that Defendant immediately repay the \$24,000.00 loan. Despite Defendant's promises, Defendant did not repay the loan.
- 7. On or about April 2, 2007, Reynolds went to Defendant Albert Baah's place of business, American Exchange, for payment of the \$24,000.00 that was owed, at which time Defendant agreed to give Plaintiff a 2007 Cadillac Escalade EXT, Vehicle Identification Number 3GYFK62827G272799 (hereinafter the "Vehicle") to satisfy the debt. The Vehicle was reportedly worth approximately \$68,000.00.
- 8. That same day, Reynolds and Defendant extensively negotiated and entered into a valid oral contract for the purchase and sale of the Vehicle (the "Contract"), whereby Plaintiff agreed to accept the Vehicle as payment of the \$24,000 debt. Because the Vehicle was worth significantly more than the debt, Plaintiff agreed to give Defendant cash for the difference between the value of the Vehicle and the debt. During the course of the parties'

negotiations, Reynolds informed Defendant that he was accepting the Vehicle in satisfaction of the debt only because it was Plaintiff's intention to resell the Vehicle and obtain cash.

- 9. Therefore, Plaintiff gave Defendant \$40,000.00 in additional cash for a total of \$64,000.00. Plaintiff agreed to pay the balance of approximately \$4,000.00 at a later date. Defendant gave Plaintiff immediate possession of the Vehicle along with a notarized bill of sale evidencing the transfer. A true and correct copy of said bill of sale is attached hereto as Exhibit "A".
- 10. However, Defendant did not give Plaintiff a valid certificate of title, because according to the bill of sale, title of ownership would only pass once a final cash payment was made.
- 11. On May 15, 2007, Reynolds returned to American Exchange and paid the remaining \$4,000.00 balance on behalf of Plaintiff using check number 1015, payable to American Exchange and bearing the notation "Cadillac EXT 07 balance." A copy of said check is attached hereto as Exhibit "B".
- 12. Defendant deposited this check and kept the proceeds. However, Defendant did not provide Plaintiff with a valid certificate of title but promised to provide it once Defendant obtained said certificate of title.
- 13. Thereafter, Reynolds repeatedly asked Defendant for the Vehicle's certificate of title so Plaintiff could resell the Vehicle. Sometime after the Vehicle's temporary tags had expired, Defendant provided Plaintiff with a copy of the application for certificate of title, attached hereto as Exhibit "C". This document listed the date of purchase as May 9, 2007, which was more than a month after the sale. Moreover, this document listed Defendant Albert Baah,

individually, as the Vehicle's owner and showed an outstanding lien against the Vehicle in favor of Y-12 Federal Credit Union.

- 14. Plaintiff alleges, upon information and belief, that after the receipt of the funds from Plaintiff, the Defendant improperly placed the Vehicle in his own name and used it to secure a loan from Y-12 Federal Credit Union for his own use and benefit.
- 15. Thereafter, Reynolds once again demanded that Defendant provide him with a valid certificate of title, and Defendant assured him that he was in the process of clearing the lien and obtaining a valid certificate of title. In the meantime, Plaintiff was unable to register or resell the Vehicle.
- 16. In approximately June of 2007, the Vehicle was driven on a business-related trip to Chicago, Illinois, by an agent of the Plaintiff. While in Chicago, Plaintiff's agent was arrested and the Vehicle was impounded. Plaintiff was unable to obtain possession of the Vehicle because of the outstanding lien in favor of Y-12 Federal Credit Union and because Plaintiff lacked a valid certificate of title.
- 17. Reynolds repeatedly contacted Defendant about obtaining possession of the Vehicle, and Defendant repeatedly assured Plaintiff that he would retrieve the Vehicle from impound, extinguish the outstanding lien in favor of Y-12 Federal Credit Union and return the Vehicle to the Plaintiff.
- 18. Thereafter, the Defendant obtained possession of the Vehicle and satisfied Y-12's lien. However, Defendant never returned the Vehicle to the Plaintiff.

- 19. Plaintiff reasonably relied upon the representations of Defendant when he agreed to enter into the Contract. Plaintiff continued to rely on the Defendant's representations that he would correct any and all breaches of the Contract.
- 20. At all times applicable hereto, Defendant made representations to Plaintiff that the vehicle Plaintiff was purchasing was new and unencumbered and that Defendant would provide Plaintiff with a valid certificate of title. The Defendant made further representations to Plaintiff, promising to return the Vehicle to Plaintiff.
- 21. As a result of the Defendant's actions, Plaintiff made a good faith effort to rescind the Contract and offered to accept a new agreement by which Plaintiff would accept another vehicle worth substantially the same amount as the Vehicle, but Defendant refused.
- 22. The Defendant never returned the Plaintiff's purchase money nor provided Plaintiff with a substitute vehicle after Defendant failed to return the Vehicle to Plaintiff.

I. BREACH OF CONTRACT

- 23. All allegations in paragraphs 1 through 22 of this Complaint are hereby incorporated and re-alleged by reference.
- 24. Defendant breached the Contract by failing to provide Plaintiff with an unencumbered vehicle and failing to provide Plaintiff with a valid certificate of title, both of which were fairly bargained-for by Plaintiff in good faith.
- 25. As a result of the breach of Contract by the Defendant, plaintiff has lost both his money and the Vehicle.

II. NEGLIGENT MISREPRESENTATION

26. All allegations in paragraphs 1 through 25 of this Complaint are hereby

incorporated and re-alleged by reference.

- 27. Defendant, who had a pecuniary interest in the Contract, negligently supplied false information to the Plaintiff regarding the lien status of the Vehicle and the validity of the Vehicle's certificate of title, upon which Plaintiff reasonably relied to his detriment.
- 28. Additionally, after the Vehicle was impounded, Defendant repeatedly misrepresented to Plaintiff that he would return the Vehicle to the Plaintiff and would extinguish the outstanding lien, upon which Plaintiff justifiably relied to his detriment.

III. FRAUDULENT MISREPRESENTATION

- 29. All allegations in paragraph 1 through 28 of this Complaint are hereby incorporated and re-alleged by reference.
- 30. Defendant made intentional misrepresentations of material facts with regard to the Vehicle's title and its lien status. These statements were designed and intended to mislead the Plaintiff regarding Defendant's true intentions of performing under the Contract.
- 31. These misrepresentations were made by the Defendant with knowledge of their falsity and with the intent to deceive the Plaintiff.
- 32. The Defendant's misrepresentations were of existing facts as to the state of the Vehicle's certificate of title, the lien status of the Vehicle, Defendant's intention of performing its obligations under the Contract, and Defendant's intentions of returning the Vehicle to the Plaintiff.
- 33. Plaintiff was, in fact, misled by Defendant's intentional misrepresentations, upon which Plaintiff reasonably relied to its injury.

IV. TENNESSEE CONSUMER PROTECTION ACT VIOLATION

- 34. All allegations in paragraphs 1 through 33 of this Complaint are hereby incorporated and re-alleged by reference.
- 35. Defendant's comments and conduct constitute unfair and deceptive acts or practices under the Tennessee Consumer Protection Act, Tennessee Code Annotated § 47-18-101, et seq.
- 36. Plaintiff has been damaged as a result of Defendant's unfair and deceptive acts or practices.
- 37. Defendant led Plaintiff to believe that Plaintiff was actually buying an unencumbered vehicle with a valid certificate of title, when Defendant knew or should have known there was an outstanding lien on the Vehicle, which negates any representation, intentional or otherwise, that the Vehicle was unencumbered.
- 38. Defendant accepted cash in the amount of \$40,000.00, credit for payment of a previous loan in the amount of \$24,000.00, and Plaintiff's check in the amount of \$4,000.00 while maintaining, at all times, that the Vehicle being bought in consideration thereof, was unencumbered and had a transferable certificate of title.
- 39. In good faith, Plaintiff relied upon the negligent, reckless, and fraudulent nature of the acts practiced by Defendant and has been damaged as a result.
- 40. Plaintiff avers that Defendant negligently, recklessly, willfully and knowingly practiced deceptive acts against Plaintiff, which damaged the Plaintiff, and Plaintiff therefore has a private right of action against Defendant pursuant to Tennessee Code Annotated §47-18-109.

41. As a direct result of the negligent and fraudulent acts, comments, and omissions of Defendant, Plaintiff has been damaged and is entitled to all remedies allowed by the Tennessee Consumer Protection Act, including attorney's fees.

V. PROMISSORY FRAUD

- 42. All allegations in Paragraph 1 through 41 of this Complaint are hereby incorporated and re-alleged by reference.
- 43. Defendant procured cash in the amount of \$40,000.00, credit towards his debt of \$24,000.00 and Plaintiff's check in the amount of \$4,000.00 from Plaintiff by intentionally misrepresenting his intentions and perhaps his ability to fulfill his obligations under the Contract. The misrepresentations made by Defendant fraudulently induced Plaintiff to pay Defendant the full consideration for the Vehicle, when Defendant had no intention of fulfilling his promises.
- 44. Plaintiff reasonably relied on the Defendant's misrepresentations to its detriment.
- 45. Because of the intentional acts and omissions of Defendant, which were the proximate and legal cause of Plaintiff's damages, Plaintiff asserts that it is entitled to punitive damages in accordance with <u>Hodges v. S.C. Toof and Company</u>, 833 S.W.2d 896 (Tenn. 1992).

VI. CONVERSION

46. All allegations in Paragraph 1 through 45 of this Complaint are hereby incorporated and re-alleged by reference.

- 47. In obtaining and thereafter retaining possession of the Vehicle paid for by Plaintiff without the Plaintiff's consent, Defendant excluded and defied the Plaintiff's rights as the rightful owner of the Vehicle.
- 48. The aforementioned actions by Defendant deprived the Plaintiff of the use and enjoyment of the Vehicle and constituted a conversion of the Vehicle.
- 49. As a natural and proximate result of the Defendant's conversion of the Vehicle, Plaintiff has been damaged.

VII. BREACH OF WARRANTY

- 50. All allegations in Paragraph 1 through 49 of this Complaint are hereby incorporated and re-alleged by reference.
- 51. The Defendant had a duty to provide Plaintiff with a valid certificate of title under Tennessee Code Annotated § 55-3-101, et seq.
- 52. In transferring possession of the Vehicle to Plaintiff and providing a notarized bill of sale, the Defendant warranted to the Plaintiff that the title conveyed was good and that Defendant's transfer of the Vehicle was rightful.
- 53. Defendant further warranted that the Vehicle would be delivered free from any security interest or other lien or encumbrance.
- 54. Defendant breached the provisions of T.C.A. § 47-2-301, et seq., by failing to provide Plaintiff with a vehicle free and clear of any and all liens and encumbrances.
- 55. Defendant breached the provisions of T.C.A. § 55-3-101 by failing to provide Plaintiff with a valid certificate of title.

56. As a result of Defendant's breach of warranty of title under T.C.A. § 47-2-301 and failure to fulfill the duties prescribed by T.C.A. § 55-3-101, *et seq.*, the Plaintiff has been damaged.

WHEREFORE, Plaintiff prays as follows:

- 1. That proper process issue to the Defendant requiring answer to this Complaint within the time allowed by law.
 - 2. For compensatory damages in an amount not to exceed \$100,000.00.
- 3. For treble damages pursuant to the provisions of T.C.A. § 47-18-109(a)(3); or in the alternative, for punitive damages in the amount of \$200,000.00.
 - 4. For attorney fees pursuant to the provisions of T.C.A. § 47-18-109(e)(1).
 - 5. For costs of this action.
 - 6. For such other and further relief to which the Plaintiff may prove entitled.

By:

Alexis M. Whitaker (BPR #02574

Attorney for Plaintiff

Carpenter, O'Connor & Sterchi, PLLC Post Office Box 2485 Knoxville, Tennessee 37901-2485 (865) 546-1831

COST BOND

We acknowledge ourselves surety for costs in this cause, for costs pursuant to the applicable provision of the Tennessee Code Annotated.

CARPENTER, O CONNOR & STERCHI, PLLC

Alexis M. Whitaker

BILL OF SALE AMERICAN EXCHANGE

526 NORTH GAY STREET KNOXVILLE, TN 37917 (865) 523-5643 FAX 523-5690

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EXHIBIT

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TO: KURT E. PETERSON COM



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IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

TIMELESS ENTERTAINMENT, IN	NC., 2018 APR -2 PH 2: 54	
Plaintiff,	DOWARD G. HOGAN	
VS.) Docket No. 172039 -	31
Serve: ALBERT BAAH, individually and d/b/a AMERICAN EXCHANGE 526 North Gay Street Knoxville, Tennessee 37917,)))))))))	
Defendant.)	
	SUMMONS	
To the above-named Defendant:	Albert Baah d/b/a American Exchange 526 North Gay Street Knoxville, Tennessee 37917	
address is P.O. Box 2485, Knoxville, Tenness within thirty (30) days after service of this Sur copy of the Answer must be filed with the Cou	ired to serve upon Alexis M. Whitaker, Plaintiff's see 37901, an answer to the Complaint herewith mmons and Complaint upon you, exclusive of the cart either before or within a reasonable time after seinst you for the relief demanded in the Complaint.	served upon you lay of service. A
Issued and tested this 2 x d	ay of <u>ap al</u> , 2008.	Ę
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NOTICE

To the Defendant Albert Baah, d/b/a American Exchange

Tennessee law provides a Four Thousand Dollar (\$4,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the Clerk of the Court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

SERVICE INFORMATION

To the process server: Defendant Albert Baah d/b/a American Exchange can be served with process at 526 North Gay Street, Knoxville, Tennessee 37917.

<u>RETURN</u>
I received this Summons on the 5 day of day.
I hereby certify and return that on the B day of Philosophy. I:
served this Summons and a Complaint on Defendant Albert Baah d/b/a American Exchange, in the following manner:
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[] failed to serve this Summons within thirty (30) days after its issuance because:
PROCESS SERVER

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IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

TIMELESS ENTERTAINMENT, IN	
Plaintiff,	MAHD G. HOGAN
vs.	Docket No. 172039-3
Serve:)
ALBERT BAAH, individually and d/b/a AMERICAN EXCHANGE)))
526 North Gay Street Knoxville, Tennessee 37917,)
Defendant.	
	SUMMONS

To the above-named Defendant:

Albert Baah 1536 Cliffside Lane

Knoxville, Tennessee 37914

You are hereby summoned and required to serve upon Alexis M. Whitaker, Plaintiff's attorney, whose address is P.O. Box 2485, Knoxville, Tennessee 37901, an answer to the Complaint herewith served upon you within thirty (30) days after service of this Summons and Complaint upon you, exclusive of the day of service. A copy of the Answer must be filed with the Court either before or within a reasonable time after service. If you fail to do so, judgment by default can be taken against you for the relief demanded in the Complaint.

Issued and tested this and day of april , 2008.

Dethic Davison

NOTICE

To the Defendant Albert Baah, individually

Tennessee law provides a Four Thousand Dollar (\$4,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the Clerk of the Court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

SERVICE INFORMATION

To the process server: Defendant Albert Baah can be served with process at 1536 Cliffside Lane, Knoxville, Tennessee 37914.

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I hereby certify and return that on the 7k day of April, 2008, I:	
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IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESEE

TIMELESS ENTERTAINMENT, INC.,)	28 PN 3:53
Plaintiff,)	ICH AU G. HOGAN
vs.)	Docket No. 172039-3
ALBERT BAAH, individually and	
d/b/a AMERICAN EXCHANGE	
Defendant.	

ANSWER AND COUNTERCLAIM

COMES now the Defendant, Albert Baah, individually and d/b/a/ American Exchange, ("Defendant") by and through counsel, and for his Answer to the Plaintiff's Complaint, states as follows:

- 1. The Defendant is without knowledge or information sufficient to admit or deny the averment in Paragraph 1 of the Complaint that Timeless Entertainment, Inc. is a corporation organized and existing under the laws of the State of Nevada, and therefore denies the averment. The remaining averments in Paragraph 1 of the Complaint are admitted.
- 2. The Defendant admits the averments in Paragraph 2 of the Complaint.
- 3. The Defendant admits the averments in Paragraph 3 of the Complaint.

- 4. The Defendant denies the averments in Paragraph 4 of the Complaint.
- 5. The Defendant denies the averments in Paragraph 5 of the Complaint.
- 6. The Defendant denies the averments in Paragraph 6 of the Complaint.
- 7. The Defendant denies the averments in Paragraph 7 of the Complaint.
- 8. Answering Paragraph 8 of the Complaint, Defendant admits that on or about April 2, 2007 Defendant and Plaintiff extensively negotiated and entered into a valid oral contract for the purchase and sale of a 2007 Cadillac Escalade EXT, Vehicle Identification Number 3GYFK62827G272799 ("Vehicle"). As further answer, Defendant denies the remaining averments in Paragraph 8 of the Complaint.
- 9. Answering Paragraph 9 of the Complaint, Defendant admits that a notarized bill of sale was given to Plaintiff on April 2, 2007, but denies that it evidenced all of the terms and conditions of the agreement as averred by Plaintiff in Paragraph 9 of the Complaint, and therefore denies the remaining averments in Paragraph 9.
- 10. The Defendant admits the averments of Paragraph 10 of the Complaint.
- 11. Answering Paragraph 11 of the Complaint, Defendant admits that on May 15, 2007 Plaintiff gave to Defendant a check, number 1015, for \$4,000, but denies

that the \$4,000 check represented the balance remaining on the Vehicle and therefore denies the remaining averments in Paragraph 11 of the Complaint.

- 12. Answering Paragraph 12 of the Complaint, Defendant admits that he deposited and kept the \$4,000 check and that he did not provide Plaintiff with the certificate of title. Defendant denies the remaining averments of Paragraph 12 in the Complaint.
- 13. Answering Paragraph 13 of the Complaint, Defendant admits that the application for certificate of title lists the Defendant as the Vehicle's owner and showed an outstanding lien against the vehicle in favor of Y-12 Credit Union. Defendant denies the remaining averments in Paragraph 13 of the complaint.
- 14. The Defendant denies the averments in Paragraph 14 of the Complaint as stated.
- The Defendant denies the averments in Paragraph 15 of the Complaint as stated.
- The Defendant admits that in June of 2007 the Vehicle was used by the Plaintiff and/or an agent of the Plaintiff for drug trafficking, and that the vehicle was impounded by the Chicago Police Department. Defendant is without knowledge sufficient enough to respond to the averment that Plaintiff attempted but was unable to get possession of the Vehicle. The Defendant further admits that Plaintiff did not have a certificate of title and that, at the time of the impounding, Y-12 Credit Union held a lien on the Vehicle.

*

The Defendant denies the averments in Paragraph 17 of the 17. Complaint as stated. The Defendant admits to satisfying the Y-12 Credit Union lien on 18. the Vehicle and to subsequently taking possession of the Vehicle. As further answer, the Defendant avers that Y-12 Credit Union required the Defendant to pay off the outstanding lien, or risk having the vehicle sold by Y-12 Credit Union to satisfy the debt. The Defendant further avers that he made multiple attempts to contact the Plaintiff regarding the Vehicle but the Plaintiff failed to respond. The Defendant denies the averments in Paragraphs 19 through 22 of 19. the Complaint. Answering Paragraph 23 of the Complaint, Defendant incorporates 20. Paragraphs 1 through 19 above. The Defendant denies the averments in Paragraphs 24 and 25 of the 21. Complaint. Answering Paragraph 26 of the Complaint, Defendant incorporates 22. his responses in Paragraphs 1 through 21 above. The Defendant denies the averments in Paragraphs 27 through 28 of 23. the Complaint. Answering Paragraph 29 of the Complaint, Defendant incorporates 24. his responses in Paragraphs 1 through 23 above. The Defendant denies the averments of Paragraphs 30 through 33 of 25. the Complaint.

Answering Paragraph 34 of the Complaint, Defendant incorporates 26. his responses in Paragraphs 1 through 25 above. The Defendant denies the averments of Paragraphs 35 through 41 of 27. the Complaint. Answering Paragraph 42 of the Complaint, Defendant incorporates 28. his responses in Paragraphs 1 through 27 above. The Defendant denies the averments in Paragraphs 43 through 45 of 29. the Complaint. Answering Paragraph 46 of the Complaint, Defendant incorporates 30. his responses in Paragraphs 1 through 29 above. The Defendant denies the averments in Paragraphs 47 through 49 of 31. the Complaint. Answering Paragraph 50 of the Complaint, Defendant incorporates 32. his responses in Paragraphs 1 through 31 above. The Defendant denies the averments of Paragraphs 51 through 56 of 33. the Complaint. The Defendant denies that the Plaintiff is entitled to any relief as set 34. forth in the Complaint. Any allegations not heretofore admitted, denied or otherwise 35. explained are hereby denied. AFFIRMITIVE DEFENSES

- 1. The Plaintiff's Complaint fails to state a claim upon which relief can be granted.
- 2. The Plaintiff is barred from recovery as the Plaintiff breached the agreement between the parties.
- 3. The Plaintiff is barred from recovery based on its own fraudulent actions and business practices.
- 4. The Plaintiff's claims are barred by the doctrines of waiver, estoppel and unclean hands.

WHEREFORE, in consideration of the foregoing, the Defendant prays that the Plaintiffs Complaint be dismissed with all costs being taxed to the Plaintiffs.

COUNTER CLAIM

Now having answered the Plaintiff's Complaint, the Defendant assumes the role of Counter Plaintiff and sues Timeless Entertainment, Inc. ("Timeless Entertainment") for breach of contract upon the following grounds:

- 1. In April 2007, Donald Reynolds, president of the Timeless Entertainment, approached Albert Baah ("Baah") and requested that Baah agree to sell to Timeless Entertainment the Vehicle.
- 2. The Vehicle had recently been purchased by Baah from Airport Cadillac in Alcoa, Tennessee (a copy of the vehicle invoice is attached Exhibit "A"). At the time of the purchase, Baah had financed a portion of the purchase price via a loan from Y-12 Credit Union ("Y-12") (a copy of the promissory note is attached as Exhibit "B").

- 3. Timeless Entertainment offered to purchase the Vehicle from Baah for a total of Sixty Eight Thousand Seventy Five Dollars and Ten Cents (\$68,075.10) (a copy of the bill of sale attached as Exhibit "C"). Both parties orally agreed that Timeless Entertainment would make a Five Thousand Dollar (\$5,000) cash down payment and would pay the remaining balance within a few weeks.
- 4. This oral agreement was consistent with numerous prior vehicle purchase agreements entered into between Baah and Timeless Entertainment (bills of sales for prior purchases are attached hereto collectively as Exhibit "D"). Because Timeless Entertainment and/or Reynolds had complied with the terms of the previous agreements, Baah had a good faith belief that Timeless Entertainment would do the same under the purchase agreement for the Vehicle. In addition to the \$5,000 down payment, Timeless Entertainment also made a Four Thousand Dollar (\$4,000) payment towards the balance of the purchase price (a copy of the check is attached as Exhibit "E").
- 5. The Bill of Sale for the Vehicle contains language stating that both parties agreed that the title of ownership of the Vehicle would not pass to Timeless Entertainment until the final cash payment had been paid (See Exhibit "C"). By June 2007, Timeless Entertainment had failed to pay off the remaining balance on the Vehicle as was required under the agreement.
- 6. Shortly thereafter, Baah was notified by the lien holder of the Vehicle, Y-12 Credit Union, that the Vehicle had been used in drug trafficking in Chicago, Illinois, had been impounded by law enforcement, and had been subsequently released to Y-12 Credit Union (a copy of the police report is attached hereto as Exhibit

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"F"). Thereafter, Y-12 Credit Union required that the loan secured by the lien be paid off in full or Y-12 Credit Union would consider the seizure a default under Baah's loan agreements and Y-12 Credit Union would sell the vehicle. (A copy of the demand letter from Y-12 is attached hereto as Exhibit "G").

- 7. Baah paid off the balance owed to Y-12 and took possession of the Vehicle. The lien was released by Y-12 on August 10, 2007 (a copy of the release is attached hereto as Exhibit "H"). At the time the Vehicle was returned to the Baah, it was in poor condition and had excessive mileage. Over the next several days Baah attempted on multiple occasions to contact Reynolds (the only contact Baah had for Timeless Entertainment) in an effort to secure payment of the remaining balance owed to Baah by Timeless Entertainment on the Vehicle. Timeless Entertainment failed to respond to Baah's requests and Baah was forced to sell the Vehicle in an effort to recoup some of the amount he was required to pay to Y-12. Baah subsequently sold the Vehicle to Carmax on August 15, 2007 for Forty Four Thousand Seven Hundred Fifty Dollars (\$44,750.00) (vehicle invoice attached hereto as Exhibit "I").
- 8. Because Timeless Entertainment failed to make the payments required under the oral and written contracts, used the Vehicle in illegal drug trafficking, and did not respond to Baah's repeated requests that the outstanding balance be paid in full, Baah's only recourse was to sell the Vehicle to pay off the Y-12 loan. Baah was never, at any time, obligated to surrender title to the Vehicle to Timeless Entertainment. Under the sales agreement, Baah had committed himself to transfer title to Timeless Entertainment Defendant only when the full balance owing on the Vehicle was paid.

- 9. Baah alleges that he entered into a valid oral agreement with the Timeless Entertainment under which Timeless Entertainment agreed to purchase the Vehicle for Sixty Eight Thousand Seventy Five Dollars and Ten Cents (\$68,075.10). Baah relied on this agreement and released the Vehicle to Timeless Entertainment believing the full balance would be paid in full within a few weeks.
- 10. Timeless Entertainment breached the agreement by failing to pay the full \$68,075.10. Further, Timeless Entertainment or its agents or employees used the Vehicle in drug trafficking which resulted in the Vehicle being seized by law enforcement and, subsequently, sent to Y-12 Credit Union. Consequently, Baah was forced to pay off the loan owed to Y-12 Credit Union. Timeless Entertainment failed to pay the balance owed to Baah or respond to Baah's repeated demands to pay for the Vehicle. In order to recoup the money he was forced to pay to Y-12 Credit Union, Baah sold the Vehicle to Carmax.
- 11. Baah has suffered a financial loss and is entitled to damages based on Timeless Entertainment's breach of its purchase agreement with Baah.

WHEREFORE, Baah respectfully requests:

- 1. That Timeless Entertainment be required to answer this Counter Complaint within the time period described by law.
- 2. That Baah be awarded a judgment against Timeless Entertainment in the amount of not less than Fourteen Thousand Three Hundred Twenty-Five Dollars and Ten Cents (\$14,325.10).
 - 3. That all costs in this cause be taxed to Timeless Entertainment.

Such other and further general relief as this Court deems appropriate. 4.

Respectfully submitted this 28th day of April , 2008.

Chadwick B. Findell (BPR #015052) 1048334

Douglas L. Rose (BPR #026563)

Stone & Hinds, P.C.

507 Gay Street, S.W. Suite 700

Knoxville, Tennessee 37902

(865) 546-6321

Attorneys for Defendant/Counter-Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Answer and Counter-Claim has been served on the following:

Alexis M. Whitaker, Esq. P.O. Box 2485 Knoxville, Tennessee 37901

this <u>28</u>th day of <u>April</u>, 2008, via U. S. Mail, facsimile or hand delivery.

Douglas L. Rose, Esquire

VEHICLE INVOICE

AIRPORT CADILLAC, Inc.



3203 Airport Hwy. ALCOA, TN. 37701 (865) 970-2960

SOLDTO

ALBERT BAAH

1536 CLIFFSIDE LN KNOXVILLE TN 37914

ADDRESS

HM: (865)524-8940 W

WK:

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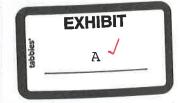
COLOR OF VEHICLE:

LIEN: Y-12 FEDERAL CREDIT UNION

PO BOX 2512

OAK RIDGE TN 37831-2512

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Note and **Disclosure Statement**



Friday 9:00-5:30, Saturday 9:00-12:00 1043 • 800-482-1043 Office Hours: Mon

NURSYVILLE CLINTON SEVIERVILLE
824 W. Lamar Alex, Powy. 450 N. Charles, Solvers Elect. 972 Doby Parton Plany.

LAFOLLETTE 2018 Jacksboro Pike ROANE COUNTY 1715 Roans State Heav N. KNOXVILLE 118 Center Park Drive

BORROWER NAME (Last - First - Middle Initial) AND ADDRESS (Street - City - State - Zip Code)

DATE 05/09/2007 MEMBER NUMBER

BAAH,	ALBERT	
1536	CLIFFSIDE LN	
KNUXV	TILE TN 3791	Δ

FIXED VARIABLE NOTE NUMBER

830236-01 MATURITY DATE

05/23/2012

In this agreement "you" and "your" mean each person who signs this agreement. The "credit union" means the credit union whose name appears above and anyone to whom the credit union transfers its rights under this agreement. The terms on the reverse side are part of this agreement. Boxes checked below apply to this agreement.

TRUTH IN LENDING DISCLOSURE

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly

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 when you have made all payments as scheduled. e means an estimate

Prepayment: If you pay off early you will not have to pay a penalty. Required Deposit: The Annual Percent-age Rate does not take into account your required deposit, if any.

15.84 % \$ 13417.37 42360,60 28943,23 Variable Rate: The annual percentage rate (APR) may increase during the term of this transaction if the credit union's average cost of dividends paid on share certificate accounts as of the 20th day of the last month of each preceding calendar quarter (Index) increases. We will add a margin of 2% for new vehicles and 4% for used vehicles to the Index and then round up to the nearest .25%. The rate will change quarterly on the first day of January, April, July and October. The rate will never be less than 6% for

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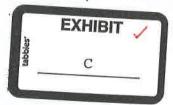


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AMERICAN EXCHANGE

526 NORTH GAY STREET KNOXVILLE, TN 37917 (865) 523-5643 FAX 523-5690

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Address Phone	I hereby certify that I am eighteen years	of age of over, and that the car I am tra	ding in is my propert
011	Buyer's Signature Donald Re	ynolds Tr. Salesman	Albert
Authorized by Albert Date Delivered 6/21/06	Address	Phone	1-
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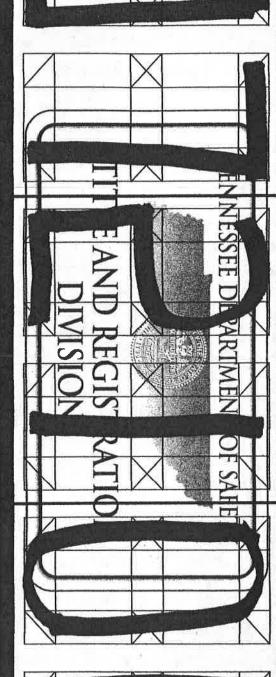


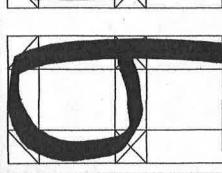
TENNESSEE DEPARTMENT OF SAFETY

THIRTY DAY LIMIT **EXPIRATION DATE**

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FEE: \$5.50 ISSUED FOR: MAKE NOFINITI NOTICE: THIS PLATE IS VOID UNLESS FULLY EXECUTED BELOW IN INK 2004 OX SC ODOMETER READING 2/323

COLOR

DEALER I.D. #

5N3AA08C84N811797 526 N. CAY S

STREET

BY: TMEXICAN (IF BY DEALER, COMPANY NAME) KXCHANSE

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R328279

CERTIFICATE OF TITLE

VEHICLE IDENTIFICATION NO.

YEAR MAKE OF MODEL

BODY

RMD932

TWS LEWIS BEINE

TITLE NO

PREVIOUS TITLE NO.

DOMETER



FACTITUE ISSUED DATE ACQUIRED

NAME(S) AND ADDRESS OF REGISTERED OWNER(S)

HOLLIN PROPERTIES PO BOX 24258 KNOXVILLE

TN 37933

DATE OF FIRST SECURITY INTEREST

FIRST LIENHOLDER

DATE OF SECOND SECURITY INTEREST

THE FACE OF THIS DOCIMENT HAS

RELEASE OF LIENS (FIRST LIEN) INTEREST IN THE DESCRIBED VEHICLE IS HEREBY RELEASED

DATE

(SECOND LIEN) INTEREST IN THE DESCRIBED VEHICLE IS HEREBY RELEASED

AUTHORIZED SIGNATURE

NAME

DATE

After the exercise of reasonable diligence in ascertaining whether or not the statements made in the application are frue, the applicant above named has been duly recorded in this department as the owner of the motor vehicle described, subject to the below firsts, if any, Any letter or other communications regarding motor vehicle Certificate of Title should be to: STATE OF TENNESSEE TITLE AND REGISTRATION DIVISION 44 Ventage Way; State 160, Nashville, Tennessee 37243-8050.

SF-0950 (REV. 5/87)

29010059

STATE OF TENNESSEE DEPARTMENT OF SAFETY

Commissioner

AUTHORIZED SIGNATURE

STORE IN A SAFE PLACE — ANY ALTERATION OF ERASURE VOIDS THIS TITLE

Dr. Kusk 10/16, 37937 This is to be filled in by the seller and delivered to the purchaser with the vehicle. Purchaser must make application for a new Certificate of Title with the County FEDERAL and STATE LAW requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in lines and/or imprisonment. "I am aware of the above odometer certification made by the seller" idometer certification made by the seller" above odometer certification made by the seller by the seller undersigned hereby certifies that the vehicle described in this title has been transferred to the following printed name and address: (Record lien in space below) The undersigned hereby certifies that the vehicle described in this title has been transferred to the following printed name and address: (Record Ilen in space below) wing printed name and address: (Record lien in space below) space below) certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked:

Odometer Reading

1 I hereby certify that the mileage stated is in excess of the mechanical limits of the edometer
Odometer Reading is not the actual mileage. WARNING - ODOMETER DISCREPANCY.
(No Tenths) certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked:

1. I hereby certify that the mileage stated is in excess of the mechanical limits of the odometer reading is not the actual mileage. WARNING - ODOMETER DISCREPANCY
(No Tenths) AETER DISCREPANC TN 37917 "I ay aware of the above - 111c. 10623 Alameda SECOND RE-ASSIGNMENT BY LICENSED DEALER to the following printed THIRD RE-ASSIGNMENT BY LICENSED DEALER ASSIGNMENT OF TITLE BY REGISTERED OWNER FIRST RE-ASSIGNMENT BY LICENSED DEALER FNOKVILLE, BUYER(S) NAME (Hand Primed) TIM FLESS operation Authorities (No Tenths)

Solution (No Tenths)

1. The odometer reading is the actual mileage of the vehicle uniess on Odometer. Reading (1. Thereby certify that the mileage stated is in exception (No Tenths) "I am ay Wm. certify to the best of my knowledge that the odometer reading is the actual myleage of the vehicle unit CATITIONS. SIGNATURE OF BUYER(S) B. 526 N. Dun St. SIGNATURE OF BUYER STALL The undersigned hereby certifies that the vehicle described in this title has been transfer BUYER(S) NAME (Hand Pripled) BUYER(S) NAME (Hand Printed) BUYER(S) NAME (Hand Printed) Local Option Tax. Local Option Tax 石があれず Local Option Tax, SIGNATURE OF BUYER(S) LIEN HOLDER TO BE RECORDED AND SHOWN ON NEW TITLE: 1ST LIEN IN FAVOR OF SIGNATURE OF BUYER(S) Maggertes By: Wm. SIGNATURE AND ADDRESS OF SELLER(S) HELICAN PROPERTIES tiffies that the vehicle described in this title has been eres SELLER(S) NAME (Hand Printed) ANER CAN Lto SIGNATURE AND ADDRESS OF SELLER(S) SIGNATURE AND ADDRESS OF SELLER(S) SELLER(S)_NAME (Hand Pinted/ SELLER(S) NAME (Hart ConferEN imeless Kni 0.22-01 SIGNATURE AND ADDRESS OF NAME & ADDRESS SELLER(S) NAME (Hand Printed) certify to the best of my knowl Make, VIN, Value of trade-in. Make, VIN, Value of trade-in_ Make, VIN, Value of trade-in. Make, VIN, Value of trade-in Merican State Sales Tax, DATE OF SALE DATE OF SALE DATE OF SALE シャイセン State Sales Tax. DATE OF SALE State Sales Tax SALES PRICE SALES PRICE SALES PRICE SALES PRICE

BILL OF SALE AMERICAN EXCHANGE

526 NORTH GAY STREET KNOXVILLE, TN 37917 (865) 523-5643 FAX 523-5690

Make of Car_	Doclas	Inc "/ 7/ Or Knoxcolle	<u> </u>	
Model		Туре		
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		Marie Page		
		773.00.7	2.00	6
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		Salesmar		1.00
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i hereby certify Buyer's Signature _ Address				
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Address 1.0.136x 52152	KNOXVILLE IN	3772	20
SOLD TO Timelen knt. Address 1.0. Box 52152, Make of Car CHEVY			
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SOLD TO BRENDA P Address 300 SURREY Make of Car INFINI		/pe		
Q 45	400	6 4		
1996 JNI	4 DO KNGOIDO	ial No.	4036	21
Cash Price of Car			1500	65
	Tel			
State of Tennessee Sales Tax			138	75
\.	Total Cost, Including A	øcessories	1638	75
Deposit				
Trade in Allowance				
Trade in Balance Owed				
Aditional Cash Payment			7/ -	
RECORD OF CAR TRADED II	N / TOTAL C	REDIT		
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Model	PLUS TIM			
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		CHARGE		
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Payable in Payments of \$				
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I hereby certify that I am eighteen years of			ading in is my p	roperty.
Buyer's Signature		Salesman		
Address		Phone _	25-22	10
Authorized by				
Sworn to and subscribed before me this	day of	-	.200	

SOLD'TO TIMELESS ENTER Address 1001 CROOKED ST Make of Car CALILLAC Model	Туре		
ESCALADE S 2002 (Green) 15 YEK	Serial No.	47	
Cash Price of Car Tax Include		31,084	
Sale Price	110	\$29,000	1
State of Tennessee Sales Tax	E (2-1000000000000000000000000000000000000	2181	50
Total Co	ost, Including Accessories		
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Bank of America



Capture Date: 20070516 Sequence #: 0892217383

TIMELESS ENTERTAINMENTS INC. P.O. BOX 52152 KNOXVILLE, TN 37950-2152 Bank of America #"001015# #064000020# 003765921

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Bank #

Electronic Endorsements

Date Sequence 20070516

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BANK OF AMERICA, NA

Page 2 of 2 TST_IMAGEVIEW Batch Fax Req. # 6844238

Thu Nov 15 13:17:09 PST 2007

Chicago Police Department Organized Crime Division



Asset Forfeiture Unit Vehicle Management 3340 W. Fillmore Chicago IL 60624

Fax: 312.746.7279 Voice: 312.746.7146

Pax: 4339

FAX TRANSMISSION COVER SHEET

(312-746-7637

LIENHOLDER #

Date:

31 July 2007

To:

Carol Baumann

Fax:

865 - 862 - 0007

Subject:

2007 Cadillac Escalade

Sender:

P.O. Kathy Sheppard



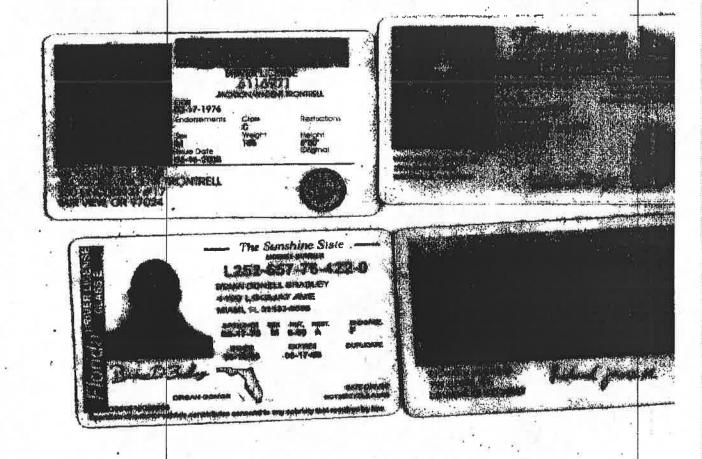
YOU SHOULD RECEIVE 6 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL.

NOTES: Thanks for all of your help.

BT 3,00

1815

RD# HN 477 699 EVENT# 07774 RAD# 189-07-2056 THOMPSON #7 TIME 8:55



VEHICLE TOW REPORT CHICAGO POUCE DEPARTMENT	1. BEAT OF ASSIGNMENT	310		3. ND.	1/2 - 47	2 769	19
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PARKED ON PRIVATE PROPERTY WITHOUT CO				REN ON THI IT MCC 8-16	ESTREETS AT 020	0:	SEIZURE 625 ILCS 5/4-107(k)
OWNER/AGENT.				ING ON REA	L ESTATE MCC 7-28-440		EIZURE 720 [LCS 5/36-1
IT TRAFFIC CRASH - VEHICLES WHICH CANNOT BE DESTRUCTING THE FLOW OF TRAFFIC, OR CA OPERATOR IS UNWILLING/UNABLE TO OBTAI	USING A HAZARDOUS CONDITION,			SSION OF FI	REARM IN MCC 8-20-015		FORFEITURE 720 ILC 550/12
ARRESTEE'S PROPERTY - MOTOR VEHICLE COM	TROLLED BY ARRESTEE.			DEVICE RE	STRICTION		FORFEITURE 720 ILC 570/505
HAZARD - MOTOR VEHICLE OBSTRUCTING TRANSPORTER.	FICFLOW: INDICATE VIOLATION I	N.		TSOLICITATI		7.0	THER (Check one
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17. NAME NOWNER DARRESTEE INC 18	ADDRESS 52/58	2 (19.HO	ME PHONE	727	20. BUSINESS PHO	NE :	AT OWNERSHIP VERIFIED
22. NAME DRIVER ARRESTEE 23.	NOX VILLE TN		ME PHONE		25. BUSINESS PHO	ME	20 (.D. VERIFIED
27. PERSONAL PROPERTY IN VEHICLE LI YES LI MO DESCRIBE IN NARRATIVE	PROPERTY INVENTORY NO.		· · · · · · · · ·				
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Location:

Oak Ridge

West Knoxville

Campbell County

Blount County

Kingston

North Knoxville

Clinton

August 3, 2007

Albert Baah

1536 Cliffside Ln Knoxville, TN 37914

Re:

2007 CADILLAC ESCALADE

VIN #:

Loan #:

0000830236 - 01

Balance: \$ 28,372.53

Dear Albert Baah:

This letter is to advise you that on 08/03/2007 the above mentioned vehicle was repossessed by Y-12 Federal Credit Union. You have until 5:30 PM 08/13/2007 to pay off the vehicle in the amount shown, plus any fees associated with this repossession. If not, the vehicle will be sold by private sale sometime after 9:00 AM 08/14/2007.

All proceeds from the sale will be applied to your outstanding debt. If sold for less than the balance, you will be notified of any remaining balance. If sold for more than the balance owed, the proceeds will be returned to you less any amount owed to other secured parties. You may request a detailed accounting of this debt by calling this office.

Sincerely,

Ron Arms Senior Collector (865) 482-1043 ext. 303 1-800-482-1043 ext. 303

Senior Collector

Oak Ridge

501 Lafayette Drive

Oak Ridge, Tennessee 37830

865/ 482-1043

Fax:

865/482-5488

Cyberspace Branch:

http://www.y12fcu.org

E-mail

Netlink@y12feu.org

By certified mail

EXHIBIT

0000830236 BAAH,ALBERT Loan 01: 2007 CADILLAC ESCALADE Transaction Summary

04/17/2008

05/10/2007 L 01	08/07/2007 07/12/2007 07/12/2007	Post Date ID 08/09/2007 L 01	
L 01	L L D D D D D D D D D D D D D D D D D D	L 01	
05/10/2007	08/07/2007 07/12/2007 07/12/2007	Eff Date 08/09/2007	
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85749021 3GYFK62827G272799

DATE OF FIRST SECURITY INTEREST 05-09-2007 FIRST LIENHOLDER CODE 70579

Y-12 FEDERAL CREDIT UNION PO BOX 2512

TN 37831 - 2512 OAK RIDGE

FIRST LIEN RELEASED BY

-10-07 RELEASE DATE **EXHIBIT** Η

Y-12 FEDERAL CREDIT UNION PO BOX 2512 37831 - 2512 OAK RIDGE

830236-01

STATE OF TENNESSEE DEPARTMENT OF REVENUE

0000001

BODY TYPE TITLE NUMBER MODEL MAKE VEHICLE IDENTIFICATION NUMBER 85749021 CADI 3GYFK62827G272799

SALES OR USE TAX CO PREVIOUS TITLE NO PREV STATE NEW USED DEMO

MSO

X TN PREV OTHER TITLE ST:

06-05-2007

REMARKS

DATE TITLE ISSUED DATE VEHICLE ACQUIRED 05-09-2007

ACTUAL MILEAGE

ALBERT BAAH 1536 CLIFFSIDE LANE

KNOXVILLE

SATISFACTORY PROOF OF OWNERSHIP HAVING BEEN SUBMITTED UNDER TENNESSEE CODE ANNOTATED, 55-3-101, TITLE TO THE MOTOR VEHICLE DESCRIBED ABOVE IS VESTED IN THE OWNER'S NAME HEREIN. THIS OFFICIAL CERTIFICATE OF TITLE IS ISSUED FOR SAID MOTOR VEHICLE.

FIRST LIEN RELEASED BY

RELEASE DATE

DATE OF FIRST SECURITY INTEREST 05-09-2007

FIRST LIENHOLDER CODE

Y-12 FEDERAL CREDIT UNION
PO BOX 2512
DAK RIDGE TN 37831 - 25

TN 37831 - 2512



Vehicle Purchase Agreement

This Pure	Vehicle chaser, Ca	Purchase arMax In	Agreement (the this Agreement,	Agreement the words	nt") is entered into we," "us," and "our	as of ' mean th	08/15/2007 e Purchaser, and the wor	, between the	e Seller(s) and the ur" mean the Seller.
Sell	er's Name	ALBERT	BAAH				Social Security No	31	
Sell	Seller's Address 1536 CLIFFSIDE LN.					KNOXVILLE	TN	37914	
Sell	Seller's Name					Social Security No			
Purc	chaser's S	Store Nam	ne / Location Carl	Max Auto St	perstores, Inc.				
Pure	chaser's A	Address 1	1225 PARKSIDE I	DRIVE	/ 1		KNOXVILLE	TN	37934
You	propose	to sell the	following vehicle	the "Vehic	de") to Purchaser:			A A	
Yea	2007	_ Make _	CADILLAC	_ Model	ESCALADE	_VIN_	3GYFK62827G27279	9 Mileage	12,251
By e ass mal	executing igns, and king of warchase Of	this Agree we hereb	y accept all such and representation on represents the	rights, title,	and interest in an eby agree to pay	d to the Vi you \$	le, and interest in and to behicle. In consideration of 44,750.00 on the CarMax Appraisal.	f the sale of the	, our successors and Vehicle to us and the (the
of a	understa vehicle f inct from t	and and a rom CarN this purch	gree that THE SA lax. You understa ase of the Vehicl	and and agi e by CarMa	ree that a subsequ x from you.	S IS A FIN ent purch	IAL SALE and is in no wasse of a vehicle from Ca	ay connected to rMax is a separa	any purchase by you ate transaction and is
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a							rchase of another vehicle		Max; or
	You are	paying to	CarMax an amou	unt equal to	the Actual Payoff	less the P	urchase Offer, in cash or	certified funds	
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XE X	LLER:	Seller's Si	- W. W. W.		08/15/2007 Date	By:	HASER: CarMax as A Purchaser's Sig Purchaser's IN	nature ag	08/15/2007 Date
Ord	291 er# rision Date	Seller's Si		XHIBIT	carma	x.com		MIS	D <u>1500000</u> Legal - JV





Dear CarMax Customer:

CarMax has issued you a bank draft, a special type of instrument commonly used to purchase motor vehicles. Please note that you cannot simply cash the bank draft. Instead, you must deposit the bank draft in your savings or checking account. Also, your bank will typically place a hold on the bank draft that can last from 3 to 10 banking days. For this reason, you are encouraged to check with your bank for its hold policy and to confirm the availability of funds before attempting to draw on the bank draft.

We appreciate your continued business and look forward to working with you in the future.

Sincerely,

CarMax Business Office

Customer Signature (Acknowledges Receipt)

(Acknowledges reserve)

Customer Printed Name

Date

VEHICLE IDENTIFICATION NUMBER YEAR MAKE MODEL BODY TYPE TITLE NUMBER 3GYFK62827G272799 2007 CADI EXT 85749021 NEW USED DEMO PREVIOUS TITLE NO PREV STATE SALES OR USE TAX CO **ODOMETER** MSO TN 05 PREV OTHER TITLE ST: TN DATE TITLE ISSUED 06-05-2007 REMARKS DATE VEHICLE ACQUIRED 05-09-2007 ACTUAL MILEAGE ALBERT BAAH 1536 CLIFFSIDE LANE KNOXVILLE TN 37914 SATISFACTORY PROOF OF OWNERSHIP HAVING BEEN SUBMITTED UNDER TENNESSEE CODE ANNOTATED, 55-3-101, TITLE TO THE MOTOR VEHICLE DESCRIBED ABOVE IS VESTED IN THE OWNER'S NAME HEREIN.

THIS OFFICIAL CERTIFICATE OF TITLE IS ISSUED FOR SAID MOTOR VEHICLE.

FIRST LIEN RELEASED BY

SIGNATURE

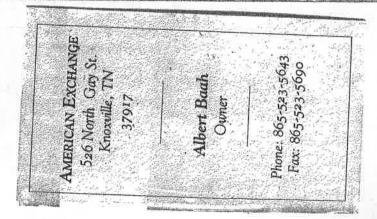
RELEASE DATE

DATE OF FIRST SECURITY INTEREST 05-09-2007 FIRST LIENHOLDER CODE

Y-12 FEDERAL CREDIT UNION PO BOX 2512 DAK RIDGE TN 37831

TN 37831 - 2512

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SIGNATURE RELEASE DATE

DATE OF FIRST SECURITY INTEREST 05-09-2007

FIRST LIENHOLDER CODE

Y-12 FEDERAL CREDIT UNION PO BOX 2512 DAK RIDGE TN 37831

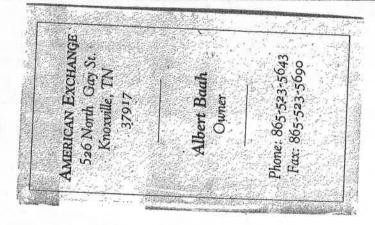
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TENNESSEE

TN 37831 - 2512

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70579



STONE & HINDS, P. C.

ATTORNEYS AT LAW

507 GAY STREET, S. W., SUITE 700 KNOXVILLE, TENNESSEE 37902-1502

HAROLD B. STONE‡
GEORGE F. LEGG*
MAURICE W. GERARD†
STEVEN D. LIPSEY
ERIC J. MORRISON

TELEPHONE 865/546-6321 TELEFACSIMILE 865/546-0422 CRAI MICH DOLL

CRAIG P. RAYSOR MICHAEL A. NOLAN DOUGLAS L. ROSE CHARLES D. WALLER

JASON E. LEGG

CHADWICK B. TINDELL

OF COUNSEL: ANNA F. HINDS

VIA HAND-DELIVERY

- - ALSO LICENSED IN VIRGINIA

† - ALSO LICENSED IN PENNSYLVANIA & NEW JERSEY

- SUPREME COURT RULE 31 MEDIATOR

April 28, 2008

DRose@s-hlaw.com

Howard G. Hogan, Clerk & Master Knox County Chancery Court City-County Building 400 Main Street, Room 125 Knoxville, Tennessee 37902

Re:

00000 37702

<u>Timeless Entertainment, Inc.</u> v. Albert Baah, individually and d/b/a American Exchange

Knox County Chancery Court

Case No. 172039-3

Our File No.

Dear Mr. Hogan:

Please find enclosed herewith an Answer and Counterclaim to be filed in the abovestyled matter. If you have any questions regarding the enclosure, please do not hesitate to contact me.

Sincerely,

STONE & HINDS, P.C.

Douglas L. Rose

DLR:ads Enclosures

cc:

Alexis M. Whitaker, Esquire

Mr. Albert Baah

05/12/2008 13:05:43

Summary of NOTICES Printed

TIMELESS ENTERTAINMENT INC. VS. ALBERT BAAH

Case No: M-08-172039 Please be advised the above styled case is set for MOTION TO STRIKE (MTS) at 09:30 AM on Monday, 6/23/2008.

MOYERS, MICHAEL W

Name	Address	Trial Notice Date
ROSE, DOUGLAS L	507 GAY STREET, SW, SUITE 700 KNOXVILLE, TN 37902	06/23/2008
WHITAKER, ALEXIS M	PO BOX 2485 KNOXVILLE, TN 37901	06/23/2008

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

TIMELESS ENTERTAINMENT, INC.,) 2000 HAY -8 PH 2: 46
Plaintiff,	-UWAL G HOGAN
vs.	Docket No. 172039-3
Serve:)
ALBERT BAAH, individually and))
d/b/a AMERICAN EXCHANGE 526 North Gay Street)
Knoxville, Tennessee 37917,)
Defendant.)

MOTION TO STRIKE

Comes the plaintiff, Timeless Entertainment, Inc., by and through counsel, and moves the Court for an order, pursuant to Rule 12.06 of the <u>Tennessee Rules of Civil Procedure</u>, to strike the following provisions from the defendant's Answer and Counter-Claim, which are irrelevant, immaterial, redundant and scandalous:

- 1. The portion of paragraph 16 of defendant's Answer, which states, "The Defendant admits that in June of 2007 the Vehicle was used by the Plaintiff and/or an agent of the Plaintiff for drug trafficking, and that the vehicle was impounded by the Chicago Police Department."
- 2. Any and all provisions in defendant's Counter-Claim and any exhibits thereto, which reference drug trafficking.

As grounds for this motion, plaintiff would show that the statements and allegations contained in paragraph 16 of defendant's Answer are an insufficient defense as a matter of law, immaterial to the defense of the action, and impertinent to the issues. Furthermore, paragraph 16 of the defendant's Answer and paragraphs 6, 8, and 10 of defendant's Counter-Claim are not

material to any issue in this case and have been included solely for the improper purpose of prejudicing the trier of fact against plaintiff. Plaintiff stipulated in paragraph 16 of the Complaint that one of plaintiff's employees was arrested while in Chicago and that the Vehicle was impounded for the purpose of explaining how defendant Baah obtained possession of the vehicle. Neither the arrest nor the grounds for the arrest have any bearing on the outcome of this litigation and, as such, the inclusion of the aforementioned portions of defendant's Answer and Counter-Claim relating to drug trafficking are improper and should be stricken.

WHEREFORE, plaintiff prays:

- 1. That the Court enter an Order striking the aforementioned provisions from defendant's Answer and Counter-Claim;
- 2. That, pursuant to Rule 12.01 of the Tennessee Rules of Civil Procedure, plaintiff be provided additional time to answer defendant's Counter-Claim and any amendments thereto should the Court deny this Motion to Strike for any reason;
- 3. That, pursuant to Rule 54.04 of the Tennessee Rules of Civil Procedure, all costs incurred in filing this Motion and seeking the Order to Strike be taxed to the defendant; and
 - 4. For such further relief to which the plaintiff may be entitled. Respectfully submitted this _____ day of May, 2008.

Bv:

Alexis M. Whitaker (BPR #025748)

Attorney for Plaintiff

Carpenter, O'Connor & Sterchi, PLLC

Post Office Box 2485

Knoxville, Tennessee 37901-2485

(865) 546-1831

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served upon counsel by mailing a copy of same via U.S. Mail, first class, prepaid as follows:

Douglas L. Rose 507 S. Gay Street, Suite 700 Knoxville, Tennessee 37902

This ____day of May, 2008.

Alexis M. Whitaker

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CARPENTER, O'CONNOR & STERCHI, PLLC

LAWYERS

10th Floor Regions Bank Building 507 South Gay Street Knoxville, Tennessee 37902 PHONE: (865) 546-1831 MAILING ADDRESS P.O. Box 2485 Knoxville, TN 37901

FAX: (865) 546-0432

OF COUNSEL: J. GREGORY O'CONNOR

ARCHIE R. CARPENTER

TOBY R. CARPENTER

ALEXIS M. WHITAKER

CHARLES F. STERCHI, III

Tn. Sup. Ct. Rule 31 Listed Mediator

May 7, 2008

Howard G. Hogan, Clerk Knox County Chancery Court 400 Main Avenue, Room 125 City County Building Knoxville, Tennessee 37902

Re:

Timeless Entertainment, Inc. v. Albert Baah and d/b/a American Exchange

Knox County Chancery Court No. 172039-3

Dear Mr. Hogan:

Please find enclosed for filing the Motion to Strike in the above-referenced matter.

There are under the property of the property of the property for the property of the property

Thank you for your assistance.

Very truly yours,

Alexis M. Whitaker

is M. Whitalier

AMW:krv Enclosure

cc: Douglas L. Rose, Esq. (w/enc.)

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IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESEE

TIMELESS ENTERTAINMENT, INC	C.,2008 HJ Y 30 PA	3: 50
Plaintiff,	HOV HD G. H	IOGAN
)	
VS.)	Docket No. 172039-3
)	
)	
)	
ALBERT BAAH, individually and)	
d/b/a AMERICAN EXCHANGE)	
)	
Defendant.)	

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE

COMES the Defendant, Albert Baah, individually and d/b/a American Exchange, by and through counsel, and submits this Response to Timeless Entertainment, Inc.'s Motion to Strike. For reasons stated more fully below, Defendant respectfully submits that this Court should deny Plaintiff's motion.

BACKGROUND:

In April 2007, Donald Reynolds, president of the Timeless Entertainment, Inc. ("Plaintiff" or "Timeless Entertainment"), approached the Defendant and requested that Defendant sell to Plaintiff a 2007 Cadillac Escalade EXT, Vehicle Identification Number 3GYFK62827G272799 ("Vehicle"). The Vehicle had recently been purchased by Defendant from Airport Cadillac in Alcoa, Tennessee. At the time of the purchase, Defendant had financed a portion of the purchase price via a loan from Y-12 Credit Union ("Y-12"). Timeless Entertainment offered to purchase the Vehicle from Defendant for a total of Sixty Eight Thousand Seventy Five Dollars and Ten Cents (\$68,075.10).

The agreement entered into between Defendant and Plaintiff was an oral agreement. As a result, the terms of the agreement and the subsequent fulfillment of those terms make up much of the dispute in this case. Defendant alleges that the oral agreement entered into between the two parties required that Plaintiff pay the balance of the price of the Vehicle to the Defendant within a few weeks. The bill of sale for the Vehicle contains language stating that both parties agreed that the title of ownership of the Vehicle would not pass to the Plaintiff until the final cash payment had been paid. Defendant further alleges that Plaintiff failed to make the required payments and, as a result, Defendant was unable to pay off the existing lien held by Y-12 and could not pass title to Plaintiff.

Defendant was notified by Y-12 that the Vehicle had been used in drug trafficking in Chicago, Illinois, impounded by law enforcement, and had subsequently been released to Y-12 due to its security interest the Vehicle. Thereafter, Y-12 required that the loan secured by the lien on the Vehicle be paid off in full or Y-12 would consider the seizure a default under Defendant's loan agreements and Y-12 would sell the Vehicle. Because the Plaintiff had failed to pay the full purchase price of the Vehicle, the Defendant had to leverage his own finances in order to pay off the existing lien held by Y-12. Shortly thereafter, Defendant sold the Vehicle to recoup some of the amount he paid to Y-12 to extinguish the lien.

LEGAL ANALYSIS AND ARGUMENT

The purposes of a motion to strike under *Tenn. R. Civ. P. 12.06* are (1) to eliminate redundant, immaterial, impertinent, or scandalous matter from pleadings, (2) to

object to insufficient defenses, and (3) to enforce Tenn. R. Civ. P. 8.05's requirement that pleadings be simple, concise and direct. Motions to strike are *not* favored in Tennessee because the remedy they offer is drastic and because they are frequently used simply as a dilatory tactic. *Doe v. Pizza*, 2001 Tenn. App. LEXIS 224 (Tenn. Ct. App. Apr. 5, 2001) (a copy of this case is attached to this response).

In Defendant's Answer and Counter Claim, the allegation that the Vehicle was used in a drug offense in Chicago is neither redundant, immaterial, impertinent, nor scandalous. Rather, the fact that the Vehicle was used in a drug offense goes directly to the Defendant's defense that the Vehicle had not been fully paid for by the Plaintiff. Had the Vehicle been paid in full by the Plaintiff, per the agreement, the Defendant would have paid off the Y-12 lien with the proceeds from the sale and passed clear title to the Plaintiff. Because the Plaintiff breached its oral agreement with the Defendant, Y-12 still held a valid security interest in the Vehicle.

Furthermore, the purpose behind the impounding of the Vehicle is essential to understanding why the Defendant was forced to pay off the existing lien and take possession of and sell the Vehicle. Pursuant to Tennessee's forfeiture statutes, a holder of a security interest in a vehicle that is seized in connection with a drug related offense can only recover the vehicle so long as the holder was without knowledge that the vehicle would be used in a criminal drug offense. *See Tenn. Code Ann. §§ 53-11-201; 53-11-451 (2008).* Consequently, the holder of the security interest in the Vehicle, Y-12 Credit Union, was forced to demand that the Defendant pay off the existing lien and take possession of the Vehicle. Had Y-12 returned the Vehicle knowing that it was used in

the commission of a crime, it would be deemed to have knowledge of the crime and would lose its security interest if the Vehicle was again sued in the commission f a crime and seized by law enforcement. Like all motor vehicle creditors, Y-12 was unwilling to risk losing its security interest and demanded payment in full from Defendant.

Because the Plaintiff had failed to pay the full purchase price of the Vehicle, the Defendant had to leverage his own finances in order to pay off the existing lien held by Y-12. If these defenses and allegations are substantiated during the course of the trial, the Defendant will be entitled to recover from the Plaintiff the losses he suffered in having to sell the Vehicle at a loss in order to pay off the debts incurred to extinguish the lien.

Furthermore, Defendant has raised the affirmative defenses of unclean hands and fraudulent actions and business practices. Whether the Plaintiff used the Vehicle to commit a crime is certainly relevant to these defenses.

CONCLUSION

Because motions to strike are not favored in Tennessee, and because the allegations complained of by Plaintiff in his Motion to Strike are material and pertinent to the determination of liability in this case and are relevant to the defenses asserted by Defendant, the Plaintiff's Motion to Strike should be denied.

Respectfully submitted this 30 th day of _ May

Chadwick B. Tindell (BPR #015052)

Douglas L. Rose (BPR #026563)

Stone & Hinds, P.C. 507 Gay Street, S.W. Suite 700 Knoxville, Tennessee 37902 (865) 546-6321 Attorneys for Defendant/Counter-Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Response to Plaintiff's Motion to Strike has been served on the following:

Alexis M. Whitaker, Esq. P.O. Box 2485 Knoxville, Tennessee 37901

this 30th day of May, 2008, via U. S. Mail, facsimile or hand delivery.

Douglas L. Rose, Esquire

1 of 1 DOCUMENT

JOHN DOE ', ET AL. v. MAMA TAORI'S PREMIUM PIZZA, LLC, ET AL.

1 Because of the subject matter of this case, we have given the minor plaintiff and his parents pseudonymous designations.

No. M1998-00992-COA-R9-CV

COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE

2001 Tenn. App. LEXIS 224

April 5, 2001, Filed

PRIOR HISTORY: [*1] Appeal from the Circuit Court for Sumner County. No. 18268-C. Thomas Goodall, Judge.

DISPOSITION: Judgment of the Circuit Court Affirmed.

COUNSEL: Brian K. Frazier and Emily M. Smachetti, Nashville, Tennessee, for the appellants, John Doe, and his parents, Robert and Jane Doe.

William B. Jakes, III, James F. Sanders, and A. Scott Ross, Nashville, Tennessee, for the appellee, Mama Taori's Premium Pizza, LLC.

JUDGES: WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

OPINION BY: WILLIAM C. KOCH, JR.

OPINION

This appeal arises out of homosexual conduct in the workplace between an adult employee and a sixteen-year-old, part-time employee. After the adult employee was arrested and charged with statutory rape and contributing to the delinquency of a minor, the minor employee and his parents filed suit in the Circuit Court for Sumner County seeking damages from the adult employee and the owner of the restaurant where the minor employee and the supervisor had worked. The restaurant denied liability and among its affirmative defenses asserted the defense of consent with regard to the minor's claims and [*2] the defense of comparative fault with regard to the claims of the minor's parents. The trial court denied the minor's and his parents' motions to strike

these defenses but granted the minor and his parents permission to apply for an interlocutory appeal. We granted the interlocutory appeal and now hold that the trial court correctly denied the motions to strike the restaurant's defenses.

When the events giving rise to this dispute occurred, John Doe was a high school student living with his parents in Sumner County. ² In 1997, when he was sixteen years old, Mr. Doe began working after school as a parttime "crew member" at Mama Taori's, a pizza restaurant in Hendersonville. Later, in December 1997, Mama Taori's hired 32-year-old Christopher Abson ³ to work at its Hendersonville restaurant as a "crew member." Messrs. Doe and Abson were assigned to work on the same shift at the restaurant.

- 2 In light of the procedural posture of this case, we have gleaned the facts used in this opinion from the parties' pleadings. These allegations are not evidence. Thus, except where there is no dispute, all parties will be required at trial to present competent evidence to prove the factual averments in their respective pleadings.
- [*3]
- 3 When Mr. Abson applied for a job with Mama Taori's, he completed an employment application stating that his name was Christopher Abson and that he had never been convicted of a crime. Mama Taori's offered Mr. Abson a job after he received a favorable reference from a former employer. It was not until late January 1998 that Mama Taori's discovered that Mr. Abson was actually Jonathan Vann Staten and that he had been released from prison in August 1997 where he had been serving sentences stemming from two rape convictions. According to Mr. Doe and his

parents, one of these convictions was for the rape of a child.

In early January 1998, Mr. Doe told his mother that Mr. Abson had made sexually suggestive comments and advances towards him. Ms. Doe passed this information along to her daughter who worked as a secretary for one of Mama Taori's executives. Ms. Doe's daughter informed Mama Taori's personnel manager that Mr. Abson was acting suspiciously toward her brother but, according to Mama Taori's, she did not report any specific acts of sexual misconduct. The management of Mama Taori's did not [*4] pursue the matter because of the information's lack of specificity and because there had been no other complaints about the quality of Mr. Abson's work or his conduct with other co-workers.

In mid-January 1998, Mama Taori's informed Mr. Abson that he was going to be transferred to its restaurant in Goodlettsville and promoted to the position of shift supervisor. After the information regarding Mr. Abson's promotion and transfer became known, Mr. Doe requested a transfer to the Goodlettsville restaurant. When the management of Mama Taori's denied his request, Mr. Doe threatened to quit and then apply for a job at the Goodlettsville restaurant. Mama Taori's management informed Mr. Doe that if he quit his job at the Hendersonville restaurant, he would not be hired at the Goodlettsville restaurant.

On or about Saturday, January 17, 1998, Ms. Doe talked by telephone with Mama Taori's personnel manager about information she had received regarding Mr. Abson's conduct at an after-hours party at the Motel 6 in Hendersonville. She stated that she had heard rumors about Mr. Abson and requested that Mama Taori's check his criminal record and that her son not be transferred to work at the Goodlettsville [*5] restaurant. Ms. Doe's daughter telephoned the Hendersonville Police Department on January 19, 1998, and was informed that Mr. Abson had no criminal record.

Mr. Abson began working at the Goodlettsville restaurant on January 22, 1998. According to Ms. Doe, Mr. Abson called her on January 25, 1998, to deny that he had ever "socialized with [Mr. Doe] . . . or the other boys after work or at any time." On January 26, 1998, Ms. Doe contacted the Hendersonville Police Department to request an investigation into Mr. Abson's background. Later that same day, Mr. Doe told his mother that Mr. Abson had engaged in sexual acts with him in the restaurant's bathroom after giving him a "marijuana cigarette [that] contained a 'knock out drug' that caused [him] . . . to become incapacitated." The police also telephoned Ms. Doe to confirm that they had discovered that Mr. Abson had been previously convicted of rape under the name of Jonathan Vann Staten. On January 28, 1998, Mr.

Doe, acting in concert with the police, engaged Mr. Abson in a recorded telephone conversation during which Mr. Abson confirmed that he had engaged in sexual acts with Mr. Doe. Following the telephone call, the authorities [*6] arrested Mr. Abson, and Mama Taori's fired him.

In April 1998, the Sumner County grand jury indicted Mr. Abson on three counts of statutory rape and three counts of contributing to the delinquency of a minor. Two of the statutory rape counts involved oral sex with Mr. Doe, and two of the contributing to the delinquency of a minor counts involved furnishing alcoholic beverages and marijuana to Mr. Doe. On May 19, 1998, Mr. Doe and his parents filed suit in the Circuit Court for Sumner County seeking \$ 3,000,000 in compensatory and \$ 5,000,000 in punitive damages from Mr. Abson and Mama Taori's. The complaint contained three claims of violations of the Tennessee Human Rights Act, 4 five intentional tort claims, 5 and five negligence claims. 6 On August 3, 1998, Mr. Abson pleaded guilty to three counts of statutory rape and one count of contributing to the delinquency of a minor. Two of the rape convictions and the contributing to the delinquency of a minor conviction involved his conduct with Mr. Doe. 7

- 4 These claims include claims for quid pro quo sexual harassment, hostile work environment, and malicious sexual harassment.
- [*7]
 5 These claims include battery, assault, false imprisonment, outrageous conduct, and invasion of privacy.
 - 6 These claims include negligent hiring, negligent entrustment, negligent retention, negligent infliction of emotional distress on Mr. Doe, and negligent infliction of emotional distress on Mr. Doe's parents.
 - 7 Mr. Doe and his parents filed a Tenn. R. App. P. 14 motion requesting this court to consider Mr. Abson's August 3, 1998 guilty pleas as post-judgment facts. We hereby grant the motion.

Mama Taori's filed an answer denying liability and asserting that Mr. Doe had contributed to his injuries by consenting to the sexual acts with Mr. Abson. The restaurant also asserted that Mr. Doe's parents were comparatively at fault. In response, Mr. Doe and his parents filed Tenn. R. Civ. P. 12.06 motions to strike Mama Taori's defenses based on Mr. Doe's consent and their contributory fault. The trial court denied the motions to strike but granted Mr. Doe and his parents permission to pursue an interlocutory appeal pursuant to Tenn. R. App. P. 9. We granted the application for permission [*8] to appeal.

I.

APPELLATE REVIEW OF RULINGS ON TENN. R. CIV. P. 12.06 MOTIONS

The purposes of a motion to strike under Tenn. R. Civ. P. 12.06 are (1) to eliminate redundant, immaterial, impertinent, or scandalous matter from pleadings, (2) to object to insufficient defenses, and (3) to enforce Tenn. R. Civ. P. 8.05's requirement that pleadings be simple, concise and direct. 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1380 (2d ed. 1990) ("Federal Practice and Procedure"). 8 When used for their intended purpose, these motions help the parties and the courts avoid the time and money wasted litigating spurious issues by dispensing with these issues prior to trial. Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983); United States v. Smuggler-Durant Mining Corp., 823 F. Supp. 873, 875 (D. Colo. 1993); Cameron v. Graphic Mgmt. Assocs., Inc., 817 F. Supp. 19, 22 (E.D. Penn. 1992). Despite [*9] their salutary purpose, motions to strike are not favored because the remedy they offer is drastic and because they are frequently used simply as a dilatory tactic. Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distribs., Pty., Ltd., 207 U.S. App. D.C. 375, 647 F.2d 200, 201 (D.C. Cir. 1981); Morell v. United States, 185 F.R.D. 116, 117 (D.P.R. 1999); 5A Federal Practice and Procedure § 1381, at 672; 2A James W. Moore, Moore's Federal Practice P 12.21[2] (2d ed. 1995) ("Moore's Federal Practice").

8 Tennessee has few precedents regarding the operation of Tenn. R. Civ. P. 12.06. The rule is, however, identical to Fed. R. Civ. P. 12(f). Accordingly, decisions of the federal courts construing their analogous rule can provide us helpful guidance in interpreting our own rule. Byrd v. Hall, 847 S.W.2d 208, 211 n.2 (Tenn. 1993); Continental Cas. Co. v. Smith, 720 S.W.2d 48, 49 (Tenn. 1986); Pacific Eastern Corp. v. Gulf Life Holding Co., 902 S.W.2d 946, 952 n.7 (Tenn. Ct. App. 1995).

[*10] A Tenn. R. Civ. P. 12.06 motion may be used to test the "legal sufficiency" of an affirmative defense. Usrey v. Lewis, 553 S.W.2d 612, 614 (Tenn. Ct. App. 1977). To succeed with a Tenn. R. Civ. P. 12.06 motion, the moving party must show both that the challenged claim or defense does not involve a question of fact or law on which the non-moving party can succeed and that failure to strike the challenged claim or defense will be prejudicial to the moving party. SEC v. McCaskey, 56 F. Supp. 2d 323, 326 (S.D.N.Y. 1999); Abrams v. Lightolier, Inc., 702 F. Supp. 509, 511 (D.N.J. 1988); 5A Federal Practice and Procedure § 1380. Prejudice for the pur-

pose of a Tenn. R. Civ. P. 12.06 motion arises when the challenged claim or defense has the effect of confusing the issues or is so lengthy and complex that it places an undue burden on the moving party. Hoffman-Dombrowski v. Arlington Int'l Racecourse, Inc., 11 F. Supp. 2d 1006, 1009-10 (N.D. Ill. 1998).

[*11] Whether a particular defense is insufficient for the purposes of a Tenn. R. Civ. P. 12.06 motion depends on the nature of the claim. 5A Federal Practice and Procedure § 1381. An affirmative defense is insufficient if, as a matter of law, the defense cannot succeed under any circumstance or if it bears no possible relationship to the matters in controversy. Brown & Williamson Tobacco Corp. v. United States, 201 F.2d 819, 822 (6th Cir. 1953); FSLIC v. Burdette, 696 F. Supp. 1183, 1186 (E.D. Tenn. 1988). A motion to strike a defense should not be granted if there is any doubt that the challenged claim or defense might raise an issue of fact or law, Nwakpuda v. Falley's, Inc., 14 F. Supp. 2d 1213, 1215 (D. Kan. 1998); Sunshine Cellular v. Vanguard Cellular Sys., Inc., 810 F. Supp. 486, 499-500 (S.D.N.Y. 1992); 2A Moore's Federal Practice P 12:21[2], or if the insufficiency of the defense is not readily apparent. 5A Federal Practice and Procedure § 1381, at 678.

Trial courts have considerable discretion with [*12] regard to granting Tenn. R. Civ. P. 12.06 motions. Stanbury Law Firm v. IRS, 221 F.3d 1059, 1063 (8th Cir. 2000); Alvarado-Morales v. Digital Equip. Corp., 843 F.2d 613, 618 (1st Cir. 1988); Krisa v. Equitable Life Assurance Soc'y, 109 F. Supp. 2d 316, 319 (M.D. Penn. 2000). Accordingly, appellate courts review decisions regarding Tenn. R. Civ. P. 12.06 motions using the deferential "abuse of discretion" standard of review.

The "abuse of discretion" standard implicitly recognizes the existence of a range of permissible alternatives. It is intended to be a review-constraining concept implying less intense appellate review and, therefore, less likelihood of reversal. State ex rel. Jones v. Looper, S.W.3d , 2000 Tenn. App. LEXIS 233 (Tenn. Ct. App. 2000); White v. Vanderbilt Univ., 21 S.W.3d 215, 222-23 (Tenn. Ct. App. 1999). Discretionary decisions must take the applicable law and the relevant facts into account. Ballard v. Herzke, 924 S.W.2d 652, 661 (Tenn. 1996). [*13] Accordingly, an appellate court reviews a discretionary decision to determine (1) whether it has a sufficient evidentiary foundation and (2) whether the court correctly identified and properly applied the appropriate legal principles. State ex rel. Vaughn v. Kaatrude, 21 S.W.3d 244, 248 (Tenn. Ct. App. 2000). We will set aside a discretionary decision only when it is based on an erroneous application of a controlling legal principle or on a clearly erroneous assessment of the evidence. Overstreet v. Shoney's Inc., 4 S.W.3d 694, 709 (Tenn. Ct. App. 1999).

9 State ex rel. Jones v. Looper, 2000 Tenn. App. LEXIS 233, No. M1999-00662-COA-R3-CV, 2000 WL 354404, at *3 (Tenn. Ct. App. Apr. 7, 2000), perm. app. denied (Tenn. Oct. 30, 2000).

II.

MAMA TAORI'S DEFENSE BASED ON MR. DOE'S CONSENT

Mr. Doe and his parents assert that the trial court erred by denying their motion to strike Mama Taori's defense premised on its claim that [*14] Mr. Doe consented to Mr. Abson's sexual contact. They assert that this defense should not be available to Mama Taori's as a matter of law because consent should not be a defense to a civil action for damages when it cannot be a defense to a criminal charge of statutory rape under *Tenn. Code Ann.* § 39-13-506 (1997). We disagree because the issue of consent is material and relevant to the issue of damages in civil proceedings where monetary damages are sought.

A.

Our analysis begins with the classification of Mr. Abson's conduct upon which Mr. Doe's and his parents' damage claims are based. For the purpose of this civil proceeding, Mr. Abson's sexual contact with Mr. Doe constitutes the intentional tort of battery. A battery is an intentional act that causes an unpermitted, harmful or offensive bodily contact. Cary v. Arrowsmith, 777 S.W.2d 8, 21 (Tenn. Ct. App. 1989); Restatement (Second) of Torts § 18(1) (1965); 7 Stuart M. Speiser, et al., The American Law of Torts § 26:12 (1990) ("Speiser"). Offensive contact is contact that [*15] infringes on a reasonable sense of personal dignity ordinarily respected in a civilized society. Restatement (Second) of Torts § 19 (1965); 1 Fowler W. Harper, et al., The Law of Torts § 3.2 (3d ed. 1996) ("Harper"); 1 Dan B. Dobbs, The Law of Torts § 28, at 52-53 (2001) ("Dobbs").

One of the fundamental principles of the common law is volenti non fit injuria - one who consents to what is done cannot complain of it, Perez v. McConkey, 872 S.W.2d 897, 900 (Tenn. 1994); William H. Inman, Gibson's Suits in Chancery § 40, at 44 (7th ed. 1988). Those who, with full knowledge, assent to an invasion of their personal interests may not complain. 1 Harper § 3.10. Thus, there can be no battery if the contact or touching was consented to. Kline v. Jordan, 685 S.W.2d 295, 296 (Tenn. Ct. App. 1984); Restatement (Second) of Torts, § 892A (1979); W. Page Keeton, Prosser and Keeton on the Law of Torts, § 18, at 112 (5th Ed. 1984) ("Prosser and Keeton"). However, consent will not negate an intentional tort in every circumstance. [*16] Consent will not

be effective to avoid liability if (1) the person giving consent lacked the necessary capacity, (2) the consent was coerced, (3) the person giving the consent was mistaken about the nature and quality of the act, or (4) the nature of the act was such that no person could consent to it. Church v. Perales, 39 S.W.3d 149, (Tenn. Ct. App. 2000); Restatement (Second) of Torts §§ 892A(2) & 892B; Prosser and Keeton, § 18, at 114; 1 Harper, at § 3.10.

Incapacity to give consent may arise from age, intoxication, or mental incompetence. Cardwell v. Bechtol, 724 S.W.2d 739, 746 (Tenn. 1987) (age); State v. Johnson, 661 S.W.2d 854, 859 (Tenn. 1983) (intoxication); Knight v. Lancaster, 988 S.W.2d 172, 180 (Tenn. Ct. App. 1998) (mental competency); Restatement (Second) of Torts § 892A; Prosser and Keeton, § 18, at 114; 1 Dobbs, § 98, at 224; 1 Speiser, § 5:7; at 798-99. This case involves incapacity to give consent based on age. Mr. Doe and his parents are asserting that Mr. [*17] Doe lacked the capacity to consent to Mr. Abson's sexual contact, as a matter of law, because he was under the age of eighteen.

B.

Both the Tennessee Supreme Court and the Tennessee General Assembly have declined to adopt a per se rule that all persons under the age of eighteen lack the capacity to consent. Approximately fifteen years ago, the court held that "mature minors" could effectively consent to medical treatment without their parents' approval. Cardwell v. Bechtol, 724 S.W.2d at 745. The court recognized that "minors achieve varying degrees of maturity and responsibility (capacity)" and that "conditions in society have changed to the extent that maturity is now reached at earlier stages of growth than at the time the common law recognized the age of majority at 21 years." Cardwell v. Bechtol, 724 S.W.2d at 744-45; see also Wells v. McNutt, 136 Tenn. 274, 277, 189 S.W. 365, 365-66 (1916).

Based on its recognition that children mature at different rates, the court declined to adopt a per se rule regarding the competency [*18] or capacity of minors. ¹⁰ Instead, the court determined that a minor's competency or capacity depends on his or her age, ability, experience, education, training, degree of maturity or judgment, as well as upon the minor's conduct and demeanor at the time of the incident. *Cardwell v. Bechtol, 724 S.W.2d at 748*. The court also dictated that the traditional "Rule of Sevens" ¹¹ should be used as the yardstick for determining whether a minor is sufficiently competent to give consent. *Cardwell v. Bechtol, 724 S.W.2d at 748*. The rule, as currently formulated by the court, is:

10 Cardwell v. Bechtol, 724 S.W.2d at 746 (quoting Dean Prosser's observation in Prosser and Keeton, § 18, at 115 that "[a] minor acquires capacity to consent to different kinds of invasions and conduct at different stages in his [or her] development. Capacity exists when the minor has the ability of an average person to understand and weigh the risks and benefits."

[*19]

11 Up to the time of the Cardwell v. Bechtol decision, the Rule of Sevens had been used chiefly to determine whether a minor was capable of committing a crime or capable of being negligent. Wells v. McNutt, 136 Tenn. at 276, 198 S.W. at 365; Bailey v. Williams, 48 Tenn. App. 320, 324, 346 S.W.2d 285, 287 (1960); West v. Southern Ry. Co., 20 Tenn. App. 491, 497-98, 100 S.W.2d 1004, 1008 (1936).

under the age of seven, no capacity; between seven and fourteen, a rebuttable presumption of no capacity; between fourteen and twenty- one, a rebuttable presumption of capacity.

Cardwell v. Bechtol, 724 S.W.2d at 745. Of course, the Rule of Sevens has been modified by the General Assembly's enactment of the Legal Responsibility Act of 1971 ¹² which lowered Tennessee's age of majority from twenty-one to eighteen years of age. Thus, for present purposes, persons over the age of eighteen, being adults, are fully capable of giving [*20] consent. For persons between the ages of fourteen and eighteen, there is a rebuttable presumption that they are capable of giving consent.

12 Act of May 4, 1971, ch. 162, 1971 Tenn. Pub. Acts 364.

Following the Cardwell v. Bechtol decision, this court has consistently used the Rule of Sevens to determine whether a minor had the capacity to obtain or consent to medical treatment. We have determined that minors had the capacity to consent to an abortion, McGlothlin v. Bristol Obstetrics, Gynecology & Family Planning, Inc., 1998 Tenn. App. LEXIS 104, No. 03 A01-9706-CV-00236, 1998 WL 65459, at *5 (Tenn. Ct. App. Feb. 11, 1998) (No Tenn. R. App. P. 11 application filed); Roddy v. Volunteer Med. Clinic, 926 S.W.2d 572, 576 (Tenn. Ct. App. 1996), and that a minor had the capacity to obtain birth control information and supplies without her parent's consent. Decker v. Carroll Acad., 1999 Tenn. App. LEXIS 336, No. 02 A01-9709-CV-00242, 1999 WL 332705, [*21] at *14 (Tenn. Ct. App. May 26, 1999) (No Tenn. R. App. P. 11 application filed).

Similarly, the General Assembly has enacted many statutes reflecting its understanding that children mature at different rates and that they may have the same capacity as adults with regard to certain activities and decisions before they are eighteen years old. For example, children may engage in certain adult activities before they become eighteen. They may begin working parttime when they are fourteen [Tenn. Code Ann. § 50-5-104 (1999)]; they may obtain a driver's license at sixteen [Tenn. Code Ann. § 55-50-311 (Supp. 2000)]; they may lease a safety deposit box [Tenn. Code Ann. § 45-2-904 (2000)]; and they may marry if they are sixteen years old (or at a younger age if approved by a court) [Tenn. Code Ann. §§ 36-3-105, -107 (1996)]. They may also make decisions regarding their healthcare such as executing a durable power of attorney for healthcare [Tenn. Code Ann. § 34-6-216 (1996)], consent to sterilization if they are married [Tenn. Code Ann. § 68-34-108 [*22] (1996)], and consent to medical treatment for drug abuse [Tenn. Code Ann. § 63-6-220 (1997)].

The General Assembly has also decided that minors have the capacity to make decisions regarding sexual conduct and its effects. For example, they may consent to sexual conduct if they are over thirteen years old and if their partner is no more than four years older than they are [Tenn. Code Ann. § 39-13-506]; they may obtain contraceptive advice and supplies [Tenn. Code Ann. § 68-34-107 (1996)]; they may consent to prenatal care [Tenn. Code Ann. § 63-6-223 (1997)]; they may seek judicial consent for an abortion [Tenn. Code Ann. § 37-10-303(b) (1996)]; and they may surrender a child for adoption [Tenn. Code Ann. § 36-1-110(a) (1996)].

The General Assembly has determined that minors are incompetent with regard to relatively few activities. For example, minors cannot possess alcoholic beverages or beer [$Tenn. Code Ann. \S 57-3-412(a)(3)(A)$ [*23] , -4-203(b)(2), -5-301(d)(1)(A) (Supp. 2000)] or tobacco products [$Tenn. Code Ann. \S 39-17-1505(a)$ (1997)]. They cannot obtain handgun permits [$Tenn. Code Ann. \S 39-17-1351(b)$ (Supp. 2000), and they cannot consent to "female genital mutilation" [$Tenn. Code Ann. \S 39-13-110(a)$ (1997)].

Based on our review of these statutes and judicial decisions, we have determined that the mature minor rule and the Rule of Sevens adopted by the Tennessee Supreme Court in *Cardwell v. Bechtol* presumptively governs issues in civil cases involving the capacity of minors to consent. Therefore, when an issue regarding the capacity or competency of a minor to consent arises in a civil case, the trier of fact must look to the totality of the circumstances, including the minor's age, ability, experience, education, training, degree of maturity and judgment, and the minor's conduct and demeanor to ascertain whether the minor was able to fully understand and ap-

preciate the risks and probable consequences of the conduct. [*24] Following the Rule of Sevens, children under the age of seven lack capacity. Children between the ages of seven and fourteen are presumed to lack capacity, but the presumption can be rebutted. Finally, children between the ages of fifteen and eighteen are presumed to have capacity, but the presumption may also be rebutted.

C.

Mr. Doe and his parents argue that the mature minor rule and the Rule of Sevens are inapplicable to all of their civil damage claims because Mr. Doe's consent is irrelevant as a matter of law. They assert that Mr. Doe's consent should not be a defense in this proceeding because it was not a defense in Mr. Abson's criminal prosecution and because of the policy in *Restatement (Second)* of Torts § 892C(2) (1979). This argument places unwarranted emphasis on the criminal statutory rape statute and blurs the substantive differences between criminal and civil proceedings.

The argument being made by Mr. Doe and his parents in this case to prevent the trier-of-fact from considering the issue of consent, if followed to its logical conclusion, would permit any victim of statutory rape to recover civil damages notwithstanding the circumstances. While several jurisdictions [*25] have adopted this per se civil liability rule, 13 others have not. The courts that have declined to adopt this per se liability rule have recognized (1) that the statutory rape laws do not explicitly create a private right of action for damages, Beul v. ASSE Int'l, Inc., 233 F.3d 441, 450-51 (7th Cir. 2000); McNamee v. A.J.W., 238 Ga. App. 534, 519 S.E.2d 298, 302 (Ga. Ct. App. 1999); (2) that criminal and civil proceedings have different purposes, Cynthia M. v. Rodney E., 228 Cal. App. 3d 1040, 279 Cal. Rptr. 94, 97 (Ct. App. 1991); and (3) that it is fundamentally unfair to permit a civil litigant to obtain money damages while preventing the trier-of-fact from considering relevant evidence regarding damages and credibility. LK v. Reed, 631 So. 2d 604, 607 (La. Ct. App. 1994); Doe v. Orangeburg County Sch. Dist. No. 2, 335 S.C. 556, 518 S.E.2d 259, 261 (S.C. 1999). Accordingly, other jurisdictions have concluded that the plaintiff's consent is relevant in civil proceedings and that the defendant may introduce evidence and cross- examine the plaintiff regarding this issue. Beul v. ASSE Int'l, Inc., 233 F.3d at 450-51; [*26] Cynthia M. v. Rodney E., 279 Cal. Rptr. at 97; McNamee v. A.J.W., 519 S.E.2d at 303; LK v. Reed, 631 So. 2d at 607; Doe v. Orangeburg County Sch. Dist. No. 2, 518 S.E.2d at 261; Parsons v. Parker, 160 Va. 810, 170 S.E. 1, 2-3 (Va. 1933); Michelle T. v. Crozier, 173 Wis. 2d 681, 495 N.W.2d 327, 329, 335 n.15 (Wis. 1993).

13 Angie M. v. Hiemstra, 37 Cal. App. 4th 1217, 44 Cal. Rptr. 2d 197, 202 (Ct. App. 1995); Bohrer v. DeHart, 943 P.2d 1220, 1227 (Colo. Ct. App. 1996); Pettit v. Erie Ins. Exch., 117 Md. App. 212, 699 A.2d 550, 557 (Md. Ct. Spec. App. 1997); Wilson v. Tobiassen, 97 Ore. App. 527, 777 P.2d 1379, 1384 (Or. Ct. App. 1989); Robinson v. Moore, 408 S.W.2d 582, 583 (Tex. Civ. App. 1966).

The Restatement (Second) of Torts § 892C(2) provides that the [*27] plaintiff's consent to an illegal act should "not [be] effective as a bar" to a civil action for damages if the conduct involved has been criminalized to protect persons like the plaintiff from harm irrespective of their consent. ¹⁴ As we construe this provision, it eliminates consent as a complete defense to a civil action for damages. It does not, however, prevent the trier-offact from considering evidence of consent when it is allocating fault or determining the existence and extent of the plaintiff's damages.

14 Restatement (Second) of Torts § 892C(2) states: "If conduct is made criminal in order to protect a certain class of persons irrespective of their consent, the consent of members of that class to the conduct is not effective to bar a tort action."

Deterrence and punishment for illegal acts should be left [*28] to the criminal law. The public's interests are sufficiently protected by the imposition of criminal sanctions. Zysk v. Zysk, 404 S.E.2d 721, 722 (Va. 1990). Thus, civil actions for damages should be left to proceed under ordinary tort law principles. Consistent with the doctrine of comparative fault, one of these principles is that a mature minor's conduct, like an adult's conduct, is relevant with regard to fault and damages.

The Tennessee Supreme Court reached this precise conclusion in a civil damage action involving an intoxicated 17-year-old driver who was seriously injured after leaving a restaurant where she had been illegally served alcoholic beverages. The General Assembly outlawed serving alcoholic beverages to minors because it recognized that minors lacked the maturity to use alcohol responsibly. Brookins v. The Round Table, Inc., 624 S.W.2d 547, 550 (Tenn. 1981). Notwithstanding the fact that the minor plaintiff had sought and consented to be served alcoholic beverages in violation of the law, the court held that the minor's civil action for damages against the restaurant should be tried using comparative fault principles. Cook v. Spinnaker's of Rivergate, Inc., 878 S.W.2d 934, 939 (Tenn. 1994). [*29] 15

15 The court based its decision, at least in part, on an earlier opinion holding that the trier-of-fact

should be permitted to determine whether a minor who consented to ride as a passenger in an automobile being driven by an intoxicated teenager was contributorily negligent. Brookins v. The Round Table, Inc., 624 S.W.2d at 550. In both Brookins and Cook, the court concluded that the trier-of-fact could consider the minor's conduct or consent even though the defendant had violated a criminal statute intended to protect minors from their own immaturity and inexperience. As we see it, these more recent decisions signal the court's implicit departure from older cases holding that the trier-of- fact could not consider the conduct or consent of a minor employee who was injured while performing work that violated the child labor laws. Schilly v. Baker, 184 Tenn. 654, 662, 202 S.W.2d 348, 351 (1947); Smith v. Uffelman, 509 S.W.2d 229, 233 (Tenn. Ct. App. 1973). If these cases were tried today, they would be tried using the principles of comparative fault.

[*30] **D**.

We have determined that the mature minor rule and the Rule of Sevens applies to this case. Accordingly, Mr. Doe, being sixteen years of age at the time the challenged conduct occurred, is presumed to have the capacity to consent to Mr. Abson's sexual contacts. Mama Taori's may, therefore, assert defenses to Mr. Doe's and his parents' various damage claims based on Mr. Doe's purported consent to Mr. Abson's acts, and Mr. Doe and his parents may offer evidence to rebut the effectiveness of his consent based on his age, inexperience, or other factors. 16 Accordingly, the trial court exercised its discretion appropriately when it declined to grant the Tenn. R. Civ. P. 12.06 motion to strike Mama Taori's defense alleging that Mr. Doe had consented to Mr. Abson's sexual contact. Mr. Doe and his parents have not demonstrated that this defense cannot succeed under any circumstance or that it bears no possible relationship to the matters in controversy. They have likewise failed to demonstrate that permitting Mama Taori's to assert this defense will confuse the issues or unduly burden them.

16 Mr. Doe's complaint contains factual allegations aimed at countering a defense based on consent. He alleges that he was rendered intoxicated and helpless by the marijuana cigarettes containing a knock-out drug supplied by Mr. Abson.

[*31] III.

COMPARING THE FAULT OF MR. DOE'S PARENTS

Mr. Doe's parents also take issue with the trial court's denial of their motion to strike Mama Taori's Tenn. Code Ann. § 20-1-119 (1994) defense attributing fault to them as non-parties. They assert that permitting Mama Taori's to assert this defense improperly imputes any potential negligence on their part to Mr. Doe. We have determined that the trial court's decision not to strike this defense at this stage of the proceeding is entirely consistent with one of the central tenets of the Tennessee Supreme Court's comparative fault scheme that defendants should not be liable for more than their proportionate share of fault.

During most of the last century, two related common-law principles shaped our consideration of the liability of parents for injuries to their children caused by the parents' own negligence. The first principle, initially recognized in 1903, 17 was that parents are absolutely immune from negligence actions brought by their own children. Barranco v. Jackson, 690 S.W.2d 221, 222 (Tenn. 1985). [*32] This parental immunity rule applied only to unemancipated children. Campbell v. Gruttemeyer, 222 Tenn. 133, 137, 432 S.W.2d 894, 895 (1968); Turner v. Carter, 169 Tenn. 553, 555, 89 S.W.2d 751, 751 (1936). Consistent with its disinclination to grant immunity from liability for negligence, 18 the Tennessee Supreme Court has now significantly limited parental immunity to conduct that constitutes the exercise of parental authority, the performance of parental supervision, and the provision of parental care and custody. Broadwell v. Holmes, 871 S.W.2d 471, 476-77 (Tenn. 1994).

> 17 McKelvey v. McKelvey, 111 Tenn. 388, 390-91, 77 S.W. 664, 664 (1903).

> 18 Fain v. O'Connell, 909 S.W.2d 790, 794 (Tenn. 1995).

The second principle is that [*33] the negligence of a parent cannot be imputed to an infant who is incapable of being negligent. Whirley v. Whiteman, 38 Tenn. (1 Head) 610, 620 (1858). However, this principle, commonly referred to as imputed contributory negligence, does not apply when a parent is seeking damages in his or her own right, Bamberger v. Citizens' St. Ry. Co., 95 Tenn. 18, 37, 31 S.W. 163, 168 (1895), or when the parent is the sole beneficiary of the deceased child's estate. Smith v. Henson, 214 Tenn. 541, 547, 381 S.W.2d 892, 895 (1964). Whether the principle of imputed contributory negligence has survived the Tennessee Supreme Court's adoption of comparative fault in McIntyre v. Balentine, 833 S.W.2d 52 (Tenn. 1992), is open to guestion in light of Herbert v. Brazeale, 902 S.W.2d 933 (Tenn. Ct. App. 1995). The Herbert case involved two children who were injured while riding as passengers in their mother's automobile when it was struck by a tractor trailer truck. This court affirmed the trial court's decision

to replace an imputed contributory negligence instruction with a comparative fault instruction directing [*34] the jury to compare the fault of the truck driver and the injured children's mother. The court based its decision on the principle that "a defendant may be held liable only for his or her proportionate share of a judgment and that the jury must assess the percentage of negligence of all parties potentially responsible for the injuries or damages involved." *Herbert v. Brazeale*, 902 S.W.2d at 941.

In light of the current procedural posture of this case, there are three reasons why the principle of parental immunity did not require the trial court to strike Mama Taori's defense seeking to compare its fault with that of Mr. Doe's parents. First, parental immunity does not apply when a minor is emancipated. Emancipation is a question of fact. Glover v. Glover, 44 Tenn. App. 712, 727, 319 S.W.2d 238, 244 (1958). Should Mama Taori's substantiate its claim that Mr. Doe was emancipated when the sexual contact with Mr. Abson occurred, then the principle of parental immunity [*35] will be irrelevant in these proceedings. Second, even if Mama Taori's cannot substantiate its claim that Mr. Doe was emancipated, the doctrine of parental immunity will not prevent comparing Mama Taori's fault and Mr. Doe's parents' fault with regard to the parents' own damage claims. Bamberger v. Citizens' St. Ry. Co., 95 Tenn. at 37; 31 S.W. at 168. Third, even if the principle of parental immunity applies with regard to Mr. Doe's own damage claims, parental immunity will not prevent comparing the fault of Mama Taori's and Mr. Doe's parents because the Tennessee Supreme Court has now explicitly held that, except for worker's compensation cases, "fairness to the parties" requires that fault be attributed to immune parties because the close fit between fault and liability will be lost "when some participants to an act of negligence are excluded from the apportionment of fault." Dotson v. Blake, 29 S.W.3d 26, 28 (Tenn. 2000); Carroll v. Whitney, 29 S.W.3d 14, 20 (Tenn. 2000). [*36]

Similarly, the doctrine of imputed contributory negligence did not require the trial court to strike Mama Taori's comparative fault defense. This doctrine has been subsumed into the comparative fault scheme mandated by the McIntyre v. Balentine decision. Herbert v. Brazeale, 902 S.W.2d at 941. It is never error for the trier-of-fact to be fully informed regarding the relevant and competent facts giving rise to a claim for damages. Carroll v. Whitney, 29 S.W.3d at 18. Thus, if Mama Taori's can marshal evidence to prove that Mr. Doe's parents did not act appropriately to protect their child from sexual abuse at the hands of Mr. Abson, the jury should be entitled to hear it and to weigh it against the other evidence presented both in support of and in opposition to Mr. Doe's and his parents' damage claims.

IV.

MAMA TAORI'S WORKERS' COMPENSATION EXCLUSIVITY DEFENSE

Mama Taori's has presented two other arguments countering Mr. Doe's and his parents' assertions that the trial court erred by denying their motion to strike certain of Mama [*37] Taori's defenses. It argues that even if the trial court's denial of the motion to strike was error, the error was harmless because Mr. Doe's claims are barred by the workers' compensation exclusive remedy provision in *Tenn. Code Ann. § 50-6-108(a)* (1999) and because it cannot be liable vicariously for Mr. Abson's conduct since he was not acting within the scope of his employment.

The scope of the issues raised on Tenn. R. App. P. 9 and 10 appeals differs from the scope of the issues that can be raised on appeals as of right under Tenn. R. App. P. 3. Subject to the limitations in Tenn. R. App. P. 3(e) and 13(b), both the appellant and the appellee have broad latitude with regard to the issues they can raise on a direct appeal. The same is not the case for interlocutory appeals under Tenn. R. App. P. 9 or extraordinary appeals under Tenn. R. App. P. 10. Heatherly v. Merrimack Mut. Fire Ins. Co., 43 S.W.3d 911, 2000 WL 1701984, at *2 (Tenn. Ct. App. Nov. 15, 2000), perm. app. filed (Tenn. Jan. 16, 2001).

[*38] For interlocutory appeals, the only issues that may be raised are those certified in the trial court's order granting permission to seek an interlocutory appeal and in the appellate court's order granting the interlocutory appeal. Tennessee Dep't of Mental Health & Mental Retardation v. Hughes, 531 S.W.2d 299, 300 (Tenn. 1975); Pass v. Shelby Aviation, Inc., 2000 Tenn. App. LEXIS 247, No. W1999-00018-COA-R9-CV, 2000 WL 388775, at *6 (Tenn. Ct. App. Apr. 13, 2000) (No Tenn. R. App. P. 11 application filed); Kent v. Edwards & Assocs., Inc., 2000 Tenn. App. LEXIS 29, No. E1999-00399-COA-R9-CV, 2000 WL 124614, at *1 (Tenn. Ct. App. Jan. 25, 2000), perm. app. denied (Tenn. June 12, 2000); Montcastle v. Baird, 723 S.W.2d 119, 122 (Tenn. Ct. App. 1986). However, trial courts may not certify questions to an appellate court that have not actually been raised and decided in the trial court. Permitting this practice would require appellate courts to consider hypothetical issues that are not a proper subject for appellate review. Judicial economy [*39] prompts us to avoid rendering advisory opinions or deciding abstract legal questions. Super Flea Mkt. v. Olsen, 677 S.W.2d 449, 451 (Tenn. 1984); Lawrence v. Stanford, 655 S.W.2d 927, 929-30 (Tenn. 1983); McIntyre v. Traughber, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994).

The trial court's decision to deny Mr. Doe's and his parents' Tenn. R. Civ. P. 12.06 motion to strike was premised on its conclusion that the principles of comparative fault permitted Mama Taori's to assert comparative fault defenses against both Mr. Doe's and his parents' claims for damages. There is no indication that the trial court ever addressed the "exclusive remedy" or "scope of employment" arguments now being made by Mama Taori's. We granted an interlocutory appeal to determine whether the doctrine of comparative fault justified the denial of the motion to strike. Accordingly, we decline to address the additional issues Mama Taori's seeks to pre-

sent on appeal. These issues may be taken up with the trial court after the case is remanded.

V.

We affirm the denial of the motions to strike Mama Taori's affirmative defenses and remand the case to the [*40] trial court for further proceedings consistent with this opinion. We tax the costs of this appeal to John Doe and his parents, Robert and Jane Doe, jointly and severally, and their surety, for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUDGE

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

ENTERED

TIMELESS ENTERTAINMENT, INC.,

JUN 25 2008

Plaintiff,

HOWARD G. HOGAN 1079-203

vs.

No. 172039-3

ALBERT BAAH, individually and d/b/a AMERICAN EXCHANGE 526 North Gay Street Knoxville, Tennessee 37917

Defendant.

ORDER TO TRANSFER

For good cause shown, it is hereby ORDERED, ADJUDGED and DECREED by the Court that this case be transferred to Part II for further proceedings.

Entered this _____ day of June, 2008.

CHANCELLOR

CHANCELLOR

CC: Alexis M. Whitaker, Esquire Douglas L. Rose, Esquire

07/24/2008 14:39:48

Summary of NOTICES Printed

TIMELESS ENTERTAINMENT INC. VS. ALBERT BAAH

Case No: M-08-172039 Please be advised the above styled case is set for MOTION TO STRIKE (MTS) at 09:30 AM on Monday, 8/25/2008.

FANSLER, DARYL R.

Name	Address	Trial Notice Date
ROSE, DOUGLAS L	507 GAY STREET, SW, SUITE 700 KNOXVILLE, TN 37902	08/25/2008
WHITAKER, ALEXIS M	PO BOX 2485 KNOXVILLE, TN 37901	08/25/2008

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

25 81112: 57
A FIUGAV
Docket No. 172039-3

NOTICE OF HEARING

Please take notice that the Plaintiffs' Motion to Strike, previously filed in this action, will be heard by the Honorable Chancellor Daryl R. Fansler, on **August 25, 2008**, at **9:00 a.m.**, EST, in the Knox County Chancery Court, as this date was set by the Court.

The parties are invited to attend and participate as they see fit.

Respectfully submitted this the 24th day of July, 2008.

ALEXIS M. WHITAKER Attorney for Plaintiff

CARPENTER, O'CONNOR & STERCHI, PLLC P.O. Box 2485 Knoxville, TN 37901 (865) 546-1831

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading has been served upon the plaintiffs by mailing a copy of same via U.S. Mail, first class, prepaid as follows:

Douglas L. Rose, Esq. Stone & Hinds, P.C. 507 S. Gay Street, Suite 700 Knoxville, Tennessee 37902

This the 24th day of July, 2008.

Alexis M. Whitaker

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CARPENTER, O'CONNOR & STERCHI, PLLC

LAWYERS

ARCHIE R. CARPENTER CHARLES F. STERCHI, III TOBY R. CARPENTER ALEXIS M. WHITAKER

OF COUNSEL: J. GREGORY O'CONNOR

Tn. Sup. Ct. Rule 31 Listed Mediator

10th Floor Regions Bank Building 507 South Gay Street Knoxville, Tennessee 37902 PHONE: (865) 546-1831 MAILING ADDRESS P.O. Box 2485 Knoxville, TN 37901

FAX: (865) 546-0432

July 24, 2008

Howard G. Hogan, Clerk Knox County Chancery Court 400 Main Avenue, Room 125 City County Building Knoxville, Tennessee 37902

Re: Timeless Entertainment, Inc. v. Albert Baah, indiviually and d/b/a American

Exchange

Knox County Chancery Court No. 172039-3

Dear Mr. Hogan:

Please find enclosed for filing a Notice of Hearing in the above-referenced matter. By copy of this letter, I am forwarding a copy of the same to counsel of record. Please be advised that Chancellor Moyers has recused himself and it is my understanding this matter is now to be heard by Chancellor Fansler.

Thank you for your assistance.

Very truly yours,

Alexis M. Whitaker

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AMW/daw

Enclosure

cc: Douglas L. Rose, Esq. (w/enc.)

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IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

TIMELESS ENTERTAINMENT, INC.,		
Plaintiff,)	-
VS.)	Docket No. 172039-3
Serve:)	
ALBERT BAAH, individually and d/b/a AMERICAN EXCHANGE)	
Defendant.)	

FIRST AMENDED COMPLAINT

Comes the plaintiff, Timeless Entertainment, Inc., (hereinafter "the Plaintiff"), and files this First Amended Complaint against Albert Baah, both individually and doing business as American Exchange (collectively referred to herein as "the Defendant"), and for his cause of action would show the following:

- 1. Timeless Entertainment, Inc. is a corporation organized and existing under the laws of the State of Nevada, and can be served with process in the State of Tennessee through its President, Donald Reynolds, whose address is 1001 Crooked Spring Road, Knoxville, Tennessee 37932.
- 2. Defendant, Albert Baah, is an individual and adult resident of Knox County, Tennessee, with his principal residence located at 1536 Cliffside Lane, Knoxville, Tennessee 37914.
- 3. Defendant, Albert Baah d/b/a American Exchange, is a sole proprietorship organized and existing under the laws of the State of Tennessee, engaging in business as a

motor vehicle dealer, with its principal place of business located at 526 N. Gay Street, Knoxville, Tennessee 37917.

- 4. On or about March of 2007, Defendant approached Plaintiff's President, Donald Reynolds (hereinafter "Reynolds"), about borrowing \$24,000 from the Plaintiff, with the entire amount of the loan to be paid back within a few days.
- 5. Thereafter, Plaintiff and Defendant orally agreed that Plaintiff would loan Defendant \$24,000.00, with Defendant fully repaying the loan within a matter of days. Thereafter, Plaintiff gave \$24,000.00 in cash to Defendant.
- 6. After the time had passed for payment and Defendant had not repaid the amounts borrowed from Plaintiff, Reynolds repeatedly contacted Defendant and demanded that Defendant immediately repay the \$24,000.00 loan. Despite Defendant's promises, Defendant did not repay the loan.
- 7. On or about April 2, 2007, Reynolds went to Defendant Albert Baah's place of business, American Exchange, for payment of the \$24,000.00 that was owed, at which time Defendant agreed to give Plaintiff a 2007 Cadillac Escalade EXT, Vehicle Identification Number 3GYFK62827G272799 (hereinafter the "Vehicle") to satisfy the debt. The Vehicle was reportedly worth approximately \$68,000.00.
- 8. That same day, Reynolds and Defendant extensively negotiated and entered into a valid oral contract for the purchase and sale of the Vehicle (the "Contract"), whereby Plaintiff agreed to accept the Vehicle as payment of the \$24,000 debt. Because the Vehicle was worth significantly more than the debt, Plaintiff agreed to give Defendant cash for the difference between the value of the Vehicle and the debt. During the course of the parties'

negotiations, Reynolds informed Defendant that he was accepting the Vehicle in satisfaction of the debt only because it was Plaintiff's intention to resell the Vehicle and obtain cash.

- 9. Therefore, Plaintiff gave Defendant \$40,000.00 in additional cash for a total of \$64,000.00. Plaintiff agreed to pay the balance of approximately \$4,000.00 at a later date. Defendant gave Plaintiff immediate possession of the Vehicle along with a notarized bill of sale evidencing the transfer. A true and correct copy of said bill of sale is attached hereto as Exhibit "A".
- 10. However, Defendant did not give Plaintiff a valid certificate of title, because according to the bill of sale, title of ownership would only pass once a final cash payment was made.
- 11. On May 15, 2007, Reynolds returned to American Exchange and paid the remaining \$4,000.00 balance on behalf of Plaintiff using check number 1015, payable to American Exchange and bearing the notation "Cadillac EXT 07 balance." A copy of said check is attached hereto as Exhibit "B".
- 12. Defendant deposited this check and kept the proceeds. However, Defendant did not provide Plaintiff with a valid certificate of title but promised to provide it once Defendant obtained said certificate of title.
- 13. Thereafter, Reynolds repeatedly asked Defendant for the Vehicle's certificate of title so Plaintiff could resell the Vehicle. Sometime after the Vehicle's temporary tags had expired, Defendant provided Plaintiff with a copy of the application for certificate of title, attached hereto as Exhibit "C". This document listed the date of purchase as May 9, 2007, which was more than a month after the sale. Moreover, this document listed Defendant

Albert Baah, individually, as the Vehicle's owner and showed an outstanding lien against the Vehicle in favor of Y-12 Federal Credit Union.

- 14. Plaintiff alleges, upon information and belief, that after the receipt of the funds from Plaintiff, the Defendant improperly placed the Vehicle in his own name and used it to secure a loan from Y-12 Federal Credit Union for his own use and benefit.
- 15. Thereafter, Reynolds once again demanded that Defendant provide him with a valid certificate of title, and Defendant assured him that he was in the process of clearing the lien and obtaining a valid certificate of title. In the meantime, Plaintiff was unable to register or resell the Vehicle.
- 16. In approximately June of 2007, the Vehicle was driven on a business-related trip to Chicago, Illinois, by an agent of the Plaintiff. While in Chicago, Plaintiff's agent was arrested and the Vehicle was impounded. Plaintiff was unable to obtain possession of the Vehicle because of the outstanding lien in favor of Y-12 Federal Credit Union and because Plaintiff lacked a valid certificate of title.
- 17. Reynolds repeatedly contacted Defendant about obtaining possession of the Vehicle, and Defendant repeatedly assured Plaintiff that he would retrieve the Vehicle from impound, extinguish the outstanding lien in favor of Y-12 Federal Credit Union and return the Vehicle to the Plaintiff.
- 18. Thereafter, the Defendant obtained possession of the Vehicle and satisfied Y-12's lien. However, Defendant never returned the Vehicle to the Plaintiff.

- 19. Plaintiff reasonably relied upon the representations of Defendant when he agreed to enter into the Contract. Plaintiff continued to rely on the Defendant's representations that he would correct any and all breaches of the Contract.
- 20. At all times applicable hereto, Defendant made representations to Plaintiff that the vehicle Plaintiff was purchasing was new and unencumbered and that Defendant would provide Plaintiff with a valid certificate of title. The Defendant made further representations to Plaintiff, promising to return the Vehicle to Plaintiff.
- 21. As a result of the Defendant's actions, Plaintiff made a good faith effort to rescind the Contract and offered to accept a new agreement by which Plaintiff would accept another vehicle worth substantially the same amount as the Vehicle, but Defendant refused.
- 22. The Defendant never returned the Plaintiff's purchase money nor provided Plaintiff with a substitute vehicle after Defendant failed to return the Vehicle to Plaintiff.

I. BREACH OF CONTRACT

- 23. All allegations in paragraphs 1 through 22 of this Complaint are hereby incorporated and re-alleged by reference.
- 24. Defendant breached the Contract by failing to provide Plaintiff with an unencumbered vehicle and failing to provide Plaintiff with a valid certificate of title, both of which were fairly bargained-for by Plaintiff in good faith.
- 25. As a result of the breach of Contract by the Defendant, plaintiff has lost both his money and the Vehicle.

II. <u>NEGLIGENT MISREPRESENTATION</u>

- 26. All allegations in paragraphs 1 through 25 of this Complaint are hereby incorporated and re-alleged by reference.
- 27. Defendant, who had a pecuniary interest in the Contract, negligently supplied false information to the Plaintiff regarding the lien status of the Vehicle and the validity of the Vehicle's certificate of title, upon which Plaintiff reasonably relied to his detriment.
- 28. Additionally, after the Vehicle was impounded, Defendant repeatedly misrepresented to Plaintiff that he would return the Vehicle to the Plaintiff and would extinguish the outstanding lien, upon which Plaintiff justifiably relied to his detriment.

III. FRAUDULENT MISREPRESENTATION

- 29. All allegations in paragraph 1 through 28 of this Complaint are hereby incorporated and re-alleged by reference.
- 30. Defendant made intentional misrepresentations of material facts with regard to the Vehicle's title and its lien status. These statements were designed and intended to mislead the Plaintiff regarding Defendant's true intentions of performing under the Contract.
- 31. These misrepresentations were made by the Defendant with knowledge of their falsity and with the intent to deceive the Plaintiff.
- 32. The Defendant's misrepresentations were of existing facts as to the state of the Vehicle's certificate of title, the lien status of the Vehicle, Defendant's intention of

performing its obligations under the Contract, and Defendant's intentions of returning the Vehicle to the Plaintiff.

33. Plaintiff was, in fact, misled by Defendant's intentional misrepresentations, upon which Plaintiff reasonably relied to its injury.

IV. TENNESSEE CONSUMER PROTECTION ACT VIOLATION

- 34. All allegations in paragraphs 1 through 33 of this Complaint are hereby incorporated and re-alleged by reference.
- 35. Defendant's comments and conduct constitute unfair and deceptive acts or practices under the Tennessee Consumer Protection Act, Tennessee Code Annotated § 47-18-101, et seq.
- 36. Plaintiff has been damaged as a result of Defendant's unfair and deceptive acts or practices.
- 37. Defendant led Plaintiff to believe that Plaintiff was actually buying an unencumbered vehicle with a valid certificate of title, when Defendant knew or should have known there was an outstanding lien on the Vehicle, which negates any representation, intentional or otherwise, that the Vehicle was unencumbered.
- 38. Defendant accepted cash in the amount of \$40,000.00, credit for payment of a previous loan in the amount of \$24,000.00, and Plaintiff's check in the amount of \$4,000.00 while maintaining, at all times, that the Vehicle being bought in consideration thereof, was unencumbered and had a transferable certificate of title.
- 39. In good faith, Plaintiff relied upon the negligent, reckless, and fraudulent nature of the acts practiced by Defendant and has been damaged as a result.

- 40. Plaintiff avers that Defendant negligently, recklessly, willfully and knowingly practiced deceptive acts against Plaintiff, which damaged the Plaintiff, and Plaintiff therefore has a private right of action against Defendant pursuant to Tennessee Code Annotated §47-18-109.
- 41. As a direct result of the negligent and fraudulent acts, comments, and omissions of Defendant, Plaintiff has been damaged and is entitled to all remedies allowed by the Tennessee Consumer Protection Act, including attorney's fees.

V. PROMISSORY FRAUD

- 42. All allegations in Paragraph 1 through 41 of this Complaint are hereby incorporated and re-alleged by reference.
- 43. Defendant procured cash in the amount of \$40,000.00, credit towards his debt of \$24,000.00 and Plaintiff's check in the amount of \$4,000.00 from Plaintiff by intentionally misrepresenting his intentions and perhaps his ability to fulfill his obligations under the Contract. The misrepresentations made by Defendant fraudulently induced Plaintiff to pay Defendant the full consideration for the Vehicle, when Defendant had no intention of fulfilling his promises.
- 44. Plaintiff reasonably relied on the Defendant's misrepresentations to its detriment.
- 45. Because of the intentional acts and omissions of Defendant, which were the proximate and legal cause of Plaintiff's damages, Plaintiff asserts that it is entitled to punitive damages in accordance with <u>Hodges v. S.C. Toof and Company</u>, 833 S.W.2d 896 (Tenn. 1992).

VI. CONVERSION

- 46. All allegations in Paragraph 1 through 45 of this Complaint are hereby incorporated and re-alleged by reference.
- 47. In obtaining and thereafter retaining possession of the Vehicle paid for by Plaintiff without the Plaintiff's consent, Defendant excluded and defied the Plaintiff's rights as the rightful owner of the Vehicle.
- 48. The aforementioned actions by Defendant deprived the Plaintiff of the use and enjoyment of the Vehicle and constituted a conversion of the Vehicle.
- 49. As a natural and proximate result of the Defendant's conversion of the Vehicle, Plaintiff has been damaged.

VII. BREACH OF WARRANTY

- 50. All allegations in Paragraph 1 through 49 of this Complaint are hereby incorporated and re-alleged by reference.
- 51. The Defendant had a duty to provide Plaintiff with a valid certificate of title under Tennessee Code Annotated § 55-3-101, *et seq*.
- 52. In transferring possession of the Vehicle to Plaintiff and providing a notarized bill of sale, the Defendant warranted to the Plaintiff that the title conveyed was good and that Defendant's transfer of the Vehicle was rightful.
- 53. Defendant further warranted that the Vehicle would be delivered free from any security interest or other lien or encumbrance.

- 54. Defendant breached the provisions of T.C.A. § 47-2-301, et seq., by failing to provide Plaintiff with a vehicle free and clear of any and all liens and encumbrances.
- 55. Defendant breached the provisions of T.C.A. § 55-3-101 by failing to provide Plaintiff with a valid certificate of title.
- 56. As a result of Defendant's breach of warranty of title under T.C.A. § 47-2-301 and failure to fulfill the duties prescribed by T.C.A. § 55-3-101, *et seq.*, the Plaintiff has been damaged.

VIII. ISSUANCE OF FRAUDULENT CHECK

- 57. All allegations in paragraphs 1-56 of this Amended Complaint are hereby incorporated and re-alleged by reference.
- 58. In a business transaction unrelated to the Vehicle, Plaintiff and Defendant Baah agreed to pool their money to invest in a real estate development project called City Center in Las Vegas, Nevada.
- 59. The parties verbally agreed that Plaintiff would contribute \$100,000.00 and Defendant Baah would contribute approximately \$80,000.00, for a total joint contribution of \$180,000.00.
- 60. Thereafter, Defendant Baah told Plaintiff he would write a check for the total amount of the investment if Plaintiff would give Defendant Baah \$100,000.00 in cash. Plaintiff agreed and gave \$100,000.00 to Defendant Baah.
- 61. On or about June 26, 2007, Defendant Baah issued and delivered to the Plaintiff check number 1354 in the amount of \$182,600.00, dated June 20, 2007 (hereinafter "Check 1354"). A copy of Check 1354 is attached hereto as "Exhibit D."

- 62. Upon receipt of Check 1354, Plaintiff deposited it into Plaintiff's account at Bank of America. Thereafter, the plaintiff issued from said account check number 1021 in the amount of \$182,600.00, payable to City Center.
- 63. On June 26, 2007, Plaintiff received notice from Bank of America that Check 1354 issued by Defendant Baah had been dishonored because Defendant Baah had stopped payment on it. A copy of the notice received by Plaintiff is attached hereto as "Exhibit E." As a result, check number 1021 issued by Plaintiff to City Center was dishonored because without Defednat Baah's funds, Plaintiff did not have sufficient funds to cover the entire amount of the check.
- 64. Despite the foregoing, Plaintiff was committed to and did ultimately pay to City Center the full amount of the parties' joint investment, which was \$182,600.00.
- 65. There after, Plaintiff contacted Defendant Baah to obtain payment of the balance owed on the face amount of Check 1354.
- 66. Over the next few months, Defendant Baah gave Plaintiff money and goods totaling approximately \$100.000.00, to reimburse the plaintiff for the \$100,000.00 in cash which Plaintiff had given Defendant Baah in anticipation of the parties' joint investment.
- 67. However, Defendant Baah never paid Plaintiff the remaining \$82,600.00 for Defendant Baah's portion of the investment, despite making repeated assurances that he would "make it right."
- 68. On July 20, 2008, Plaintiff sent Defendant Baah written notice that Check 1354 had been dishonored and requesting payment thereunder. Said notice is attached hereto as "Exhibit F."

- 69. Even after Plaintiff provided Defendant Baah with the aforementioned verbal and written notices of Check 1354's dishonor, Defendant Baah failed to pay Plaintiff the balance owed thereunder.
- 70. Defendant violated T.C.A. §47-29-101, *et seq.*, when Defendant Baah fraudulently executed and delivered Check 1354 to Plaintiff and then allowed Check 1354 to be dishonored because he intentionally stopped payment thereon.
- 71. Check 1354 was issued by Defendant Baah for the purpose of obtaining an investment opportunity. At the time Defendant Baah stopped payment on Check 1354, said investment opportunity continued to be as represented at the time the check was issued.
 - 72. As a result of the foregoing, Plaintiff has been damaged.
- 73. Pursuant to T.C.A. §47-29-101(a), Plaintiff is entitled to the unpaid balance of the check, interest at a rate of ten percent (10%) per annum, reasonable service charges incurred by Plaintiff, court costs, reasonable attorney's fees and treble damages.

WHEREFORE, Plaintiff prays as follows:

- 1. That proper process issue to the Defendant requiring answer to this Amended Complaint within the time allowed by law.
 - 2. For compensatory damages in an amount not to exceed \$200,000.00.
- 3. For treble damages pursuant to the provisions of T.C.A. § 47-18-109(a)(3); or in the alternative, for punitive damages in the amount of \$400,000.00.
- 4. For attorney's fees pursuant to the provisions of T.C.A. §§ 47-18-109(e)(1) and 47-29-101, et seq.
 - 5. For the costs of this action.

6. For such other and further relief to which the Plaintiff may prove entitled.

By: Alexis M. Whitaker (BPR #025748)
Attorney for Plaintiff

Carpenter, O'Connor & Sterchi, PLLC Post Office Box 2485 Knoxville, Tennessee 37901-2485 (865) 546-1831

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading has been served upon the executor's attorney by mailing a copy of same via U.S. Mail, first class, prepaid as follows:

Douglas L. Rose, Esq. Stone & Hinds, P.C. 507 Gay Street S.W., Suite 700 Knoxville, TN 37902

This 215 day of August, 2008.

Alexis M. Whitaker DAW

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Knownia Teachers Federal Credit Union

Vinuvida, Teachers Federal Credit Union

Knownia, Teachers Federal Credit Union

Research Manager 27917 P 26 amount My DO NOT BEDEVOOR # 25 L 27 4 EO E 10 O DO O O D 26 B PO 7 13 5 L INCULTIFICATION INCOME. Order of Jim EL ESS 46546400300 46546400300

This is a LEGAL COPY of your check. You can use it the same way you would use the original check

1822001 *10201* *1* *02696* 4::264279506: 000000125890?"1354 1.0018250000

EXHIBIT V

Benk of America, N.A. Eddorsement Gueranteed esysq bemail millilly with Stellied to The Account Of 4Do not andorse or write below this line. 2002/92/90 *2282TOTTT* *005/55/90 *940000190*



June 26 2007

RETURN ITEMS P.O. BOX 2518 HOUSTON, TX 77252-2518

TIMELESS ENTERTAINMENTS INC. PO BOX 52152 KNOXVILLE TN 37950-2152 US

Dear Valued Customer:

We have been notified that an item deposited to your account will be returned to Bank of America unpaid. We are reducing the availability of funds in your account for the item amount shown below for five business days or until the item is received. Upon receipt of the item, we will charge it back to your account and return it to you unless you have an agreement with us for special handling of returned deposited items. The information we have regarding this item is as follows:

Deposit Acct Number:

3785921977

Item Amount:

\$182,600.00

Date Deposited:

6/22/2007 \$182,600.00

Deposit Amount: Written By:

ALBERT BAAH

Payee Name:

TIMELESS ENTERTAINMENT INC

Return Reason:

PAYMENT STOPPED

In the event this item should be paid and not returned to us, these funds will be made available to you on the sixth business day from the date of this notice. If there are any fees assessed solely as a result of the delay we imposed on the availability of funds, please contact our customer service representatives at 1-800-432-1000.

Thank you for choosing Bank of America.

Sincerely,

Returned Items Department



CARPENTER, O'CONNOR & STERCHI, PLLC

LAWYERS

ARCHIE R. CARPENTER CHARLES F. STERCHI, III TOBY R. CARPENTER ALEXIS M. WHITAKER

OF COUNSEL: J. GREGORY O'CONNOR

Tn. Sup. Ct. Rule 31 Listed Mediator

10th Floor Regions Bank Building 507 South Gay Street Knoxville, Tennessee 37902 PHONE: (865) 546-1831 MAILING ADDRESS P.O. Box 2485 Knoxville, TN 37901

FAX: (865) 546-0432

July 30, 2008

Mr. Albert Baah d/b/a American Exchange 5526 N. Gray Street Knoxville, Tennessee 37919

Re:

Notice of Dishonored Check

Dear Mr. Baah:

Pursuant to Tennessee Code Annotated section 47-29-101, et seq., you are, hereby notified that the check described below, issued by you d/b/a American Exchange, has been dishonored:

Check Number:

1354

Check Date:

6/20/2007

Drawee Bank:

Knoxville Teachers Federal Credit Union

Amount:

\$ 182,600.00

Payable to (payee):

Timeless Entertainment, Inc.

Reason for dishonor:

Stop Payment

Pursuant to Tennessee law, you have thirty (30) days from the date of this notice to pay or tender to the payee the full amount of the check or remaining unpaid balance thereof, together with all reasonable costs and protest fees. Unless this amount is paid in full within the time specified above, the payee of the dishonored check may seek recovery by bringing a civil action against you, which may entitle the payee to the face amount of the check or the remaining unpaid balance thereof, interest at the rate of ten percent (10%) per annum on the remaining unpaid balance, court costs, reasonable attorney's fees, and treble damages.

Thank you for your prompt attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Alexis M. Whitaker

AMW/daw

cc: D

Douglas Rose, Esq.

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IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

TIMELESS ENTERTAINMENT, INC.,) XIII AOG ZI
Plaintiff,	HOWARD G. HOGAN
VS.) Docket No. 172039-3 🗸
Serve:)
ALBERT BAAH, individually and d/b/a AMERICAN EXCHANGE)
Defendant.)

PLAINTIFF'S ANSWER TO COUNTERCLAIM

Comes now the Plaintiff, Timeless Entertainment, Inc. ("Plaintiff"), and for its Answer to the Counterclaim filed by the Defendants, Albert Baah, individually and d/b/a/ American Exchange (collectively the "Defendant"), states as follows:

- 1. The Plaintiff denies that allegations in Paragraph 1 of the Counterclaim.
- 2. The Plaintiff is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 2 of the Counterclaim.
 - 3. The Plaintiff denies that allegations in Paragraph 3 of the Counterclaim.
 - 4. The Plaintiff denies that allegations in Paragraph 4 of the Counterclaim.
- 5. The Plaintiff states that the Bill of Sale for the Vehicle speaks for itself and therefore admits it contains language stating that title of ownership of the Vehicle does not pass until the final cash payment is made and all notes thereon are honored. However, the remaining allegations in Paragraph 5 of the Counterclaim are denied.
- 6. Plaintiff admits that the Vehicle was impounded in Chicago, Illinois, when one of Plaintiff's employees was arrested while in possession of the Vehicle without Plaintiff's

consent. However, the Plaintiff is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 6 of the Counterclaim.

- 7. While Plaintiff admits that Defendant took possession of the Vehicle at some point, the Plaintiff is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the first sentence of Paragraph 7 of the Counterclaim. The Plaintiff denies the allegations in the second and third sentences of Paragraph 7 of the Counterclaim. The Plaintiff further denies that it failed to respond to Baah's requests as alleged in the fourth sentence of paragraph 7 of the Counterclaim, but states that it is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the fourth and fifth sentences of Paragraph 7 of the Counterclaim.
 - 8. The Plaintiff denies the allegations in Paragraph 8 of the Counterclaim.
 - 9. The Plaintiff denies the allegations in Paragraph 9 of the Counterclaim.
 - 10. The Plaintiff denies the allegations in Paragraph 10 of the Counterclaim.
 - 11. The Plaintiff denies the allegations in Paragraph 11 of the Counterclaim.
- 12. The Plaintiff denies that Defendant is entitled to any relief as set forth in the Counterclaim.
- 13. Any allegations not heretofore admitted, denied or otherwise explained are hereby denied.

AFFIRMATIVE DEFENSES

1. For its first affirmative defense, Plaintiff would show that on or about May 14, 2007, Plaintiff duly paid, satisfied, and discharged the alleged claim of the Defendant set forth in the counterclaim herein by payment to the Defendant of the full sum owed for the Vehicle.

- 2. For its second affirmative defense, Plaintiff pleads accord and satisfaction. In this connection, it is alleged and shown that even if Plaintiff owed Defendant for the balance owed on the Vehicle as Defendant alleges, a dispute existed as to the balance owed and the Plaintiff remitted the amount which it considered to be due and payable to Defendant by issuance of a check, drawn payable to the order of Defendant on which there was indorsed in plain type, "Cadillax EXT 07 balance." Defendant accepted said check retained the funds derived there from and never returned either the check or the funds received from the check to the Plaintiff.
- 3. For its third affirmative defense, Plaintiff states that even if there was a deficiency, after the defendant's sale of the vehicle to Carmax, the defendant disposed of the vehicle in a commercially unreasonable manner. The defendant did not furnish a list of the collateral to be sold, inadequately advertised the sale and the collateral to be sold, failed to notify specifically dealers and others known by the defendant to be interested in the collateral, and stored the collateral in a manner such that prospective purchasers could not adequately inspect it.
- 4. For its fourth affirmative defense, Plaintiff would show that Defendant's Counterclaim fails to state a claim upon which relief can be granted.
- 5. For its fifth affirmative defense, Plaintiff would show that the Defendant is barred from recovery because the Defendant materially breached the agreement between the parties.
- 6. For its sixth affirmative defense, Plaintiff would show that Defendant is barred from recovery based on Defendant's own fraudulent actions and business practices.

7. For its seventh affirmative defense, Plaintiff would show that the Defendant's claims are barred by the doctrines of waiver, estoppel and unclean hands.

WHEREFORE, in consideration of the foregoing, the Plaintiff prays that the Defendant's Counterclaim be dismissed with all costs being taxed to the Defendant.

ALEXIS M. WHITAKER, BPR# 025748
Attorney for Plaintiff

OF COUNSEL:

CARPENTER,O'CONNOR & STERCHI, PLLC P.O. Box 2485 Knoxville, TN 37901-2485 (865) 546-1831

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading has been served upon the executor's attorney by mailing a copy of same via U.S. Mail, first class, prepaid as follows:

Douglas L. Rose, Esq. Stone & Hinds, P.C. 507 Gay Street S.W., Suite 700 Knoxville, TN 37902

This ______day of August, 2008.

Alexis M. Whitaker

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IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

TIMELESS ENTERTAINMENT, INC.,	2088 AUG 21 PM 4: 14
Plaintiff,	HOWARD G. HOGAN
Vs.) Docket No. 172039-3 🗸
Serve:)
ALBERT BAAH, individually and d/b/a AMERICAN EXCHANGE)))
Defendant.	,)

NOTICE OF WITHDRAWAL OF MOTION TO STRIKE

Comes the Plaintiff, Timeless Entertainment, Inc., and hereby withdraws its Motion to Strike portions of the Answer and Counterclaim filed by Defendant. Although the Plaintiff continues to object to certain allegations in the Defendant's Answer and Counterclaim, Plaintiff is confident that the Court will refrain from considering any irrelevant, immaterial, redundant or scandalous matters contained therein.

This the _____day of August, 2008.

ALEXIS M. WHITAKER, BPR# 025748 Attorney for Plaintiff

OF COUNSEL:

CARPENTER,O'CONNOR & STERCHI, PLLC P.O. Box 2485 Knoxville, TN 37901-2485 (865) 546-1831

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading has been served upon the executor's attorney by mailing a copy of same via U.S. Mail, first class, prepaid as follows:

Douglas L. Rose, Esq. Stone & Hinds, P.C. 507 Gay Street S.W., Suite 700 Knoxville, TN 37902

This ______ day of August, 2008.

Alexis M. Whitaker

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IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

TIMELESS ENTERTAINMENT, INC.,)	2008 AUG 21 PN 4: 14
Plaintiff,)	HOWARD G. HOGAN
VS.)	Docket No. 172039-3 /
Serve:)	
ALBERT BAAH, individually and d/b/a AMERICAN EXCHANGE)	
Defendant.)	

STIPULATION FOR AMENDMENT OF PLAINTIFF'S COMPLAINT

It is hereby stipulated and agreed between the attorneys for the respective parties in the above-entitled suit that the Plaintiff shall be allowed to file forthwith its First Amended Complaint, the receipt of which is hereby acknowledged by counsel for Defendant.

This the 215t day of August, 2008.

APPROVED FOR ENTRY:

Attorney for Plaintiff

Carpenter, O'Connor & Sterchi, PLLC

P.O. Box 2485

Knoxville, Tennessee 37901-2485

(865) 546-1831

Douglas L. Rose, BPR# 5026563

Attorney for Defendant

Stone & Hinds, P.C.

507 Gay Street S.W., Suite 700

Knoxville, Tennessee 37902

(865) 546-6321

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FILED

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE PART II

2008 AUG 21 PM 1: 43

WILLIAM D. MALONE,

Plaintiff,

HOWARD G: HOGAN

VS.

NO: 172140-2

EDNA MALONE, ET. AL.,

Defendants.

REPORT OF GUARDIAN AD LITEM

Comes now Rufus W. Beamer, Jr., court appointed guardian ad litem who would respectfully report to the court as follows:

- 1. The undersigned was appointed guardian ad litem for the unknown and unfound heirs of J.B. Malone, deceased, the unknown and unfound heirs of J.B. Malone, Jr., Claude Malone, Reed Malone, Flonnie Malone Stewart and Bertha Malone Everett. The order of appointment was made and entered on May 5, 2008.
- 2. The guardian ad litem would respectfully report as follows:
- J.B. Malone died, unmarried, in 1957. He was the father of six children who are identified as follows:

Bertha Malone Everett [died 1970's, unmarried, no children]

Claude Malone [died 1980's, Washington State, unmarried, no children]

Reed Malone [died 1960's, unmarried, no children]

Ray Malone [died November 18, 1982, survived by wife, Wanda Grimes Malone, who died April 29, 2008; also survived by son Tommy Malone, his only child]

J.B. Malone, Jr. [died May 15, 1952, unmarried at time of death and survived by Barbara J. Dow]

Flonnie Malone Stewart [died September, 1982 married to James Stewart who died in 1983; she had three children, Judy Stewart, Dudley Stewart and Donnie Stewart; Donnie Stewart

died November 10, 1079, unmarried, and survived by four children, Kim Stewart, Darrell Stewart, Marcia Stewart and Karen Wright.

- 3. The guardian ad litem would respectfully report that the foregoing constitutes all of the heirs, known and unknown, found and unfound of the said J.B. Malone, as presented to him by certain informants.
- 4. All of the living heirs of the said J.B. Malone have, in fact, been found and their names and addresses are know to the plaintiff.
- 5. The guardian ad litem is advised that Judy Stewart is not competent and is a resident of the Sonoma Development Center in Sonoma, California. He is further advised that her interest are represented by Karen Litzenberg, MBA and Assistant to the Executive Director of said institution and that adequate contact has been made with said person who will act on behalf of the said incompetent Judy Stewart.
- 6. Information herein presented by the guardian ad litem is based upon conversations with Tommy Malone on June 19, 2008, Dudley Stewart on July 23, 2008 and Barbara Malone Dow on July 3, 2008. Affidavits for each of these persons were prepared and presented to them. The affidavits of Dudley Stewart and Barbara Malone Dow have been filed. The affidavit presented to Tommy Malone has not been returned, for reasons unknown to the guardian ad litem. Information was also obtained via electronic communication from Karen Litzenberg.

WHEREFORE, the guardian ad litem submits the interests of the unknown and unfound heirs of J.B. Malone and his heirs, unknown and unfound, to the court.

Rufus W. Beamer, Jr. Guardian Ad Litem

Sworn to and subscribed before me this the 20^{th} day of August, 2008.

OTARA PUBLIC

ommission expires

09-08-0

CERTIFICATE

This is to certify that I have mailed/transmitted a copy of the foregoing to K. David Myers, Esq. by US Mail, postage pre-paid and/or by FAX 992-5354 this the $20^{\rm th}$ day of August, 2008.

Rufus W. Beamer, Jr.

08/26/2008 15:16:16

Summary of NOTICES Printed

TIMELESS ENTERTAINMENT INC. VS. ALBERT BAAH

Case No: M-08-172039 Please be advised the above styled case is set for TRIAL (TRI) at 09:30 AM on

Thursday, 1/22/2009.

FANSLER, DARYL R.

Name	Address	Trial Notice Date
ROSE, DOUGLAS L	507 GAY STREET, SW, SUITE 700 KNOXVILLE, TN 37902	01/22/2009
WHITAKER, ALEXIS M	PO BOX 2485 KNOXVILLE, TN 37901	01/22/2009

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESEE

TIMELESS ENTERTAINMENT, INC.,)	
Plaintiff,)	200
vs.)	Docket No. 172039-3
)	G PH
ALBERT BAAH, individually and d/b/a AMERICAN EXCHANGE)	3: 23
Defendant.	

ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND COUNTERCLAIM

COMES now the Defendant, Albert Baah, individually and d/b/a/ American Exchange, ("Defendant") by and through counsel, and for his Answer to the Plaintiff's First Amended Complaint ("Complaint"), states as follows:

- 1. The Defendant is without knowledge or information sufficient to admit or deny the averment in Paragraph 1 of the Complaint that Timeless Entertainment, Inc. is a corporation organized and existing under the laws of the State of Nevada, and therefore denies the averment. The remaining averments in Paragraph 1 of the Complaint are admitted.
- 2. The Defendant admits the averments in Paragraph 2 of the Complaint.
- 3. The Defendant admits the averments in Paragraph 3 of the Complaint.

- 4. The Defendant denies the averments in Paragraph 4 of the Complaint.
- 5. The Defendant denies the averments in Paragraph 5 of the Complaint.
- 6. The Defendant denies the averments in Paragraph 6 of the Complaint.
- 7. The Defendant denies the averments in Paragraph 7 of the Complaint.
- 8. Answering Paragraph 8 of the Complaint, Defendant admits that on or about April 2, 2007 Defendant and Plaintiff extensively negotiated and entered into a valid oral contract for the purchase and sale of a 2007 Cadillac Escalade EXT, Vehicle Identification Number 3GYFK62827G272799 ("Vehicle"). As further answer, Defendant denies the remaining averments in Paragraph 8 of the Complaint.
- 9. Answering Paragraph 9 of the Complaint, Defendant admits that a notarized bill of sale was given to Plaintiff on April 2, 2007, but denies that it evidenced all of the terms and conditions of the agreement as averred by Plaintiff in Paragraph 9 of the Complaint, and therefore denies the remaining averments in Paragraph 9.
- 10. The Defendant admits the averments of Paragraph 10 of the Complaint.
- 11. Answering Paragraph 11 of the Complaint, Defendant admits that on May 15, 2007 Plaintiff gave to Defendant a check, number 1015, for \$4,000, but denies

that the \$4,000 check represented the balance remaining on the Vehicle and therefore denies the remaining averments in Paragraph 11 of the Complaint.

- 12. Answering Paragraph 12 of the Complaint, Defendant admits that he deposited and kept the \$4,000 check and that he did not provide Plaintiff with the certificate of title. Defendant denies the remaining averments of Paragraph 12 in the Complaint.
- 13. Answering Paragraph 13 of the Complaint, Defendant admits that the application for certificate of title lists the Defendant as the Vehicle's owner and showed an outstanding lien against the vehicle in favor of Y-12 Credit Union. Defendant denies the remaining averments in Paragraph 13 of the complaint.
- 14. The Defendant denies the averments in Paragraph 14 of the Complaint as stated.
- The Defendant denies the averments in Paragraph 15 of the Complaint as stated.
- The Defendant admits that in June of 2007 the Vehicle was used by the Plaintiff and/or an agent of the Plaintiff for drug trafficking, and that the vehicle was impounded by the Chicago Police Department. Defendant is without knowledge sufficient enough to respond to the averment that Plaintiff attempted but was unable to get possession of the Vehicle. The Defendant further admits that Plaintiff did not have a certificate of title and that, at the time of the impounding, Y-12 Credit Union held a lien on the Vehicle.

- 17. The Defendant denies the averments in Paragraph 17 of the Complaint as stated.
- 18. The Defendant admits to satisfying the Y-12 Credit Union lien on the Vehicle and to subsequently taking possession of the Vehicle. As further answer, the Defendant avers that Y-12 Credit Union required the Defendant to pay off the outstanding lien, or risk having the vehicle sold by Y-12 Credit Union to satisfy the debt. The Defendant further avers that he made multiple attempts to contact the Plaintiff regarding the Vehicle but the Plaintiff failed to respond.
- 19. The Defendant denies the averments in Paragraphs 19 through 22 of the Complaint.
- 20. Answering Paragraph 23 of the Complaint, Defendant incorporates Paragraphs 1 through 19 above.
- 21. The Defendant denies the averments in Paragraphs 24 and 25 of the Complaint.
- 22. Answering Paragraph 26 of the Complaint, Defendant incorporates his responses in Paragraphs 1 through 21 above.
- 23. The Defendant denies the averments in Paragraphs 27 through 28 of the Complaint.
- 24. Answering Paragraph 29 of the Complaint, Defendant incorporates his responses in Paragraphs 1 through 23 above.
- 25. The Defendant denies the averments of Paragraphs 30 through 33 of the Complaint.

- 26. Answering Paragraph 34 of the Complaint, Defendant incorporates his responses in Paragraphs 1 through 25 above.
 27. The Defendant denies the averments of Paragraphs 35 through 41 of
- 27. The Defendant denies the averments of Paragraphs 35 through 41 of the Complaint.
- 28. Answering Paragraph 42 of the Complaint, Defendant incorporates his responses in Paragraphs 1 through 27 above.
- 29. The Defendant denies the averments in Paragraphs 43 through 45 of the Complaint.
- 30. Answering Paragraph 46 of the Complaint, Defendant incorporates his responses in Paragraphs 1 through 29 above.
- 31. The Defendant denies the averments in Paragraphs 47 through 49 of the Complaint.
- 32. Answering Paragraph 50 of the Complaint, Defendant incorporates his responses in Paragraphs 1 through 31 above.
- 33. The Defendant denies the averments of Paragraphs 51 through 56 of the Complaint.
- 34. Answering Paragraph 57 of the Complaint, Defendant incorporates his responses in Paragraphs 1 through 33 above.
- 35. The Defendant denies the averments of Paragraphs 58 through 60 of the Complaint.
- 36. The Defendant admits that he issued and delivered to the Plaintiff check number 1354 in the amount of \$182,600.00, dated June 20, 2007. However, the

Defendant issued the above check to the Plaintiff only after being instructed to do so by a special agent of the United States Department of the Treasury investigating the Plaintiff for potential violations of federal law, including money laundering. 37. The Defendant is without knowledge or information sufficient to

- admit or deny the averment of Paragraph 62.
- 38. The Defendant admits that it stopped payment on check number 1354. The Defendant is without knowledge or information sufficient to admit or deny all other averments in Paragraph 63.
- 39. The Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 64 and therefore denies the averments.
 - 40. The Defendant denies the averments of Paragraph 65.
 - The Defendant denies the averments of Paragraph 66. 41.
- 42. The Defendant admits that he has not paid \$82,600.00 to the Plaintiff. All other allegations in Paragraph 67 are denied.
- 43. In response to Paragraph 68, the Defendant admits that it received a notice that check 1354 had been dishonored and a request for payment thereunder.
- The Defendant admits that he has not paid \$82,600.00 to the 44. Plaintiff. All other allegations in Paragraph 69 are denied.
- The Defendant denies the averments of Paragraphs 70 through 73 of 45. the Complaint.
- The Defendant denies that the Plaintiff is entitled to any relief as set 46. forth in the Complaint.

47. Any allegations not heretofore admitted, denied or otherwise explained are hereby denied.

AFFIRMITIVE DEFENSES

- 1. The Plaintiff's Complaint fails to state a claim upon which relief can be granted.
- 2. The Plaintiff is barred from recovery as the Plaintiff breached the agreement between the parties.
- 3. The Plaintiff is barred from recovery based on its own fraudulent actions and business practices.
- 4. The Plaintiff's claims are barred by the doctrines of waiver, estoppel and unclean hands.

WHEREFORE, in consideration of the foregoing, the Defendant prays that the Plaintiffs Complaint be dismissed with all costs being taxed to the Plaintiffs.

COUNTER CLAIM

Now having answered the Plaintiff's Complaint, the Defendant assumes the role of Counter Plaintiff and sues Timeless Entertainment, Inc. ("Timeless Entertainment") for breach of contract upon the following grounds:

- 1. In April 2007, Donald Reynolds, president of the Timeless Entertainment, approached Albert Baah ("Baah") and requested that Baah agree to sell to Timeless Entertainment the Vehicle.
- 2. The Vehicle had recently been purchased by Baah from Airport Cadillac in Alcoa, Tennessee (a copy of the vehicle invoice is attached Exhibit "A"). At

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the time of the purchase, Baah had financed a portion of the purchase price via a loan from Y-12 Credit Union ("Y-12") (a copy of the promissory note is attached as Exhibit "B").

- 3. Timeless Entertainment offered to purchase the Vehicle from Baah for a total of Sixty Eight Thousand Seventy Five Dollars and Ten Cents (\$68,075.10) (a copy of the bill of sale attached as Exhibit "C"). Both parties orally agreed that Timeless Entertainment would make a Five Thousand Dollar (\$5,000) cash down payment and would pay the remaining balance within a few weeks.
- 4. This oral agreement was consistent with numerous prior vehicle purchase agreements entered into between Baah and Timeless Entertainment (bills of sales for prior purchases are attached hereto collectively as Exhibit "D"). Because Timeless Entertainment and/or Reynolds had complied with the terms of the previous agreements, Baah had a good faith belief that Timeless Entertainment would do the same under the purchase agreement for the Vehicle. In addition to the \$5,000 down payment, Timeless Entertainment also made a Four Thousand Dollar (\$4,000) payment towards the balance of the purchase price (a copy of the check is attached as Exhibit "E").
- 5. The Bill of Sale for the Vehicle contains language stating that both parties agreed that the title of ownership of the Vehicle would not pass to Timeless Entertainment until the final cash payment had been paid (See Exhibit "C"). By June 2007, Timeless Entertainment had failed to pay off the remaining balance on the Vehicle as was required under the agreement.

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- 6. Shortly thereafter, Baah was notified by the lien holder of the Vehicle, Y-12 Credit Union, that the Vehicle had been used in drug trafficking in Chicago, Illinois, had been impounded by law enforcement, and had been subsequently released to Y-12 Credit Union (a copy of the police report is attached hereto as Exhibit "F"). Thereafter, Y-12 Credit Union required that the loan secured by the lien be paid off in full or Y-12 Credit Union would consider the seizure a default under Baah's loan agreements and Y-12 Credit Union would sell the vehicle. (A copy of the demand letter from Y-12 is attached hereto as Exhibit "G").
- 7. Baah paid off the balance owed to Y-12 and took possession of the Vehicle. The lien was released by Y-12 on August 10, 2007 (a copy of the release is attached hereto as Exhibit "H"). At the time the Vehicle was returned to the Baah, it was in poor condition and had excessive mileage. Over the next several days Baah attempted on multiple occasions to contact Reynolds (the only contact Baah had for Timeless Entertainment) in an effort to secure payment of the remaining balance owed to Baah by Timeless Entertainment on the Vehicle. Timeless Entertainment failed to respond to Baah's requests and Baah was forced to sell the Vehicle in an effort to recoup some of the amount he was required to pay to Y-12. Baah subsequently sold the Vehicle to Carmax on August 15, 2007 for Forty Four Thousand Seven Hundred Fifty Dollars (\$44,750.00) (vehicle invoice attached hereto as Exhibit "I").
- 8. Because Timeless Entertainment failed to make the payments required under the oral and written contracts, used the Vehicle in illegal drug trafficking, and did not respond to Baah's repeated requests that the outstanding balance be paid in

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full, Baah's only recourse was to sell the Vehicle to pay off the Y-12 loan. Baah was never, at any time, obligated to surrender title to the Vehicle to Timeless Entertainment. Under the sales agreement, Baah had committed himself to transfer title to Timeless Entertainment Defendant only when the full balance owing on the Vehicle was paid.

- 9. Baah alleges that he entered into a valid oral agreement with the Timeless Entertainment under which Timeless Entertainment agreed to purchase the Vehicle for Sixty Eight Thousand Seventy Five Dollars and Ten Cents (\$68,075.10). Baah relied on this agreement and released the Vehicle to Timeless Entertainment believing the full balance would be paid in full within a few weeks.
- 10. Timeless Entertainment breached the agreement by failing to pay the full \$68,075.10. Further, Timeless Entertainment or its agents or employees used the Vehicle in drug trafficking which resulted in the Vehicle being seized by law enforcement and, subsequently, sent to Y-12 Credit Union. Consequently, Baah was forced to pay off the loan owed to Y-12 Credit Union. Timeless Entertainment failed to pay the balance owed to Baah or respond to Baah's repeated demands to pay for the Vehicle. In order to recoup the money he was forced to pay to Y-12 Credit Union, Baah sold the Vehicle to Carmax.
- 11. Baah has suffered a financial loss and is entitled to damages based on Timeless Entertainment's breach of its purchase agreement with Baah.

WHEREFORE, Baah respectfully requests:

1. That Timeless Entertainment be required to answer this Counter Complaint within the time period described by law.

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- 2. That Baah be awarded a judgment against Timeless Entertainment in the amount of not less than Fourteen Thousand Three Hundred Twenty-Five Dollars and Ten Cents (\$14,325.10).
 - 3. That all costs in this cause be taxed to Timeless Entertainment.
 - 4. Such other and further general relief as this Court deems appropriate.

Respectfully submitted this 3rd day of September, 2008.

Chadwick B. Tindell (BPR #015052)

Douglas L. Rose (BPR #026563)

Stone & Hinds, P.C.

507 Gay Street, S.W. Suite 700

Knoxville, Tennessee 37902

(865) 546-6321

Attorneys for Defendant/Counter-Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Answer and Counter-Claim has been served on the following:

Alexis M. Whitaker, Esq. P.O. Box 2485 Knoxville, Tennessee 37901

this 4th day of September, 2008, via U. S. Mail, facsimile or hand delivery.

Douglas L. Rose, Esquire

VEHICLE INVOICE

AIRPORT CADILLAC, Inc.



3203 Airport Hwy. ALCOA, TN. 37701 (865) 970-2960

ADDRESS

ALBERT BAAH

1536 CLIFFSIDE LN

KNOXVILLE TN 37914

HM: (865)524-8940

WK:

YEAR	MAKE	MODEL	NEW OR USED	VEHICLE IDENT. OR SER, NO.
2007	CADIL	LAC ESCALA	DE	3GYFK62827G272799
SALESMAN	HOUS			NOS.
COLOR :				

COLOR OF VEHICLE:

LIEN: Y-12 FEDERAL CREDIT UNION PO BOX 2512

OAK RIDGE TN 37831-2512

EXHIBIT Α

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LOANLINER.



Note and Disclosure Statement



-5:30, Saturday 9:00-12:00 0-482-1043 Office Hours: Monday - Fr

OAK RIDGE W. KNOXVILLE 501 Latayeta Drive 8540 Clarkon Hwy. CLINTON Trades Selvers Blad. SEVIERVILLE 872 Doly Parton Plays

LAFOLLETTE Plan ROANE COUNTY 715 Roans State Hwy. N. KNOXVILLE 116 Center Park Drive

BORROWER NAME (Last - First - Middle Initial) AND ADDRESS (Street - City - State - Zip Code)

DATE 05/09/2007

830236-01

MEMBER NUMBER

BAAH, ALBERT 1536 CLIFFSIDE LN KNOXVILLE TN 37914

FIXED VARIARI F

MATURITY DATE NOTE NUMBER 05/23/2012

In this agreement "you" and "your" mean each person who signs this agreement. The "credit union" means the credit union whose name appears above and anyone to whom the credit union transfers its rights under this agreement. The terms on the reverse side are part of this agreement. Boxes checked below apply to this agreement.

TRUTH IN LENDING DISCLOSURE ANNUAL PERCENTAGE RATE The cost of your credit as a yearly

FINANCE CHARGE The dollar amount the credit will

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

Total of Payments The amount you will have paid when you have made all payments as scheduled.

e means an estimate Prepayment: If you pay off early you will not have to pay a penalty. Required Deposit: The Annual Percent-age Rate does not take into account your

required deposit, if any.

15.84 % \$ 13417.37 \$ 28943.23 42360,60

Variable Rate: The annual percentage rate (APR) may increase during the term of this transaction if the credit union's average cost of dividends paid on share certificate accounts as of the 20th day of the last month of each preceding calendar quarter (Index) increases. We will add a margin of 2% for new vehicles and 4% for used vehicles to the Index and then round up to the nearest 25%. The rate will change quarterly on the first day of January, April, July and October. The rate will never be less than 6% for new vehicles and 8% for used vehicles. Any interest rate increase will result a higher final payment. If your loan were for \$5,000.00 at 8.00% for 48 months, and the rate increased to 8.50% in 24 months, you would have to make 23 more payments of the same amount and your final payment would be increased by \$16.36.

Your	Number of Payments	An	ount of Payments	When Paymen	ts Are Due	from anyone	you want that	is acceptable	roperty insurance to the credit union.
Payment Schedule will be:	60		706.01 MO	NTHLY BEGIN	NING: 06/23/200)7 If you get th _\$ N/A	e insurance fro	m the credit	union you will pay
Security: 0	ollateral securing othe ing a security interest i	loans with t	he credit union will a and/or deposits in t	also secure this loan. the credit union; and	the goods/property being purchased;	Othe	r (Describe)		
	e: After 15 days or m				~/~	Filing Fees		Non-Filing	Insurance
Late Charg	e: Aller 15 days of iti	JIE IALE, WE	ilay charge you o /s	Of the payment amou	iii duo.	\$	N/A	\$	N/A
SEE VOUR	CONTRACT DOCUMENT	FOR ANY A	DITIONAL INFORMAT	TION ABOUT NONPAYM	ENT, DEFAULT, AND ANY RE	QUIRED REPAY	MENT IN FULL I	BEFORE THE S	SCHEDULED DATE.
	TION OF THE AM			•					
ITEMIZATION AMOUNT FIN		3.23	AMOUNT GIVEN TO YOU DIRECTLY'S	N/A	AMOUNT PAID ON YOUR ACCOUNT \$	N/A	PREPAID FINA CHARGE	NCE \$	N/A
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ON YOUR BE	D TO OTHERS \$ HALF \$ ⊃S	943 23		CADILLAC IN	c \$	N/A_	To N/A		
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Promise to Pay: You promise to pay \$ 28943.23 to the credit union plus interest on the unpaid balance at 15.84% per year until what you owe has been repaid. Collection Costs: You agree to pay all costs of collecting the amount you owe under this agreement including court costs and reasonable attorney fees.

Security Offered:	MODEL	YEAR	I.D. NUMBER	TYPE	VALUE	
	Sinships					
CADILLAC	ESCALADE	2007	3GYFK62827G272799	EXT		

Other (Describe):

This Note is governed by the laws of You Pledge Shares and/or Deposits of \$ in account number N/A Key No. SIGNATURE: If you agree to make and be bound by the terms of this Note and Security Agreement sign below. If you are not a borrower but an owner of the collateral for this loan, sign below and check the box for "Owner of Collateral". By doing so you agree only to the terms of the Security Agreement.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.

Date Borrower 2 Owner of Collateral (other than a Borrower) 05/09/2007X · Date Borrower Owner of Collateral (other than a Borrower) CREDIT INSURANCE APPLICATION/SCHEDULE (SEAL) Obu are eligible for disability insurance only if you are working for wages or profit for 25 hours a week or more on the date of any advance. If you are not, that particular advance will not be insured until you return to work. If you are off work because of temporary layoff, strike or vacation, but soon to resume, you will be considered at work.

"You" or "Your" means the member and the Joint insured (if applicable).

Credit insurance is voluntary and not required in order to obtain this loan. You may select any insurer of your choice. You can get this insurance only if you check the "yes" box below and sign your name and write in the date. The rate you are charged for the insurance is subject to change. You will receive written notice before any increase goes into effect. You have the right to stop this insurance by notifying your credit union in writing. Your signature below means you agree that:

If you elect insurance, you authorize the credit union to add the charges for insurance to your loan each month.

You are eligible for insurance up to the Maximum Age for Insurance. Insurance will stop

When you reach that age.

NOTE: THE LIFE AND DISABILITY INSURANCE CONTAINS CERTAIN BENEFIT EXCLUSIONS, INCLUDING A PRE-EXISTING CONDITION EXCLUSION. PLEASE REFER

your loan each month.		-	TO YOUR	CERTIFICATE FOR DETAILS.			
YOU ELECT THE FOLLOWING INSURANCE COVERAGE(S)	YES	NO	INITIAL PREMIUM RATE SCHEDULE	INSURANCE MAXIMUMS	DISABILITY	LIFE	
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Joint Credit Life		XX	\$ N/A e				



BILL OF SALE AMERICAN EXCHANGE

526 NORTH GAY STREET KNOXVILLE, TN 37917 (865) 523-5643 FAX 523-5690

COLD TO THE PLANE THE	t. 1.16. 11 37950
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Make of Car CHBILLHC	
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in this agreement. We do not guarantee the mileage, m it is understood and agreed that the Title of Owner the final cash payment is made and all checks or notes in is free from all encumbrances except as stated above This order is not binding unless authorized by an	ership of car as above described does not pass to me until on this car are honored. I certify that the car I am trading he and agree to take the above car AS IS. n officer of the company,
I hereby certify that I am eighteen years of age Buyer's Signature 7	of over, and that the car I am trading in is my property.
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EXHIBIT C

AMERICAN EXCHANGE

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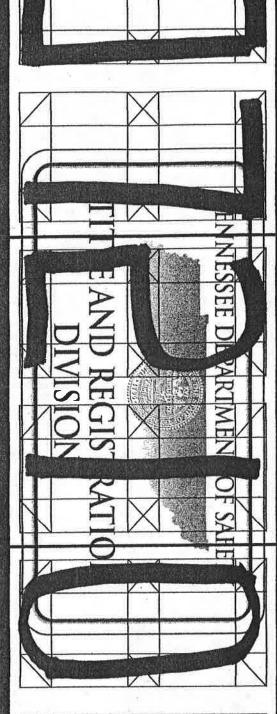


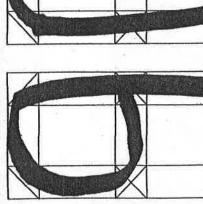
TENNESSEE DEPARTMENT OF SAFETY

THIRTY DAY LIMIT



R P R O T S M I





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FEE: \$5.50 **NOTICE: THIS PLATE IS VOID UNLESS FULLY EXECUTED BELOW IN INK**

5N3AA08C8#N811797 ISSUED FOR: 10 FINITI YEAR 2004

526

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STREET

ADDRESS

MODEL OX SC

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ISSUED (IF BY DEALER, COMPANY NAME)
BY: TIMERICAN EXCHANGE ファクメンハへの CHY CHY

DEALER I.D. #

R328279

CERTIFICATE OF TITLE

RM11932

VEHICLE IDENTIFICATION NO.

TASABUSE BANET | ZE

TITLE NO

YEAR MAKE OF MODEL

ERECT OF THE FORTH OF THE STANDARD

NAME(S) AND ADDRESS OF REGISTERED OWNER(S)

HOLLIN PROPERTIES PO BOX 24258 KNOXVILLE

DATE OF FIRST SECURITY INTEREST

FIRST LIENHOLDER

TN 37933



(FIRST LIEN), INTEREST IN THE DESCRIBED VEHICLE IS HEREBY RELEASED

NAME

DATE OF SECOND SECURITY INTEREST

AUTHORIZED SIGNATURE

(SECOND LIEM INTEREST IN THE DESCRIBED VEHICLE.

NAME

AUTHORIZED SIGNATURE

Aller the chericus of reasonable diligence in accertaining whether or not the state-ments made in the application" are first. The splicing above named has been duly recorded in this department as the owner of the motor vehicle described subject to the below lifes of any Any letter or other communications regarding motor white Certificate of Tile should be by STATE OF TENNESSEE THE AND REGISTRATION ON 44 Vantage Wayy Saite 160, Nastwile, Tennessee 3722,2,000.

29010059

-0950 (REV. 5/97)

Commissioner

STATE OF TENNESSEE DEPARTMENT OF SAFETY

STORE IN A SAFE PLACE — ANY ALTERATION OR ENASURE VOIDS THIS TITLE

FEDERAL and STATE LAW requires that you state the mileage in connection with the transfer of ownership. Fallure to complete or providing a false statement may result infers and complete or providing a false statement may	providing a false statement may
ASSIGNMENT OF TITLE BY REGISTERED OWNER	
delivered to the purchaser with the vehicle. Purchaser must make application for	a new Certificate of Title with the County
vehicle described in this title has been transferred to the following printed name and	address: (Record lien in space below)
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Make, VIN, Value of trade-in	
SECOND RE-ASSIGNMENT BY LICENSED DEALER	
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and	
E (Hand Printed) KMEQICAN XXCHANGE "1 ag aware of the above	Adometer certification made by the seller"
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ne of trade-in	
State Sales Tax	
THIRD RE-ASSIGNMENT BY LICENSED DEALER The undersigned hereby certifies that the vehicle described in this title has been transferred to the following printed name and address: (Record Jennin space below)	(Record flemin space below)
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SIGNATURE OF BUYER(S)	
SALES PRICE BUYER(S) NAME (Hand Printed)	Third to be
Make, VIN, Value of trade-in	
State Sales Tax	
LIEN HOLDER TO BE RECORDED AND SHOWN ON NEW TITLE: 1ST LIEN IN FAVOR 0F	e Contraction
NAME & ADDRESS	

BILL OF SALE AMERICAN EXCHANGE

Charger 2005 2B3K Cash Price of Car	K/1. Serial No. (A53H16H1.	3442	-0
	M35H16H1.	5442	
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I hereby certify that I am eighteen years of age of		trading in is my p	roperty.
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BILL OF SALE AMERICAN EXCHANGE

SOLD TO Timelen L. Address 1.0. Box 5215:	, KNOXVILLE IN	377	20
Make of Car CHEVY		531216.57	1 12
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in is free from all encumbrances except as stated This order is not binding unless authorized		car AS IS.	t Kr
I hereby certify that I am eighteen years of	age of over, and that the car I am	trading in is my	property.
Buyer's Signature	PARTICULAR TAXABLE PROPERTY OF A SECURIS	in Albe	R
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AND THE RESIDENCE OF THE PARTY			STREET, ST.

AMERICAN EXCHANGE

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BILL OF SALE AMERICAN EXCHANGE

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the final cash payment is made and in is free from all encumbrances of	d all checks or notes or except as stated above	this car are honor and agree to take	ed. I certify to the above ca	nat the car I am	trading
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I hereby certify that I am e			car I am tra	ding in is my p	roperty.
Buyer's Signature			Salesman	-0= -1	1
Address			Phone 5		
Authorized by				1.80	
Sworn to and subscribed before		day of 190 "	7778	200	

BILL OF SALE AMERICAN EXCHANGE

(865) 523-56	43 FAX 523-5690	
SOLD'TO TIMELESS ENT Address 1001 CROOKED S Make of Car CADILLAC	TERTAINMENT I	1,2005 NOC DOX, TN 3
ESCALADE 2002 (Green) 15 YE	SUV K63N62R10	0/03/
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State of Tennessee Sales Tax		2181 5
N Total	Cost, Including Accessories	ļ
Deposit /		
Trade in Allowance		
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Aditional Cash Payment RECORD OF CAR TRADED IN	TOTAL CREDIT	
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I hereby certify that I am eighteen years of ag	0 1	1101 - 1
Buyer's Signature CEO Dolla C.	Salesma Salesma	756 EILIA
Authorized by TN 371112 Person	Date Delivered	1110-
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DONALD R.	KEYNOLDS ~	R.
will have to	orgn.	W

KURT E. PETERSON COMPAN.

Bankof America

Bank of America



Capture Date: 20070516 Sequence #: 0892217383

TIMELESS ENTERTAINMENTS INC. P.O. BOX 52152 ICHOXVILLE, TN 37850-2152 DATE 5-14-07	1015
1	, OGG 60
Bank of America	
FOR Cidellow EXT D7 BALANCE Fonds R. Repl. 10010151 (10640000020): 0037859219770 2000	400000

Electronic Endorsements

Date Sequence 20070516

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84000026 111012822

FIRST TENNESSEE BANK, NA

BANK OF AMERICA, NA

20070516 . 000892217383 No Payee Endorsements Found

> Page 2 of 2 TST_IMAGEVIEW

Batch Fax Req. # 6844238

Thu Nov 15 13:17:09 PST 2007

Chicago Police Department Organized Crime Division



Asset Forfeiture Unit Vehicle Management 3340 W. Fillmore Chicago IL 60624

Fax: 312.746.7279

Voice: 312.746.7146

Pax: 4339

FAX TRANSMISSION COVER SHEET

(312-746-7637

LIEN HOLDER H

8:30AM

Date:

31 July 2007

To:

Carol Baumann

Fax:

865 - 862 - 0007

Subject:

2007 Cadillac Escalade

Sender:

P.O. Kathy Sheppard



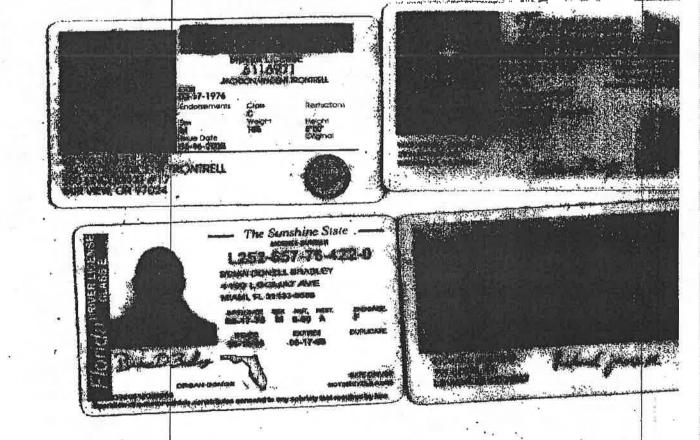
YOU SHOULD RECEIVE 6 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL.

NOTES: Thanks for all of your help.

BT 3100

1815

RD# HN 477 699 EVENT# 07774 RAD# 189-07-2056 THOMPSON #7



VEHICLE TOW REPO		BEAT OF ASSIGNMENT	310	O	3. RD. N	-47	769	19
4. IMME	DIATE (Check	one)		5. IMPO	OUNDMENT (Check one)	6. S	EIZURE (Chec
PARKED ON PRIVATE PROPERTY WIT OWNER UNKNOWN, AND A COMPL OWNER/AGENT.	HOUT CONSE AINT (CPD-11.	NT OF PROPERTY OWNER/A 478) HAS BEEN SIGNED BY T	GENT, VEHICLE THE PROPERTY		DRENONTHE: HT MCC 8-16-0		0:	SEIZURE 625 ILC 5/4-107(k)
		4		DUMPING ON REAL ESTATE WITOUT PERMIT MCC 7-28-440			SEIZURE 720 ILCS 5/36-1	
☐ TRAFFIC CRASH - VEHICLES WHICH CANNOT BE OBSTRUCTING THE FLOW OF TRAFFIC, OR CAU OPERATOR IS UNWILLING/UNABLE TO OBTAIN		JEING A HAZARDOUS CONDITION, AND THE			ESSION OF FIRE TOR VEHICLE N		FORFEITURE 720 550/12	
ARRESTEE'S PROPERTY - MOTOR VEH					11-4-1115	LEICTION.		ORFEITURE 72 570/505
☐ HAZARD • MOTOR VEHICLE OBSTRUC NARRATIVE.	TING TRAFFIC	FLOW: INDICATE VIOLATIO	ON IN		STITUTION MO		7.0	THER (Check
ED WITH AN ADDITIONAL OFFENSE,	REQUEST	TO NOTIFY INVESTIGATING	S UNIT.		KLE MCC7-24-		X	OLD FOR INVESTIGATION
O INSURANCE AND IS SUSPENDED - TOW OF A VEHICLE BELONGING TO VEHICLE AND NO DRIVER'S LICENSE	DANINDIVIDL	IAL WHO HAS NO INSURAN	CEFORTHE		CENSED PUBLIC ICLE MCC 9-11			NANTED VEHIC
PUBLIC ADMINISTRATOR'S/MEDICAL PERSON INVOLVED IN AN ESTATE OF	R MEDICAL EX	AMINER'S CASE.		(сл	ER MCC VIOLATE VIOLATION IN	NARRATIVE)		CONFIDENTIAL VIN CHECK OTHER VIOLATI
STOLEN- TOW AUTHORIZED BY OWN ILLEGALLY PARKED, OR NEEDED FO			ERED VEHICLE 19. MOTOR VE	(CIT	RILCS VIOLATI E VIOLATION IN NTORY NO.			CITE VIOLATION
3340 W. FILL	MORE	The same of the sa		ver			6	007
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816 YNL	TENN		TRIEN.	1	ONE	ON V	EH	ICLE
7. NAME CONNER ARRESTEE 7. MELES FUT A 2. NAME DRIVER ARRESTEE	10 76 2	30X 5216	201	ME PHONE		20. BUSINESS PHO () 25. BUSINESS PHO		21. OWNERS VERIFIE A YES O
*	KN	OX VILLE /	N [""]	MIL PHONE		()		O YES EI
7. PERSONAL PROPERTY IN VEHICLE OF YES ESCRIBE IN MARRATIVE 9. PROPERTY INVENTORIED BY - NAME	28. PRO	PERTY INVENTORY NO.			DISTRICT	· · · · · · · · · · · · · · · · · · ·	DA	ATE/TIME
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August 3, 2007

Location:

Albert Baah

Oak Ridge

1536 Cliffside Ln Knoxville, TN 37914

West Knoxville

Campbell County

Blount County

Kingston

North Knoxville

Clinton

Re:

2007 CADILLAC ESCALADE

VIN #:

Loan #:

0000830236 - 01

Balance: \$ 28,372.53

Dear Albert Baah:

This letter is to advise you that on 08/03/2007 the above mentioned vehicle was repossessed by Y-12 Federal Credit Union. You have until 5:30 PM 08/13/2007 to pay off the vehicle in the amount shown, plus any fees associated with this repossession. If not, the vehicle will be sold by private sale sometime after 9:00 AM 08/14/2007.

All proceeds from the sale will be applied to your outstanding debt. If sold for less than the balance, you will be notified of any remaining balance. If sold for more than the balance owed, the proceeds will be returned to you less any amount owed to other secured parties. You may request a detailed accounting of this debt by calling this office.

Sincerely,

Ron Arms Senior Collector (865) 482-1043 ext. 303 1-800-482-1043 ext. 303

Senior Collector

Oak Ridge

501 Lafayette Drive

Oak Ridge, Tennessee 37830

865/ 482-1043

Fax:

865/ 482-5488

Cyberspace Branch:

http://www.y12fen.org

E-mail

Netlink@y12fen.org

By certified mail

EXHIBIT /

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2007 CADI EXT

DATE OF FIRST SECURITY INTEREST 05-09-2007 FIRST LIENHOLDER CODE

Y-12 FEDERAL CREDIT UNION

PO BOX 2512 DAK RIDGE

TN 37831 - 2512

FIRST LIEN RELEASED BY

-10-07 RELEASE DATE

Y-12 FEDERAL CREDIT UNION

PO BOX 2512 OAK RIDGE

37831 - 2512

EXHIBIT Η

830236-01

STATE OF TENNESSEE DEPARTMENT OF REVENUE

0000001

VEHICLE IDENTIFICATION NUMBER

3GYFK62827G272799

YEAR

MAKE

CADI

BODY TYPE MODEL .

TITLE NUMBER

85749021

PREVIOUS TITLE NO

PREV STATE

SALES OR USE TAX

ODOMETER

MSO

TN

PREV OTHER TITLE ST:

06-05-2007

REMARKS

DATE TITLE ISSUED DATE VEHICLE ACQUIRED 05-09-2007

ACTUAL MILEAGE

ALBERT BAAH

1536 CLIFFSIDE LANE KNOXVILLE

SATISFACTORY PROOF OF OWNERSHIP HAVING BEEN SUBMITTED UNDER TENNESSEE CODE ANNOTATED, 55-3-101, TITLE TO THE MOTOR VEHICLE DESCRIBED ABOVE IS VESTED IN THE OWNER'S NAME HEREIN. THIS OFFICIAL CERTIFICATE OF TITLE IS ISSUED FOR SAID MOTOR VEHICLE.

FIRST LIEN RELEASED BY

SIGNATURE

8-10-07

RELEASE DATE

DATE OF FIRST SECURITY INTEREST 05-09-2007

EIRST LIENHOLDER CODE

Y-12 FEDERAL CREDIT UNION PO BOX 2512 TN 37831

TN 37831 - 2512)

DMS Tracking # 398969 Reprint # 0

CARMAX®

Vehicle Purchase Agreement

This <u>Vehicle Purchase Agreement</u> (the "Agreement") is entered into as of	08/15/2007 e Purchaser, and the words	between the Seller(s) and the you" and your mean the Seller.
Seller's Name ALBERT BAAH	Social Security No	
Seller's Address 1536 CLIFFSIDE LN.	KNOXVILLE	TN 37914
Seller's Name	Social Security No	
Seller's Address	1 (1) × 'c', cale	The state of the s
Purchaser's Store Name / Location CarMax Auto Superstores, Inc.	- 10 f 18m - 11	Spring of the second of the se
Purchaser's Address 11225 PARKSIDE DRIVE	KNOXVILLE	TN 37934
You propose to sell the following vehicle (the "Vehicle") to Purchaser:		
Year 2007 Make CADILLAC Model ESCALADE VIN_	3GYFK62827G272799	Mileage12,251
AGREEMENT TO SELL VEHICLE By executing this Agreement, you hereby sell, transfer, and convey all rights, transfers, and we hereby accept all such rights, title, and interest in and to the Vermaking of warranties and representations, we hereby agree to pay you \$	44,750.00	Vehicle to us, our successors and the sale of the Vehicle to us and the
SEPARATE TRANSACTION You understand and agree that THE SALE OF THE VEHICLE TO US IS A Fill of a vehicle from CarMax. You understand and agree that a subsequent pured distinct from this purchase of the Vehicle by CarMax from you.	NAL SALE and is in no way nase of a vehicle from CarM	connected to any purchase by you ax is a separate transaction and is
TITLE TRANSFER AND LIENHOLDER INFORMATION You hereby represent and warrant to us that you are the sole legal and record the Vehicle unless disclosed below, and that:	A 32 IN	
The Vehicle is free from all security interests, liens, charges, and encuming outright: or	brances ("Liens") and that yo	ou have the right to sell the vehicle
Upon payoff to the following lienholder(s):	a right maket is	7. 20 10 10 10 10 10 10 10 10 10 10 10 10 10
You represent and warrant that the Lienholder(s) is the only party with Liens ag is the total estimated payoff of the Liens on the Vehicle (the "Estimated Payoff entire amount of the actual payoff owed to any Lienholder, including any fees, ("Actual Payoff"). You and Purchaser further agree that:	penalties, interest or other ar	mounts assessed by the Lienholder
You are financing the Estimated Payoff in connection with financing the pu	irchase of another vehicle by	you from CarMax; or
☐ You are paying to CarMax an amount equal to the Actual Payoff less the F	Purchase Offer, in cash or ce	rtified funds
VEHICLE MILEAGE DISCLOSURE Seller has executed an Odometer Disclosure Statement, which is incorporated odometer of the Vehicle reflects the actual mileage of the Vehicle, unless one		
Reflects the amount of mileage in excess of its mechanical limits.	Is NOT actual mileage, mean	ing there is an odometer discrepancy
PLEASE SEE THE REVERSE OF THIS DOCUMENT FOR	ADDITIONAL TERMS O	F THIS AGREEMENT.
You acknowledge receiving and reading entirely, prior to signing below, a copy Purchase Procedures, all of which are incorporated herein by reference. You a VEHICLE HISTORY AND CONDITION section on the reverse of this document be bound by this Agreement.	of this Agreement, the Carl acknowledge reviewing and out. By executing this docume	Max Appraisal, and the CarMax completing the DISCLOSURE OF nt. you represent that you intend to
Seller's Signature Date By:	Ate Duchus Purchaser's Nam	ture Date
Seller's Signature Date PFF291		MIS ID 1500000
Order # Carmax.com Revision Date 10/06		Legal - JV
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Dear CarMax Customer:

CarMax has issued you a bank draft, a special type of instrument commonly used to purchase motor vehicles. Please note that you cannot simply cash the bank draft. Instead, you must deposit the bank draft in your savings or checking account. Also, your bank will typically place a hold on the bank draft that can last from 3 to 10 banking days. For this reason, you are encouraged to check with your bank for its hold policy and to confirm the availability of funds before attempting to draw on the bank draft.

We appreciate your continued business and look forward to working with you in the future.

Sincerely,

CarMax Business Office

Customer Signature (Acknowledges Receipt)

Customer Printed Name

PFF152 • Legal- JK • Design- SS 09/02 • Editor-JK

VEHICLE IDENTIFICATION NUMBER

YEAR MAKE MODEL

BODY TYPE

TITLE NUMBER

3GYFK62827G272799

2007

CADI

EXT

85749021

NEW USED DEMO

PREVIOUS TITLE NO

PREV STATE

SALES OR USE TAX

ODOMETER

MSO

TN

06-05-2007

DATE VEHICLE ACQUIRED 05-09-2007

PREV OTHER TITLE ST:

DATE TITLE ISSUED

REMARKS

ACTUAL MILEAGE

ALBERT BAAH 1536 CLIFFSIDE LANE

KNOXVILLE

SATISFACTORY PROOF OF OWNERSHIP HAVING BEEN SUBMITTED UNDER TENNESSEE CODE ANNOTATED. 55-3-101, TITLE TO THE MOTOR VEHICLE DESCRIBED ABOVE IS VESTED IN THE OWNER'S NAME HEREIN. THIS OFFICIAL CERTIFICATE OF TITLE IS ISSUED FOR SAID MOTOR VEHICLE.

FIRST LIEN RELEASED BY

RELEASE DATE

DATE OF FIRST SECURITY INTEREST 05-09-2007

FIRST LIENHOLDER CODE

Y-12 FEDERAL CREDIT UNION PO BOX 2512 OAK RIDGE TN 37831 -

TN 37831 - 2512

MA 271467

Athr. John B

VEHICLE IDENTIFICATION NUMBER MAKE MODEL BODY TYPE TITLE NUMBER YEAR 3GYFK62827G272799 2007 CADI 85749021 EXT PREVIOUS TITLE NO NEW USED DEMO PREV STATE SALES OR USE TAX CO **ODOMETER** MSO 05 PREV OTHER TITLE ST: TN DATE TITLE ISSUED 06-05-2007 REMARKS DATE VEHICLE ACQUIRED 05-09-2007 ACTUAL MILEAGE

ALBERT BAAH 1536 CLIFFSIDE LANE KNOXVILLE

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FIRST LIENHOLDER CODE

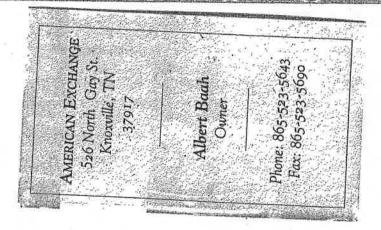
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Y-12 FEDERAL CREDIT UNION PO BOX 2512 OAK RIDGE TN 37831 -

TN 37831 - 2512.

TENNESSEE

4271467



FILED

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

TIMELESS ENTERTAINMENT, INC.,	2080 SEP 26 PM 1: 42
Plaintiff,	BOWARD G. HOGAN
VS.) Docket No. 172039-3
ALBERT BAAH, individually and d/b/a AMERICAN EXCHANGE)
)
Defendants.)

REQUESTS TO ADMIT

TO: Albert Baah, individually and d/b/a
American Exchange,and his attorney
Douglas L. Rose, Esq.
507 S. Gay Street, Suite 700
Knoxville, Tennessee 37902

Comes the Plaintiff, pursuant to Rule 36.01, Tennessee Rules of Civil Procedure, and submits the following Requests to Admit to the Defendant, Albert Baah. These Requests to Admit are to be admitted or specifically denied within thirty (30) days after service of this request. If the Defendant cannot admit or deny the following, the Defendant shall set forth in detail the reasons why the matter cannot be truthfully admitted or denied. Further, the answering parties may not give lack of information or knowledge as a reason for failure to admit or deny unless they state that they have made reasonably inquiry and that the information known or readily obtainable by them is insufficient to enable them to admit or deny. The Plaintiff requests the Defendant admit the following:

1. Please admit that you were indebted to the Plaintiff in the approximate amount of \$24,000 immediately prior to your sale of the Vehicle to the Plaintiff.