

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Francine Gaillard, *on behalf of herself and
all others similarly situated,*

Plaintiffs,

v.

Capital One Auto Finance, a division of
Capital One, N.A.; Axiom Product
Administration, LLC; and John Doe
Defendants,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Francine Gaillard, individually and on behalf of all other persons similarly situated, through her undersigned attorneys, brings this action for breach of contract, fraud in the inducement, breach of contract accompanied by fraudulent act, violation of the South Carolina Unfair Trade Practices Act, and violation of the federal Fair Credit Reporting Act (FCRA), and alleges as follows:

NATURE OF THE ACTION

1. This is a consumer protection class action. Plaintiff seeks for herself, and all others similarly situated, relief from Defendants’ predatory refusal to honor the terms of Guaranteed Asset Protection (GAP) products they sell to consumers purchasing financed automobiles.

2. In the event of a total loss of the vehicle, a GAP product promises to cover the difference between what the purchaser owes the finance company on an automobile and what the insurer pays on the claim for its loss, less certain permitted deductions.

3. GAP protection targets lower-income buyers. Lower-income buyers are more likely to purchase GAP products both because they have less ability to pay the “gap” in the event

of a total loss, and because they generally finance vehicles at much higher rates and therefore owe larger financing charges, increasing the size of the “gap.”

4. There are two types of GAP product: GAP waiver and GAP insurance. GAP insurance is offered by insurers and is regulated by state insurance regulators. GAP waiver is a contractual obligation added to the retail installment contract to waive any remaining indebtedness in the event of a qualifying loss. GAP waiver products are attractive to dealerships and finance companies because they do not require an insurance company to administer the product and so they avoid the regulatory scrutiny applied to insurers.

5. Defendant Axiom Product Administration, LLC administers GAP waiver products. In so doing, it willfully breaches the clear contractual terms governing the GAP product—terms it created—by basing its payment on an actual cash valuation method of their own choosing, rather than the collision insurance payment, resulting in a substantial underpayment on each claim. Axiom does this as a matter of policy and standard business practice *on every claim*.

PARTIES

6. Plaintiff Francine Gaillard is a resident of Richland County, South Carolina.

7. Defendant Capital One, N.A., is a national bank association chartered under the laws of the United States with its principal place of business in Virginia. Capital One Auto Finance is a division of Capital One, N.A. (together referred to as “Capital One”), with its principal place of business in Texas.

8. Defendant Axiom Product Administration, LLC (Axiom) is a limited liability company organized under the laws of the state of Missouri and authorized to do business in South Carolina. It has been in business since April 28, 2014.

9. John Doe Defendants are banks and similar institutions financing consumer automobile purchases under loan or installment contracts containing a GAP waiver product administered by Axiom. The identity of the John Doe Defendants is known to Axiom and Plaintiff will name the John Doe Defendants as soon as Axiom discloses their identities.

JURISDICTION AND VENUE

10. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332, as the amount in controversy, exclusive of interest and costs, exceeds \$75,000 and complete diversity exists between the named parties.

11. The Court also has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the Class is a citizen of a different state than Defendants, and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs.

12. The Court has personal jurisdiction over Defendants because the claims asserted in this action arise from the named Defendants' contacts with South Carolina.

13. Venue is proper in the District of South Carolina under 28 U.S.C. § 1391 because the most substantial part of the events giving rise to the claims in this action occurred in this judicial district.

FACTUAL ALLEGATIONS

14. Axiom administers GAP waiver products on behalf of finance companies like Capital One and John Doe Defendants. Dealerships sell the GAP product to the consumer at the time of purchase, the GAP purchase is included in the amount financed and the contract for the GAP product is an addendum to the finance contract between the consumer and the dealership. The finance contract, including the GAP Contract, is then immediately assigned to finance

companies like Capital One, which agreed to purchase the finance contract from the dealership before the deal was executed.

15. Axiom is the express agent of Capital One and John Doe Defendants for the administration of the GAP waiver obligations in their loan agreements with Plaintiff and other Class members. The loan agreements are the agency contracts between Capital One and John Doe Defendants and Axiom. Capital One and John Doe Defendants consented to allow Axiom to act for it in administering their GAP waiver obligations by purchasing loan agreements expressly stating the GAP product would be administered by Axiom. Said purchase occurred simultaneously with the execution of the loan agreements and was agreed to by all parties prior to execution. Capital One and John Doe Defendants thus expressly identified Axiom as their agent during the formation of the loan agreements.

16. Axiom acted within the scope of its agency when administering the GAP products contained in Plaintiff and other Class members' loan agreements.

17. On December 13, 2018, Plaintiff purchased a 2015 Kia Optima from Dick Smith Ford, an auto dealer in Columbia, South Carolina, financed under a retail installment contract (the "Loan Agreement") (**Exhibit A**).

18. Plaintiff paid Dick Smith Ford valuable consideration for a GAP waiver product provided by Axiom. The terms of the GAP protection were set forth in the GAP Contract (**Exhibit B**) attached as an addendum to the Loan Agreement by and between Plaintiff and Dick Smith Ford.

19. The Loan Agreement, including the GAP Contract, was contemporaneously assigned to Capital One by Dick Smith Ford at the time of purchase. The assignment was disclosed to and agreed by Plaintiff.

20. The GAP Contract contained a material term wherein Capital One agreed to waive rights against Plaintiff for the amount due on the loan in the event of a qualifying loss.

21. The GAP Contract defines a qualifying loss as “the difference between the Net Payoff and the Primary Carrier settlement or in the event of no Primary Carrier, the Net Payoff and the Actual Cash Value.” The Net Payoff is the portion of the unpaid balance according to the original payment schedule of the Financing Contract.

22. The GAP Contract defines a Total Constructive Loss as direct and accidental damage to the vehicle resulting in a total loss of value.

23. In the event of a Total Constructive Loss, the Qualifying Loss is “the difference between the Net Payoff and the Primary Carrier settlement or in the event of no Primary Carrier, the Net Payoff and the Actual Cash Value” The Net Payoff is the portion of the unpaid balance according to the original payment schedule of the Financing Contract.

24. On November 11, 2019, the covered vehicle sustained a Total Constructive Loss. The Net Payoff was \$15,134.31 on the date of loss. Plaintiff’s primary insurance carrier, USAA, paid \$10,340 in settlement of the claim.

25. According to the express terms of the GAP Contract, the actual cash value is relevant only in the absence of a primary carrier. Where there is a primary carrier settlement, the GAP Contract covers the difference between the Net Payoff and the settlement amount.

26. Despite being aware that there was a primary carrier settlement, Axiom tendered GAP coverage based on its own estimate of the actual cash value of the vehicle at \$12,700 less a service contract refund of \$767.49, resulting in an underpayment of the amount due under the GAP Contract.

27. Axiom estimated the actual cash value of the vehicle using a valuation from the National Automobile Dealers Association (NADA). Axiom's management is aware that insurers do not use NADA to determine how much to pay on a claim unless required by state regulation. Insurers instead prefer to use valuations provided by CCC Information Services ("CCC"), which works exclusively with insurance companies. Nationwide, GEICO, Allstate, and USAA, among others, all use CCC where possible.

28. Axiom knows the GAP Contract, an adhesive contract it drafted, does not permit it to substitute its own actual cash value determination for what the insurer actually paid. Yet it unabashedly does exactly that in every claim it processes, including Plaintiff's claim. *See, e.g., Exhibit C* (Axiom's statement to the Better Business Bureau).

29. The GAP Contract has a "mitigation of loss" provision providing,

You should do all things reasonable and practical to avoid any loss covered under this **Addendum** and to protect the **Collateral** from any further loss. **You** should also take reasonable measures to ensure that the maximum amount of **Actual Cash Value** of the **Collateral** is paid by **Your Primary Carrier**.

30. The second sentence of this provision clearly means the claimant must cooperate fully with the insurer's claims adjuster. Axiom however "interprets" this provision to require Plaintiff to haggle with USAA over the valuation of the vehicle. Axiom's interpretation is specious because there is no "reasonable measure" by which a consumer could cajole a national insurance company into using a valuation method less favorable to the insurer than the insurer's preferred valuation method, which the insurer is permitted to use under the insurance policy and applicable laws and regulations.

31. Purportedly acting on its specious interpretation of the "mitigation of loss" provision, on April 9, 2020, Axiom requested Plaintiff ask USAA to reevaluate the value of her vehicle.

32. Axiom asserts Plaintiff failed to comply with its request. Axiom however knows this assertion is false. Despite having no obligation to haggle with USAA, Plaintiff did promptly contact USAA about the valuation. Axiom was aware of her contact with USAA because USAA employee Dashea Madison-Jackson contacted Axiom on Plaintiff's behalf *before* responding to Plaintiff on April 10, 2020, *the very next day*. See **Exhibit D** (correspondence).

33. A material term and condition of the GAP Contract was the agreement by Capital One to waive rights against Gaillard for the remaining amount due on the auto loan in the event of a qualifying loss.

34. Despite the clear terms of the GAP Contract, Capital One has refused to waive its rights against Plaintiff for the amount due on her automobile loan. Instead, Capital One wrongfully pursued debt collection activities against Plaintiff, and then, in February 2020, reported an adverse "charge off" of \$2,297 to Equifax, a credit reporting agency. **Exhibit E** (excerpt from Equifax credit report).

35. In March 2020, Plaintiff notified credit reporting agencies that the \$2,297 purported debt is disputed. The dispute notification is noted on Plaintiff's Equifax credit report. Capital One however refused to conduct a reasonable investigation of the dispute or to modify the inaccurate information. That Capital One had notice from the credit reporting agencies of the dispute is shown on Plaintiff's TransUnion credit report, which provides Capital One's address regarding the \$2,297 purported debt as "CB [i.e., 'Credit Bureau'] Disputes Team" at Capital One Auto Finance's principal place of business in Texas. **Exhibit F** (excerpt from TransUnion credit report).

TOLLING OF THE STATUTE OF LIMITATIONS

36. **Fraudulent Concealment**. Axiom has known the terms of the GAP contracts it drafted, its own policies regarding claims under those GAP contracts, the falsity of its

representations in the GAP contracts, that it intended consumers to rely on those false representations when entering GAP contracts, that it would not honor the terms of the GAP contracts, and that if challenged it intended to make false statements blaming the consumer for failure to mitigate losses, since it began operating on April 28, 2014 through the present. During that time, Axiom has concealed these facts from Plaintiff and other Class members. Any applicable statutes of limitations have therefore been tolled by Axiom's knowledge, active concealment, and denial of the facts alleged herein, which is ongoing and which knowledge and behavior is imputed to Axiom's principals Capital One and John Doe Defendants.

37. Estoppel. For the reasons set forth above, Axiom, Capital One, and the John Doe Defendants are estopped from relying on any statute of limitations defense to any claim in this action other than the FCRA claims.

38. Discovery Rule. The causes of action alleged herein did not accrue until Plaintiffs and other Class members discovered until after Defendants refused to honor the GAP Contract and after Axiom exhausted their fraudulent efforts to blame consumers for failing to mitigate losses.

CLASS ACTION ALLEGATIONS

39. Plaintiff brings this action as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class:

All persons or entities who purchased a GAP waiver product administered by Axiom and made a claim for a qualifying total loss on or after April 28, 2014.

40. Excluded from the Class are current and former officers and directors of Capital One, Axiom, or John Doe Defendants; members of the immediate families of the officers and directors of Capital One, Axiom, or John Doe Defendants; Capital One, Axiom, or John Doe Defendants' legal representatives, heirs, successors, assigns, any entity in which either of them has or has had a controlling interest; any federal, state, or local governmental agencies; any judges

who have decided or are assigned to decide some or all issues in this case; any persons related to a judge in a manner that would disqualify the judge from hearing the case; and any chambers staff working for the assigned judge or other courthouse staff who perform tasks relating to this matter.

41. Also excluded from the Class are persons or entities who had no primary insurance carrier settlement on their qualifying total loss claim.

42. The Class contains one Subclass:

Credit Reporting Subclass: All Class members who had adverse credit information regarding any remaining balance due regarding the financing for the vehicle that was the subject of their qualifying total loss, which was furnished to a credit reporting agency and which the Class member disputed by written notice to the credit reporting agency on or after July 20, 2019.

43. Plaintiff alleges FCRA claims on behalf of the Credit Reporting Subclass.

44. Plaintiff reserves the right to revise the Class definition based on facts learned while litigating this matter. Plaintiff expects the Class and Subclass will be further divided into Subclasses based on state of purchase, asserting state-specific causes of action, when Axiom discloses the purchase locations of the Class members.

45. This action is proper for Class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believes that there are many thousands of Class members. Thus, the Class members are so numerous that individual joinder of all Class members is impracticable.

46. Common questions of law and fact arise from Axiom, Capital One, and John Doe Defendants' conduct described herein. Such questions are common to all Class members and predominate over any questions affecting individual Class members. These include:

a. Interpretation of the GAP Contract;

- b. Whether Axiom, Capital One, and/or John Doe Defendants complied with the GAP Contract, and, if not, the manner in which they breached it;
- c. Whether Axiom, Capital One, and/or John Doe Defendants knew they would not comply with the GAP Contract at the time of sale;
- d. Whether, and to what extent, injunctive relief should be imposed on Axiom, Capital One, and John Doe Defendants to prevent such conduct in the future;
- e. Whether the members of the Class have sustained damages as a result of Axiom, Capital One, and John Doe Defendants' wrongful conduct; and
- f. The appropriate measure of damages or other relief.

47. Plaintiffs' claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages caused directly by the same wrongful conduct of Axiom, Capital One, and John Doe Defendants, as detailed herein. In addition, the factual underpinning of Axiom, Capital One, and John Doe Defendants' misconduct is common to all Class members and represents a common misconduct resulting in injury to all Class members. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of Class members and are based on the same legal theories.

48. Plaintiffs will fairly and adequately represent and pursue the interests of the Class. Plaintiffs understands the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class members. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class members.

49. Plaintiffs have retained competent and experienced class action attorneys to represent their interests and those of the Class members. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to litigate this class action adequately and vigorously. Plaintiffs

and counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for them.

50. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual Class member are too small to make it economically feasible for an individual Class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein.

51. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Axiom, Capital One, and John Doe Defendants have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

52. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

53. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings or incompatible standards of conduct for Axiom, Capital One, and John Doe Defendants. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

54. Axiom, Capital One, and John Doe Defendants' conduct is generally applicable to the Class as a whole and Plaintiffs seek, inter alia, equitable remedies with respect to the Class as

a whole. As such, Axiom, Capital One, and John Doe Defendants practices make injunctive and declaratory relief with respect to the Class appropriate.

CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

Breach of Contract

Brought by all Class members against Capital One and John Doe Defendants

55. Each of the above allegations is repeated as fully as if set forth verbatim.

56. The Loan Agreement is a contract between Plaintiff and Capital One. The GAP Contract is an addendum incorporated into the Loan Agreement. Other Class members likewise have loan agreements with Capital One or a John Doe Defendant with GAP contracts incorporated as addenda into those loan agreements.

57. Capital One breached the GAP Contract by refusing to waive the balance due from Plaintiff in the amount of \$2,297.36, plus interest, late fees, and collection costs.

58. Plaintiff brings this claim on behalf of herself and all other Class members who have likewise been incurred by substantially similar conduct by Capital One and John Doe Defendants who have refused to waive balances due when required under the terms of GAP products administered by Axiom on behalf of those Defendants and incorporated as addenda to Plaintiff and other Class members' loan agreements.

59. Plaintiff and other Class members have suffered loss and damages because of the breach of the loan agreement, including loss of funds and the inability to obtain credit.

60. Plaintiff and other Class members therefore are entitled to judgment against Capital One and John Doe Defendants for all actual and consequential damages.

FOR A SECOND CAUSE OF ACTION
Fraud in the Inducement
Brought by all Class members against all Defendants

61. Each of the above allegations is repeated as fully as if set forth verbatim.

62. The Loan Agreement, incorporating the GAP Contract, is a contract under which Capital One undertook to waive rights to collect amounts due in the event of a qualifying loss.

63. That representation was material to the formation of the GAP Contract, which is incorporated into the Loan Agreement. Without such representation, Plaintiff never would have assented to the GAP Contract or to the Loan Agreement in its final form.

64. As set forth above, Axiom is the express agent of Capital One and John Doe Defendants for the administration of the GAP waiver obligations in their loan agreements with Plaintiff and other Class members, and Axiom acted within the scope of its agency when administering the GAP products contained in Plaintiff and other Class members' loan agreements.

65. Capital One and John Doe Defendants are liable for the frauds their agent, Axiom, committed when acting within the scope of its agency.

66. Axiom's representation on behalf of its principal, Capital One, that Capital One would waive rights to collect amounts due in the event of a qualifying loss was false. Capital One did in fact press collection of amounts due despite the qualifying loss. Capital One expressly authorized Axiom to make that representation.

67. Axiom knew the representation that Capital One would waive rights to collect amounts due in the event of a qualifying loss was false. Axiom admits it *always* uses its own NADA valuations, not the primary insurance carrier's settlement, when settling GAP claims on behalf of its principal, Capital One, in clear violation of the GAP Contract terms Axiom drafted for Capital One, even though, as it knows, the insurers generally do not use a NADA valuation but instead use a CCC valuation resulting in a lower payment by the insurer.

68. Axiom's knowledge regarding its representations about the GAP Contract is imputed to its principals.

69. Axiom made the false representation on behalf of its Capital One with the intent that Plaintiff would enter into the Loan Agreement including the GAP Contract.

70. Plaintiff was ignorant of the falsity of the representations made by Axiom on behalf of Capital One.

71. Plaintiff had a right to rely on the truth of the representations made to her when contracting to purchase her automobile, including representations made in the GAP Contract.

72. Plaintiff brings this claim on behalf of herself and all other Class members who have likewise been incurred by substantially similar conduct by Axiom, Capital One and John Doe Defendants who fraudulently induced Plaintiff and other Class members to enter into loan agreements having GAP product provisions.

73. Because of their justified reliance upon false representations made by Axiom on behalf of Capital One and John Doe Defendants, Plaintiff and other Class members have suffered loss and damages, including loss of funds and the inability to obtain credit.

74. Plaintiff and other Class members therefore are entitled to judgment against Axiom, Capital One, and John Doe Defendants for all actual and consequential damages, and for an injunction enjoining Axiom, Capital One, and John Doe Defendants' wrongful conduct.

75. By virtue of Axiom's willful fraudulent acts, which are imputed to Capital One and John Doe Defendants, Plaintiffs and other Class members are also entitled to an award of punitive damages sufficient to impress upon Axiom, Capital One, and John Doe Defendants the seriousness of their conduct and to deter similar conduct in the future.

FOR A THIRD CAUSE OF ACTION
Breach of Contract Accompanied by Fraudulent Act
Brought by all Class members against Capital One and John Doe Defendants

76. Each of the above allegations is repeated as fully as if set forth verbatim.

77. As set forth above, the Loan Agreement was a contract between Plaintiff and Capital One that Capital One breached.

78. As set forth above, Axiom was Capital One's agent regarding the GAP provisions in the Loan Agreement, expressly authorized to speak for and act for Capital One regarding GAP claims.

79. Axiom had fraudulent intent related to the breach in that it intended to falsely attribute its principal's refusal to waive rights to collect amounts due to Plaintiff's purported failure to comply with mitigation of loss provisions in the GAP Contract, rather than Axiom's own decision not to honor the terms of the GAP Contract, despite knowing the that claim to be false.

80. Axiom committed a fraudulent act accompanying the breach when it demanded Plaintiff haggle with USAA over the valuation of her vehicle to portray her as failing to comply with mitigation of loss provisions in the GAP Contract, and when it told USAA and Plaintiff that the refusal to waive the entire amount due on the loan was due to a legitimate difference in valuation methods. Axiom committed these fraudulent acts to conceal its own willful violation of the GAP Contract.

81. Plaintiff brings this claim on behalf of herself and all other Class members who have likewise been incurred by substantially similar conduct by Capital One and John Doe Defendants who have refused to waive balances due when required under the terms of GAP products administered by Axiom on behalf of those Defendants and incorporated as addenda to Plaintiff and other Class members' loan agreements.

82. Plaintiff and other Class members therefore are entitled to judgment against Axiom, Capital One, and John Doe Defendants for all actual and consequential damages.

83. By virtue of Axiom's willful fraudulent acts, which are imputed to its principals Capital One and John Doe Defendants, Plaintiffs and other Class members are entitled to an award of punitive damages sufficient to impress upon Axiom, Capital One, and John Doe Defendants the seriousness of their conduct and to deter similar conduct in the future.

FOR A FOURTH CAUSE OF ACTION
Violation of the South Carolina Unfair Trade Practices Act
Brought by all Class member against all Defendants

84. Each of the above allegations is repeated as fully as if set forth verbatim.

85. Defendants committed unfair and deceptive acts in the conduct of trade or commerce by:

- a. Misrepresenting that they agreed to waive their rights against Plaintiff for the amount due in the event of a qualifying loss, when, in fact, they had no such intent;
- b. Failing to abide by the terms of the GAP Contract in waiving their rights against Plaintiff despite the qualifying loss;
- c. Charging late fees, interest, and other charges for an account in which they agreed to waive any amounts due;
- d. For seeking to collect on an account in which they agreed to waive the amounts due;
- e. Using actual cash value to determine the amount to be paid under the GAP Contract regardless of whether there was a primary insurance carrier; and
- f. For such other unfair and deceptive acts as may be found through discovery.

86. Defendants acted willfully in that they knew or should have known their conduct violated the South Carolina Unfair Trade Practices Act (S.C. Code Ann. §§ 39-5-10 *et seq.*).

87. Defendants' wrongful conduct directly impacts the public interest because of each Defendant's substantial public trade and commerce activity and advertising aimed at the public.

88. Further, Defendants' unfair and deceptive practices have been used on previous GAP purchasers and will continue in the future. Plaintiff has knowledge of at least 27 examples of South Carolina consumers victimized by Defendants' unfair and deceptive practices, and Plaintiff believes there are many more examples in South Carolina. *See Exhibit G* (list of claims processed using unfair and deceptive practices).

89. As a direct and proximate result of Defendants' unfair and deceptive practices, Plaintiff has suffered and continued to suffer damages, including but not limited to the false claim of an indebtedness.

90. Plaintiff brings this claim on behalf of herself and all other Class members who have likewise been injured by substantially similar conduct by Defendants who have used unfair and deceptive practices when refusing to waive balances due when required under the terms of GAP products administered by Axiom.

91. Plaintiff and other Class members therefore are entitled to judgment against Defendants for their unfair and deceptive practices, an award of actual damages, treble damages for their wanton and willful violation, and an award of reasonable attorney's fees, pursuant to South Carolina Code § 39-5-140.

FOR A FIFTH CAUSE OF ACTION
Violation of 15 U.S.C. § 1681s-2(b)
*Brought by all Credit Reporting Subclass members against Capital One
and John Doe Defendants*

92. Each of the above allegations is repeated as fully as if set forth verbatim.

93. Title 15 U.S.C. § 1681s-2(b)(1) requires furnishers of credit information to conduct a reasonable investigation of consumer disputes. It imposes certain duties on a creditor who has been notified by a credit reporting agency that a consumer has disputed information furnished by that creditor:

After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

- (A) conduct an investigation with respect to the disputed information;
- (B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;
- (C) report the results of the investigation to the consumer reporting agency;
- (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and
- (E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—
 - (i) modify that item of information;
 - (ii) delete that item of information; or
 - (iii) permanently block the reporting of that item of information.

15 U.S.C. § 1681s-2(b)(1).

94. The investigation 15 U.S.C. § 1681s-2(b)(1) requires creditors to conduct after receiving notice of a consumer dispute from a credit reporting agency must be “a reasonable investigation of their records to determine whether the disputed information can be verified.” *Johnson v. MBNA Am. Bank, NA*, 357 F.3d 426, 431 (4th Cir. 2004).

95. As set forth above, Capital One had notice from a credit reporting agency of the dispute.

96. Capital One willfully refused to perform a reasonable investigation of the dispute or to remove inaccurate information reported to credit reporting agencies. Capital One did not

consult the underlying documents to verify the accuracy of its records—not even its own loan agreements. Had Capital One done so in good faith, it would have seen the unambiguous language in the Loan Agreement requiring it to waive collection of the remaining amount due and it would have corrected the information it furnished to credit reporting agencies. Capital One merely checked its own electronic records merely to confirm those records showed Plaintiff owed the reported amount. Capital One knew its actions did not satisfy its obligations under 15 U.S.C. § 1681s-2(b).

97. Plaintiff brings this claim on behalf of herself and all other Credit Reporting Subclass members who have likewise been injured by substantially similar conduct by Defendants who have willfully refused to perform reasonable investigations or to remove inaccurate information reported to credit reporting agencies, despite notice of the dispute from the credit reporting agency.

98. Plaintiff and other Credit Reporting Subclass members therefore are entitled under 15 U.S.C. § 1681n to statutory damages of \$1,000 per claim, costs, and reasonable attorney’s fees.

99. By virtue of Capital One and John Doe Defendants’ knowing and willful violation of their legal duties under 15 U.S.C. § 1681s-2(b), Plaintiffs and other Credit Reporting Subclass members are also entitled to an award of punitive damages sufficient to impress upon Capital One and John Doe Defendants the seriousness of their conduct and to deter similar conduct in the future.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants in this matter in a sum sufficient to adequately compensate her for damages suffered, for statutory damages, for treble damages, for punitive damages, for reasonable attorney’s fees, for the costs of this action, for an

injunction enjoining Defendants' wrongful conduct, and for such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Gaillard demands a trial by jury on all issues so triable.

s/Phillip D. Barber
Richard A. Harpootlian (Fed. ID No. 1730)
Christopher P. Kenney (Fed. ID No. 11314)
Phillip D. Barber (Fed. ID No.12816)
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, SC 29201
(803) 252-4848
(803) 252-4810 (facsimile)
rah@harpootlianlaw.com
pdb@harpootlianlaw.com

Tobias G. Ward, Jr. (Fed ID No. 5826)
Derrick Jackson (Fed. ID No. 15192)
TOBIAS G. WARD, JR., P.A.
534 Congaree Avenue
Columbia, South Carolina 29205
(803) 708-4200
tw@tobywardlaw.com
dj@tobywardlaw.com

July 21, 2021
Columbia, South Carolina.

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RETAIL INSTALLMENT SALE CONTRACT SIMPLE FINANCE CHARGE

Dealer Number Contract Number 32062

Buyer Name and Address (Including County and Zip Code)
FRANCLINE DEBBIE GAILLARD
Co-Buyer Name and Address (Including County and Zip Code)
HAYESH ANWAIN COFFIEL
Seller-Creditor (Name and Address)
DICK SMITH FORD
7201 GARNERS FERRY RD
COLUMBIA, SC 29209

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

New/Used Year Make and Model Vehicle Identification Number Primary Use For Which Purchased
USED 2015 KIA OPTIMA CVXGM4A73EG473563 Personal, family, or household unless otherwise indicated below
[] business
[] agricultural []

FEDERAL TRUTH-IN-LENDING DISCLOSURES
ANNUAL PERCENTAGE RATE 8.35%
FINANCE CHARGE \$ 5003.75
Amount Financed \$ 12194.00
Total of Payments \$ 22197.75
Total Sale Price \$ 500.00
Total Cost of Credit \$ 22697.75

Your Payment Schedule Will Be:
Number of Payments 75
Amount of Payments 295.97
When Payments Are Due Monthly beginning 01/21/2019

Or As Follows:
Late Charge: If a payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late, with a minimum charge of \$7.40. The charge will not exceed \$18.50 if you bought the vehicle primarily for personal, family, or household use.

ITEMIZATION OF AMOUNT FINANCED
1 Cash Price (including \$ 0.00 sales tax and \$ 387.00 closing fee) \$ 14187.00 (1)
2 Total Downpayment Trade-in 2007 DODGE CHARGER (Make) (Model)
Gross Trade-In Allowance \$ 500.00
Less Pay Off Made By Seller \$ N/A
Equals Net Trade In \$ 500.00
- Cash \$ N/A
- Other \$ N/A
3 Unpaid Balance of Cash Price (1 minus 2) \$ 13687.00 (3)
4 Other Charges including Amounts Paid to Others on Your Behalf
A Cost of Optional Credit Insurance Paid to Insurance Company or Companies \$ N/A
B Vendor's Single Interest Insurance Paid to Insurance Company \$ N/A
C Other Optional Insurance Paid to Insurance Company or Companies \$ N/A
D Optional Gap Contract \$ 800.00
E Official Fees Paid to Government Agencies
to SC - DMV for IMF \$ 500.00
to N/A for N/A \$ N/A
to N/A for N/A \$ N/A
to N/A for N/A \$ N/A
F Government Taxes Not Included in Cash Price \$ N/A
G Government License and/or Registration Fees LICENSE & REG FEES \$ 70.00
H Government Certificate of Title Fees \$ N/A
I Infrastructure Maintenance Fee \$
J Other Charges (Seller must identify who is paid and describe purpose)
to N/A for Prior Credit or Lease Balance \$ N/A
to N/A for N/A \$ N/A
to N/A RESERVE for SERV. CONT. \$ 2137.00
to N/A for N/A \$ N/A
to N/A for N/A \$ N/A
to N/A for N/A & WHEEL CARE \$ N/A
to N/A for N/A \$ N/A
to N/A for N/A \$ N/A
to N/A for N/A \$ N/A
to N/A for N/A \$ N/A
Total Other Charges and Amounts Paid to Others on Your Behalf \$ 3507.00 (4)
5 Amount Financed (3 + 4) \$ 17194.00 (5)

Insurance: You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is acceptable to us. You may also provide the physical damage insurance through an existing policy owned or controlled by you that is acceptable to us. You are not required to buy any other insurance to obtain credit unless the bank issuing the Single Point of Sale requires it. If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:
Optional Credit Insurance
[] Credit Life [] Buyer [] Co-Buyer [] Both
[] Credit Disability [] Buyer [] Co-Buyer [] Both
Premium:
Credit Life \$ N/A
Credit Disability \$ N/A
Insurance Company Name N/A
N/A
Home Office Address N/A
N/A
CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COST. Your decision to buy or not buy credit life insurance and credit disability insurance will not be a factor in the credit approval process.

Other Optional Insurance
[] N/A
Type of insurance N/A Term
Premium \$ N/A
Insurance Company Name N/A
N/A
Home Office Address N/A
N/A
Type of insurance N/A Term
Premium \$ N/A
Insurance Company Name N/A
N/A
Home Office Address N/A
N/A
Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost. I want the optional credit insurance and other insurance checked above.
X Buyer Signature N/A Date
X Co-Buyer Signature N/A Date
[] IF CHECKED, THE TERM OF OPTIONAL CREDIT INSURANCE IS LESS THAN THE TERM OF THIS CONTRACT, AS DESCRIBED ABOVE.
X N/A
Buyer Signature N/A Date
THIS INSURANCE DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE CAUSED TO OTHERS.
Returned Check Charge: You agree to pay a charge of \$50.00 if any check you give us is dishonored.

OPTION: [] You pay no finance charge if the Amount Financed item 5 is paid in full on or before Year SELLER'S INITIALS
[] If this box is checked, the following late charge applies to vehicles purchased primarily for business or agricultural use. If a payment is not received in full within days after it is due, you will pay a late charge of % of the part of the payment that is late, whichever is less. If this box is not checked, the late charge in the "Federal Truth-in-Lending Disclosures" still applies.

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

OPTIONAL GAP CONTRACT: A gap contract (debt cancellation contract) is not required to obtain credit. To obtain certain terms of credit, or to buy the vehicle, a gap contract will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract. Term 75 Mos. AXION GAP Name if Gap Contract

I want to buy a gap contract.
Buyer Sign X Francline Gaillard

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

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

HOW THIS CONTRACT CAN BE CHANGED: This contract contains the agreement between you and us relating to this contract. Any change to this contract must be in writing, and we must sign it. No oral changes are binding. Buyer Sign X Francline Gaillard Co-Buyer Sign X Hayesh Coffiel
If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from entering any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others. See back for other important agreements.

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

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take time to review it. You confirm that you received a completely filled-in copy when you signed it.

Buyer Sign X Francline Gaillard Date 7/13/18 Co-Buyer Sign X Hayesh Coffiel Date 7/13/18
Co-Buyers and Other Owners - A co-buyer is a person who is responsible for paying the entire debt. In another owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner signs to the security interest in the vehicle given to us in this contract.

Other owner signs here X
Seller sign DICK SMITH FORD Date 12/13/18
Seller assigns its interest in this contract to CAPITAL ONE AUTO FINANCE (Assigned under the terms of Seller's agreement with Assignee)
[] Assigned with recourse [X] Assigned without recourse [] Assigned with limited recourse

SELLER: DICK SMITH FORD By Title ORIGINAL LENDER/HOLDER

GAILLARD_COAF_0001

OTHER IMPORTANT AGREEMENTS

1. FINANCE CHARGE AND PAYMENTS

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

The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.

- c. **You may have to pay collection costs.** If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's reasonable fee and court costs as the law allows. The maximum attorney's fee you will pay will be 15% of the amount you owe. You will also pay the reasonable expenses we incur in realizing on our security interest as the law allows.
- d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you after we give you any notice the law requires. We may only take the vehicle if we do so peacefully without entering into a dwelling used as a current residence. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you. If you do not ask for these items back, we may dispose of them as the law allows.
- e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.
- f. **We will sell the vehicle if you do not get it back.** If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney's fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us, unless the law provides otherwise. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest rate permitted by applicable law.

2. YOUR OTHER PROMISES TO US

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

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

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

d. Insurance you must have on the vehicle

- a. **Physical damage insurance.** You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium for the insurance and a finance charge computed at the Annual Percentage Rate shown on the front of this contract.
- b. **If the vehicle is lost or damaged.** You agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- c. **What happens to returned insurance, maintenance, service, or other contract charges.** If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

4. WARRANTIES SELLER DISCLAIMS

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

5. Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract.

Information on the window form overrides any contrary provisions in the contract of sale.
 Spanish Translation: Guía para compradores de vehículos usados: La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

6. SERVICING AND COLLECTION CONTACTS

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

7. APPLICABLE LAW

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

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. **You may owe late charges.** You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments. If you pay late, we may also take the steps described below.
- b. **You may have to pay all you owe at once.** If you break your promises (default) we may demand that you pay all you owe at once after we give you any notice the law requires. Default means:
 - You do not make any payment when due; or
 - You start a proceeding in bankruptcy or one is started against you, or your property, you give false, incomplete, or misleading information on a credit application; or you break any agreements in this contract; except that if you bought the vehicle primarily for personal, family, or household use, we will only treat these events as defaults if they significantly impair the prospect of payment, performance, or realization of the collateral.

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

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

DT ID: 882963 -- Lender ID: 31789



159938661RSC

Capital One Application Status

Customer Information

| | |
|----------------------|--------------------|
| Applicant Name: | Gaillard, Francine |
| Co Applicant Name: | Coffeil, Hakeem |
| APP ID: | 159938661 |
| App Income: | |
| Co-App Income: | |
| Total Income: | |
| Status: | Counteroffer |
| eContract Status: | Available |
| Approval Date: | 12/13/2018 |
| Approval Expiration: | 01/12/2019 |

Financing Information

| | |
|--------------------|-------------|
| Approved Product: | Retail |
| Tier Level: | Tier 2 -EX |
| Term: | 75 |
| Amount Countered: | \$17,224.00 |
| Total Dealer Fee: | \$95.00 |
| Buy Rate: | 6.35% |
| Max Participation: | 2.00% |

*Customer APR cannot exceed lower of state limit or 24.99%.

Vehicle Information

| | |
|-----------------|-------------------|
| N/U/D-Year: | Used 2015 |
| Make: | KIA |
| Model: | OPTIMA |
| Trim: | 4DR SDN EX |
| VIN #: | 5XXGN4A73FG473563 |
| Mileage: | 33978 |
| Book / Invoice: | \$14,250.00 |

Approved Structure

| | |
|---------------------|-------------|
| Sales Price: | \$13,800.00 |
| Doc Fee: | \$387.00 |
| Front End Products: | \$0.00 |
| Cash down: | \$0.00 |
| Trade: | \$500.00 |
| Rebate: | \$0.00 |
| Approved Front End: | \$13,687.00 |
| Approved FE %: | 96.05% |
| TT&L: | \$600.00 |
| Warranty: | \$2,137.00 |
| GAP: | \$800.00 |
| Credit Life: | \$0.00 |
| Accident/Health: | \$0.00 |
| Approved ATF: | \$17,224.00 |
| Approved LTV %: | 120.87% |

[Click here to update directly in Dealer Navigator](#)

Stipulations

| |
|--|
| Vehicle must be for personal use. Contracts indicating use for any other purpose will be returned. |
| POI not required based on current deal structure. Requirement may change if deal structure changes |

Comments From Credit Analyst

| | |
|---------------------|---|
| 12/13/2018 17:55:09 | We have looked at your exception request and provided a response. If you have any questions please call your RM. |
| 12/13/2018 18:00:23 | HEY LEE, PLEASE GIVE ME A CALL. JUST NEED TO GO OVER THE STRUCTURE WE TALKED ABOUT WITH THE BUY DOWN. THANK YOU - K. Treminio |
| 12/17/2018 17:14:25 | We have looked at your exception request and provided a response. If you have any questions please call your RM. |

Standard Comments

GAILLARD COAF 0003

FOR THIS APPLICATION:

Submitted deal structure meets COAF approval criteria.
 Buy rate and/or fee is subject to change if trade is removed
 Exception applies for current structure only. Call RM with structure changes
 Max Allowable Amount to Finance is \$40,000
 Max Allowable Loan to Value is 125.0%
 Max Allowable Maintenance is \$2,000

Bureau Information

| | |
|---------|----------|
| Equifax | Experian |
|---------|----------|

Use invoice or trade-in value for book value. Kelly Blue Book limited to AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA and WY.

All approvals are subject to verification. Contract purchase is subject to satisfaction of stipulations and receipt of all required documentation as specified in Capital One Auto Finance program guidelines.

All deals must be received and funded within 30 days from the date of the original Approval.

Analyst Information for App ID 159938661

| | |
|------------------------------------|--|
| Relationship Manager: Leann Colson | Ph : (888)396-2623 Ext: 5614, Fax: (888)722-5186 |
| Funding Manager: Michelle Mohammad | Ph : (800)945-9875 Ext: 5621, Fax: (888)722-5186 |

DEAL #: 32062

DICK SMITH FORD Dick Smith Ford, Inc.
 7201 Garners Ferry Rd., Columbia, SC 29209
 803-254-4000 • 800-922-6218

PHONE NO: (803)576-3245
 SOLD TO: FRANCINE DENEEN GAILLARD
 ADDRESS: HAKEEM ANTWAIN COFFIEL

| NEW/USED | YEAR | MAKE | MODEL | BODY STYLE |
|----------|------|------|--------|------------|
| USED | 2015 | KIA | OPTIMA | SD |

SERIAL NUMBER: 5XXGN4A73FG473563 MILES: 33978
 SALESMAN NO: 1377 TRUETT, DOUG

INSURANCE COVERAGE/LIEN INFORMATION
 COMPANY: CAPITAL ONE AUTO FINANCE
 AGENT: PO BOX 660068 SACRAMENTO CA 95866
 PH. NO.:
 POLICY DATES FR: 20 TO 20

DESCRIPTION:
CONTRACT DISCLOSURE STATEMENT
 THE INFORMATION YOU SEE ON THE WINDOW FORM (BUYERS GUIDE) FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRACT PROVISIONS IN THE CONTRACT OF SALE

PURCHASER'S SIGNATURE: *Hakeem Coffiel*
 ACCEPTED BY: *[Signature]*
 Dick Smith Ford, Inc.
 "AS IS"

The only warranties, if any, applying to this vehicle are those offered by the manufacturer. The selling dealer hereby expressly disclaims all warranties, either express or implied, including any implied warranties of merchantability of fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this vehicle. Buyer shall not be entitled to recover from the selling dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.

Buyer's Signature X

| DATE | STOCK # | INVOICE NO. | CUSTOMER # | KEY |
|-------------------------|---------|-------------|-------------------|-----|
| 12/13/18 | TN6516A | 32902 | 259468 | 1 |
| DESCRIPTION | COST | ACCT. NO. | SALE PRICE | KEY |
| OPTIMA | | | 13800.00 | |
| TOTAL SALES PRICE | | | 13800.00 | |
| CAR DEAL NO. | 32062 | | 13800.00 | |
| TOTAL SALES PRICE | | | 13800.00 | |
| LICENSE & TITLE | | 30500 | 57.50 | |
| ELECTRONIC FILING FEE | | 30500 | 12.50 | |
| SALES TAX | IMF | 32400 | 500.00 | |
| TOTAL CASH PRICE | | | 14370.00 | |
| AXION GAP | | | 000.00 | |
| FIRST EXTENDE | | | 2137.00 | |
| ADVANCED PROT | | | 0 | |
| SINONIZ PROSE | | | 0 | |
| FIRST PLACE F | | | 0 | |
| DOC FEE | | 80300 | 387.00 | |
| FINANCE CHARGES | | | 5003.75 | |
| TOTAL TIME PRICE | | | 22697.75 | |
| DEPOSIT - CR # | | 22500 | 0 | |
| CASH ON DELIVERY - CR # | | 22500 | 0 | |
| ACCTS. REC. | | 22000 | 0 | |
| REBATE | | 22104 | 0 | |
| PAY OFF: | | 30300 | 0 | |
| USED CAR ALLOWANCE | | | 500.00 | |
| NET DIFFERENCE | TO | | 500.00 | |
| PAYMENTS | | | | |
| MONTHS | 75 | DOLLARS | 295.87 | |
| TOTAL | | | 22197.75 | |
| FINANCE CONTRACT | | 20500 | 17194.00 | |
| DEFERRED PRICE | | | 22697.75 | |
| STOCK NO. | TN6516B | 23700 | | |
| USED CAR TRADED #1 | | | | |
| YEAR | MAKE | MODEL | SERIAL # | |
| 2007 | DODGE | CHARGER | 2B3KA43R27H671054 | |
| STOCK NO. | | 23700 | | |
| USED CAR TRADED #2 | | | | |
| YEAR | MAKE | MODEL | SERIAL # | |

WHITE - OFFICE COPY YELLOW - CUSTOMER COPY PINK - BANK COPY GOLD - E COPY

GAILLARD_COAF_0010



Thank You
for this opportunity
to be of service





GUARANTEED ASSET PROTECTION

Declaration Page

GAP125A02705

The **Addendum** is between the **Customer/Borrower (You or Your)** and the **Dealer/Creditor (We, Us, or Our)** or the **Financing Contracts** assignee.

| CUSTOMER / BORROWER | | | | AGREEMENT # | |
|---------------------|-------------|------------|------------------|-------------|--|
| NAME (FIRST) | (LAST) | ADDRESS | | | |
| FRANCINE/ HAKEEM | GAILLARD/ C | [REDACTED] | | | |
| CITY | STATE | ZIP | CUSTOMER PHONE # | EMAIL | |
| [REDACTED] | SC | [REDACTED] | [REDACTED] | [REDACTED] | |

| DEALER / CREDITOR | | | FINANCIAL INSTITUTION / LENDER | | |
|-----------------------|-----------------|----------------------|--------------------------------|-------|------------|
| DEALER NAME/GROUP | DEALER/ACCOUNT# | NAME | | | |
| Dick Smith Ford | MOFS002 | CAPITAL ONE AUTO FIN | | | |
| ADDRESS | PHONE NUMBER | ADDRESS | PHONE NUMBER | | |
| 7201 Garners Ferry Rd | 800-922-6218 | PO BX 660068 | [REDACTED] | | |
| CITY | STATE | ZIP | CITY | STATE | ZIP |
| Columbia | SC | 29209 | SACRAMENTO | CA | 95865-5587 |

| VEHICLE INFORMATION | | | | | |
|---------------------|--|-----------|---------------------|------------|-----------------------------------|
| YEAR | MAKE | MODEL | CHARGE FOR ADDENDUM | APR % | TERM OF ADDENDUM |
| 2015 | KIA | OPTIMA EX | \$800.00 | 8.350000 % | 75 |
| VIN | MSRP / NADA | | AMOUNT FINANCED | | FINANCING CONTRACT INCEPTION DATE |
| 5XXGN4A73FG473563 | <input checked="" type="checkbox"/> NEW <input type="checkbox"/> USED \$16,525.00 | | \$17,194.00 | | 12/13/2018 |

| PROGRAM LIMITS | | | | | |
|--|---------------|----------------------------|--------------------------------|--|--|
| Maximum AFVR: | Maximum Term: | Maximum Limit of Coverage: | Maximum Amount Financed Limit: | Finance Instrument | |
| 125% MSRP/NADA | 96 Months | \$50,000 | \$125,000 | <input type="checkbox"/> Installment Sales Contract <input type="checkbox"/> Lease <input checked="" type="checkbox"/> Loan | |
| <input type="checkbox"/> Commercial \$50 Surcharge (Includes all vehicles other than those defined and excluded on reverse side and increases the Gross Vehicle Weight (GVW) to 15,000 lbs. in the Commercial Vehicle Definition. | | | | | |

This **Addendum** amends the **Financing Contract**. In the event of a **Constructive Total Loss** of the **Collateral**, **We** hereby agree to waive **Our** rights against **You** for the amount due under a **Qualifying Loss**. **You** will remain responsible for any past due amounts, payment extensions, or any items listed in **EXCLUSIONS**. This **Addendum** will follow the **Financing Contract** with no subrogation rights against **You**, if the **Financing Contract** is sold or assigned by **Us**.

Although not required to do so, **You** elect to purchase this **Addendum** for an additional charge which is shown above. **You** may as an alternative to purchasing this **Addendum**, be able to purchase a similar product from a company of **Your** choice. **This GAP Program is not insurance, does not take the place of insurance on the Collateral** and does not afford collision, comprehensive, or any other form of automobile insurance coverage. **You** are responsible for all communications with **Your Primary Carrier** including notice and claims. If **You** purchase this **Addendum** from **Us**, **You** understand that **We** may retain all or a portion of the charge paid by **You**.

ENROLLMENT IS AVAILABLE ONLY AT THE TIME THE **FINANCING CONTRACT** IS ORIGINALLY EXECUTED. BY **YOUR SIGNATURE** BELOW, **YOU** ACKNOWLEDGE AND AGREE THAT **YOUR** ACCEPTANCE OF THIS **ADDENDUM** IS VOLUNTARY AND IS **NOT** REQUIRED IN ORDER FOR **YOU** TO OBTAIN CREDIT, DOES **NOT** IMPACT THE CREDIT TERMS, AND HAS NO EFFECT ON THE TERMS OF THE RELATED SALE OF THE **COLLATERAL**.

The coverage under this **Addendum** may decrease over the term of **Your Financing Contract**. **You** should carefully read the front and back of this **Addendum** for additional information on conditions, limitations and exclusions that could prevent **You** from receiving the amount due under a **Qualifying Loss** attributed to a **Constructive Total Loss**. This **Addendum** has no coverage to any **Collateral** where: a) the amount financed is greater than the **Maximum Amount Financed Limit**; and/or b) the **Financing Contract** term exceeds the **Maximum Term** stated above.

By **Your** signature below, **You** acknowledge **You** have read and understand this **Addendum** and its **CONDITIONS** and no other verbal representations have been made to **You** that differ from these written provisions and that this **Addendum** is not an insurance policy or part of an insurance policy. **You** authorize release of **financing contract** or any other information required for processing this addendum or processing of a loss.

| | | | |
|--------------------------------|--------------------|-----------------|--------------------|
| CUSTOMER/BORROWER SIGNATURE | DATE 12/13/2018 | DEALER/CREDITOR | DATE 12/13/2018 |
| CO-CUSTOMER/BORROWER SIGNATURE | DATE 12/13/2018 | TITLE | DATE |

GAILLARD_COAF_0129

DEFINITIONS

ACTUAL CASH VALUE (ACV) - Is the retail value of the **Collateral** on the **Date of Loss**, as listed in a national or regional guide, such as National Automobile Dealers Association (NADA) or an equivalent national or regional guide for the territory in which the **Collateral** is principally garaged.

COLLATERAL- Is the **Vehicle** described in the schedule of this **Addendum** and described in the **Financing Contract**.

COMMERCIAL VEHICLE - Is the use of the **Collateral** for commercial purposes, which includes but is not limited to: pickup and delivery service, snowplow use, company pool use, or business travel when the Vehicle is used by more than 1 driver, deliveries, service or repair calls, route work, job site activities, construction, farming, ranching, hauling, ride-sharing, emergency, taxicab, public omnibus, jitney, sightseeing conveyance, carrying goods or passengers for compensation or hire, government, police usage or if the Collateral exceeds 12,500 lbs (GVW).

CONSTRUCTIVE TOTAL LOSS- Is a direct and accidental loss of or damage to the **Collateral**, which meets one of these criteria: 1.) the total cost to repair the **Collateral** is greater than or equal to the **Actual Cash Value** of the **Collateral** immediately prior to the loss; or 2.) the **Customer/Borrower's Primary Carrier** declares the **Collateral** a total loss; or 3.) an Unrecovered Theft.. In the case there is no primary insurance coverage, the **Collateral** must be available for the Administrator's inspection to determine if the **Collateral** is a total loss, except in the case of unrecoverable theft.

CUSTOMER/BORROWER - The natural person(s) or business named in the **Financing Contract** purchasing this **Addendum** from the Dealer/Creditor.

DATE OF LOSS - Is the date on which the **Collateral** is reported stolen or incurs physical damage that is severe enough to constitute a **Constructive Total Loss**.

FINANCING CONTRACT - Is the contract which represents the financing instrument for the purchase or lease of the **Collateral**, which sets forth the terms, conditions, inception date, and expiration date of the financing instrument.

FINANCIAL INSTITUTION/LENDER - Is the entity to which **Your Financing Contract** is sold, assigned or transferred.

LOAN means **Financing Contract**.

NET PAYOFF - Is the amount, as of the **Date of Loss**, represented by the portion of **Your** unpaid balance according to the original payment schedule of the **Financing Contract** that is secured by the **Collateral**, subject to the following limitations: the amount does not include any unearned finance charges or **Loan**/financing charges; past due payments/skipped payments as described in the **Financing Contract**; late charges; uncollected service finance charges; refundable prepaid taxes and fees; disposition fees; termination fees; penalty fees; the recoverable portion of finance service charges or the recoverable portion of financed amounts for unearned insurance premiums or refundable charges (including, but not limited to credit life, vehicle service coverages/warranties) that are owed by **You** on the **Date of Loss**; and amounts that are added to the financing instrument balance after the inception date of the **Financing Contract**.

QUALIFYING LOSS - Is the difference between the **Net Payoff** and the **Primary Carrier** settlement or in the event of no **Primary Carrier**, the **Net Payoff** and the **Actual Cash Value**. The **Qualifying Loss** will not exceed the Maximum Limit of Coverage as shown in the **Addendum** schedule. If settlement by the **Primary Carrier** or the **Actual Cash Value** is greater than or equal to the outstanding balance, no **Qualifying Loss** will be afforded under this **Addendum**. **Qualifying Loss** includes the amount of the physical damage deductible on the **Primary Carrier** policy up to \$1,000. In the event that there is no **Primary Carrier** coverage in effect on the **Date of Loss**, or if the **Primary Carrier** is declared insolvent, or if no proceeds are received from the **Primary Carrier** policy, the **Addendum** will only cover the difference between the **Scheduled Net Payoff** and the **Actual Cash Value** of the **Collateral** on the **Date of Loss**. If there is no **Primary Carrier**, the **Collateral** must be available for inspection by the Administrator (inspection will be paid by the Administrator) to determine if the **Collateral** is a **Constructive Total Loss**, except in the event of an unrecoverable theft.

PRIMARY CARRIER - Is the insurance company prior to the **Date of Loss** that underwrites a policy of insurance providing physical damage coverage on the **Collateral** or the insurance company that provides liability coverage to any person who has caused the **Collateral** to incur a **Constructive Total Loss**.

SETTLEMENT DATE - The date on which the **Primary Carrier** issues the settlement check for the **Collateral**.

INSTALLMENT SALES CONTRACT means **Financing Contract**.

UNRECOVERED THEFT - **Collateral** is stolen and not recovered within 30 days after the **Date Of Loss**.

CONDITIONS

1. Concealment, Misrepresentation and fraud: This **Addendum** may not cover a **Qualifying Loss** if **You**, the **Customer/Borrower** intentionally conceal or misrepresent any material fact relating to this **Addendum**.

2. **You** are responsible for making at least the minimum payment under the terms of the **Financing Contract** for each payment due scheduled after the **Date of Loss** until the request for a **Qualifying Loss** has been processed.

3. Should **You** not have collectible automobile physical damage insurance on the **Date of Loss**, it is **Your** responsibility to advise the Administrator within 180 days from the **Date of Loss** and have the **Collateral** available for inspection by the Administrator (inspection will be paid by the Administrator). The Administrator will calculate the **Actual Cash Value** (ACV) of the **Collateral** immediately prior to the loss.

4. This coverage applies only to a **Qualifying Loss** sustained while the **Collateral** is within the United States of America (USA), its territories or possessions and Canada.

5. This **Addendum** will provide coverage to the **Collateral** where the Amount Financed to Value Ratio (AFVR) exceeds the Maximum AFVR stated above however, the **Addendum** will not cover the amount exceeding the Maximum AFVR.

MITIGATION OF LOSS

You should do all things reasonable and practical to avoid any loss covered under this **Addendum** and to protect the **Collateral** from any further loss. **You** should also take reasonable measures to ensure that the maximum amount of **Actual Cash Value** of the **Collateral** is paid by **Your Primary Carrier**.

QUALIFYING LOSS PROCEDURE

QUALIFYING LOSS PROCEDURES: In the event of a **Constructive Total Loss**, **You** must notify and provide the documents listed below to the Administrator within 180 days from the **Settlement Date** or no amount will be waived for any **Qualifying Loss**. In the event there is no **Primary Insurance**, the **Customer/Borrower** has 180 days from the **Date of Loss** to report a **Qualifying Loss**. A **Qualifying Loss** will cause this **Addendum** to terminate and be fully earned and not subject to any cancellation refund. **The GAP Addendum may not cancel or waive the entire amount owed at the time of loss. You** must submit the following for the Administrator to process a claim for **Your Qualifying Loss**:

1. a copy of the **Financing Contract** and a copy of this signed **Addendum**,
2. a copy of the **Financing Contract** history and pay-off as of the **Date of Loss**,
3. a legible copy of the police report, which must include confirmation of the **Collateral** shown on this **Addendum**.
4. a copy of the settlement check, **Collateral** valuation report and total loss breakdown, repair estimate and complete total loss package from **Primary Carrier** and Declarations Page issued by the **Primary Carrier**, (provided **Primary Carrier** coverage is in effect on the **Date of Loss**),
5. a copy of the Bill of Sale (aka Buyer's Order, Purchase Agreement, etc.)
6. verification of any other refundable amounts (including, but not limited to credit life, vehicle service coverages/warranties),
7. any additional or reasonable documentation requested by the Administrator. The Administrator will not be able to obtain this information for **You**.

REPORT A QUALIFYING LOSS TO OUR ADMINISTRATOR:

AXIOM PRODUCT ADMINISTRATION LLC: 8651 Hwy N, Suite 201, Lake Saint Louis, MO 63367 (844) 252-0937

Qualifying Loss Documentation Fax Number: (636) 614-0519 Email: Contact@axiomadmin.com

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TERMINATION OF ADDENDUM

This **Addendum** will terminate on the earlier date that one of the following events occurs: 1. the date **Your Financing Contract** is scheduled to terminate; 2. upon payment in full of the **Financing Contract**; 3. expiration of any redemption period following the repossession or surrender of the **Collateral**; 4. in the event of a **Constructive Total Loss** or theft of the **Collateral**; or 5. the date the **Financing Contract** is prepaid or the **Financing Contract** is refinanced.

CANCELLATION AND REFUNDS

You have the unconditional right to cancel this optional **Addendum** for a refund/credit of the unearned portion of the charge for this **Addendum** at any time. If the **Addendum** is canceled by **You** within 30 days of the **Addendum** purchase, **You** will receive a full refund/credit of the **Addendum** cost, provided no **Constructive Total Loss** has occurred. After 30 days, **You** will receive a refund/credit of the **Addendum** cost calculated by the Pro-rata refund method, or by the refund method as may be required by state or federal law, less a \$50 cancellation fee, where such cancellation fee is permitted by law. To cancel this **Addendum** and request a refund/credit, **You** must contact the **Dealer/Creditor**, in writing, at the address shown above. If the refund/credit is not received within 60 days of notice of cancellation, contact the Administrator shown below. In the event of a cancellation, the **Financial Institution/ Lender** will be named as payee on all refunds and sole payee on a repossession refund.

EXCLUSIONS

In addition to other provisions herein, this **Addendum** does not provide coverage for a loss:

- A.** occurring prior to the effective date of this **Addendum**.
- B.** occurring prior to the **Financing Contract** inception date shown in the schedule.
- C.** due to confiscation of the **Collateral** by a government body or public official.
- D.** caused by theft, unless a police report is filed.
- E.** resulting from the **Collateral** being operated, used, or maintained in any race, speed contest, or other contest.
- F.** to the **Collateral** held as security under any wholesale, floor plan, field warehouse, or any type of financing made to a dealership or its employees.
- G.** to the **Collateral**, while used for **Commercial Purposes** unless Commercial Surcharge is selected on the front of this **Addendum**.
- H.** occurring after the **Collateral** has been repossessed by the **Financial Institution/Lender** or placed in their possession or in the possession of their employees or agents.
- I.** to **Collateral** with a **Financing Contract** in which the Amount Financed for **Collateral** exceeds the Maximum Amount Financed Limit shown on the front of this **Addendum** at the inception date of the **Financing Contract**.
- J.** to **Collateral** with a **Financing Contract** where the contract term exceeds the Maximum Term as shown on the front of this **Addendum**.
- K.** for any amounts deducted from the **Primary Carrier** settlement due to wear and tear, prior damage, unpaid insurance premiums, and towing and storage.
- L.** to the following vehicles which are excluded from coverage: Aston Martin, Bentley, Daewoo, Ferrari, Lamborghini, Lotus, Maserati, Rolls Royce.
- M.** attributable to other than the standard or optional equipment available from the manufacturer of the **Collateral**, including but not limited to: special carpeting, furniture, bars, audio, video, or data equipment, cooking and sleeping facilities, customized paint, flat bed, dump bed, box body or any equipment installed to overcome a physical handicap. Factory approved conversion packages and dealer installed options usually included in used car value guidebooks are not excluded.
- N.** to the **Collateral** with a salvage or rebuilt title at the time of sale or for which title has been changed or re-issued as salvage or rebuilt prior to the **Date of Loss**.
- O.** resulting directly or indirectly from any dishonest, fraudulent, criminal, or illegal act or arising from an intentional act committed by **You** or a person covered under the policy underwritten by **Your Primary Carrier**.
- P.** from a **Financing Contract** that does not have uniform scheduled payments after the first payment is made and/or a **Financing Contract** or **Loan** that is self-financed. The first payment must be made within 45 days of the **Financing Contract** inception date.
- Q.** due to war, whether or not declared, invasion, civil war, insurrection, rebellion, or revolution.
- R.** occurring outside the USA, its territories or possessions and Canada.

STATE PROVISIONS

ALABAMA: If this **Addendum** is canceled early because of the early termination of the Financial Agreement, **You** will be entitled to any refund of the purchase price without having to request cancellation of the **Addendum**. Any cancellation refund due under this **Addendum** may be paid directly to the Lienholder, who may apply the refund as a reduction of the amount owed under the Financial Agreement, unless **You** can show that the Financial Agreement has been paid in full. The cost of this **Addendum** is not regulated and **You** should determine whether the cost of this **Addendum** is reasonable in relation to the protection afforded by this **Addendum**.

ALASKA: The definition of Qualifying Loss is deleted and replaced with the following: **QUALIFYING LOSS** - Is the difference between the **Net Payoff** and the **Primary Carrier** settlement or in the event of no **Primary Carrier**, the **Net Payoff** and the **Actual Cash Value**. The **Qualifying Loss** will not exceed the Maximum Limit of Coverage as shown in the **Addendum** schedule. If settlement by the **Primary Carrier** or the **Actual Cash Value** is greater than or equal to the outstanding balance, no **Qualifying Loss** will be afforded under this **Addendum**. In the event that there is no **Primary Carrier** coverage in effect on the **Date of Loss**, or if the **Primary Carrier** is declared insolvent, or if no proceeds are received from the **Primary Carrier** policy, the **Addendum** will only cover the difference between the **Scheduled Net Payoff** and the **Actual Cash Value** of the **Collateral** on the **Date of Loss**. If there is no **Primary Carrier**, the **Collateral** must be available for inspection by the Administrator (inspection will be paid by the Administrator) to determine if the **Collateral** is a **Constructive Total Loss**, except in the event of an unrecoverable theft.

GEORGIA: The effective date of any cancellation may be no earlier than 90 days prior to the date such written notice is received by the Dealer/Creditor.

INDIANA: The cancellation fees are not applicable. The sale of the GAP Waiver **Agreement** is not permitted if the amount financed, less the cost of the GAP Waiver **Agreement**, less the cost of credit insurance, and less the cost of warranties or service agreements is less than 80% of MSRP for a new vehicle or 80% of the NADA average retail value for a used vehicle. For additional information or complaints, contact: Indiana Department of Financial Institutions at 800-382-4880 or by mail to 30 South Meridian Street, Ste 300, Indianapolis, IN 46204-2759.

KANSAS: The cancellation fees are not applicable. The DEFINITION of **Actual Cash Value** (ACV) means the amount which it would cost to repair or replace damaged property with material of like kind and quality less allowance for physical deterioration and depreciation. The EXCLUSION section is amended by deleting P. For questions or complaints may contact the Office of the State Bank Commissioner, 700 S.W. Jackson #300, Topeka, KS 66603, (785) 296-2266 or toll free 1-877-387-8523. **GAP coverage may not cancel or waive the entire amount You owe at the time of loss.**

LOUISIANA: The cancellation fees are not applicable. "Payable Loss" is defined as the consumer's deficiency balance between the **Net Payoff** of the consumer's **Loan** retail **Installment Sales Contract** at the time of a loss and the amount paid by the consumer's primary insurance after a vehicle is deemed a total loss due to any direct or accidental physical damages or unrecoverable theft. EXCLUSION K is amended as follows: for any amounts deducted from the **Primary Carrier** settlement due to prior damage, wear and tear, unpaid insurance premiums, and towing and storage.

MISSOURI: The cancellation fees are not applicable.

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MINNESOTA: THE GAP WAIVER IS OPTIONAL. YOU DO NOT HAVE TO PURCHASE THIS PRODUCT IN ORDER TO BUY THIS MOTOR VEHICLE. YOU ALSO HAVE A LIMITED RIGHT TO CANCEL.

NEBRASKA: This **Addendum** is not insurance and is not regulated by the Nebraska Department of Insurance. The Financial Institution / Lender or Administrator cannot unilaterally modify the terms of the waiver unless the modification is favorable to the borrower and is made without additional charge to the borrower, or the borrower is notified of the proposed modification and has the option to cancel the waiver without penalty.

NEVADA: A GAP WAIVER IS NOT A POLICY OF LIABILITY OR CASUALTY INSURANCE AND DOES NOT SATISFY THE REQUIREMENT TO MAINTAIN LIABILITY INSURANCE PURSUANT TO NRS 485.185; FAILURE TO MAKE A PAYMENT UNDER THE TERMS OF THE CONTRACT MAY VOID THIS GAP AMENDMENT.

NEW HAMPSHIRE: The cancellation fees are not applicable. in order for the **Customer/Borrower** to receive any refund due in the event of a **Customer/Borrower's** cancellation of the **Addendum** or early termination of the **Financing Contract** after the free look period of the **Addendum**, the **Customer/Borrower**, in accordance with terms of the **Addendum**, shall provide a written request to cancel to the creditor, administrator, or such other party. If the **Addendum** is being canceled due to the termination of the **Financing Contract**, a written notice to cancel shall be sent to the creditor, administrator, or other such party within 90 days of the occurrence of the event terminating the **Financing Contract**.

NEW MEXICO: The cancellation fees are not applicable.

OREGON: Because **You** financed the purchase of this **Addendum**, any cancellation or early termination refund due may be paid directly to the creditor or may be applied to any outstanding balance under **Your Financing Contract**. If **You** have paid **Your Financing Contract** in full, any refund owed will be paid to **You**. **You** must apply in writing to the Dealer/Creditor for any refund within 90 days of any cancellation except in instances where the cancellation is a result of the early termination of **Your Financing Contract**. The Dealer/Creditor shall cause to be made an appropriate refund pursuant to the terms of this **Addendum**. If **You** do not receive **Your** credit or refund within 60 days, please notify the administrator listed on the **Addendum**.

PENNSYLVANIA: A portion of the charges **You** pay for **Your** GAP coverage will be retained by the seller.

SOUTH CAROLINA: The cancellation fees are not applicable. The sale of this **Addendum** is not permitted if the amount financed, less the cost of this **Addendum**, less the cost of any credit insurance, and less the cost of any warranties, is less than 80% of the MSRP (new) or NADA (used). The sale of this **Addendum** is not permitted if **You**, the credit terms, including but not limited to, cash price, Motor Vehicle value or amount financed or the Motor Vehicle used as **Collateral** for the credit transaction do not qualify for or conflict with any restrictions or limitations in the Waiver conditions. THIS ADDENDUM IS NOT REQUIRED TO OBTAIN CREDIT, NOR TO OBTAIN CERTAIN TERMS OF CREDIT OR TO PURCHASE THE RELATED MOTOR VEHICLE. THIS **ADDENDUM** WILL NOT BE PROVIDED UNLESS **YOU** SIGN AND AGREE TO PAY THE ADDITIONAL COST. This **Addendum** is not insurance and does not take the place of collision, comprehensive, or any other form of insurance on the Motor Vehicle.

TENNESSEE: The cost of the **Addendum** is not regulated and **You** have the responsibility to determine whether the cost of the **Addendum** is reasonable in relation to the coverage afforded by this **Addendum**.

UTAH: The **Addendum** is subject to limited regulation by the Utah Insurance Commissioner. Complaints regarding the GAP **Addendum** may be submitted to the offices of the Utah Insurance Commissioner.

VERMONT: The cancellation fees are not applicable. The Dealer/Creditor must assign, sell or transfer, within 15 business days, the **Financing Contract** to a **Financial Institution/Lender** as defined in subdivision 1110(32) of Title 8 or a credit union or entity licensed under subdivision 2201(a) (1) or (3) of Title 8 or this **Addendum** is void and **You** will receive a full refund of the charges of the **Addendum**.

WASHINGTON: 1. Any refund of purchase price for an **Addendum** that was included in the financing of the **Collateral** may be applied by the creditor as a reduction of the overall amount owed under the **Financing Contract**, rather than applying the refund strictly to the purchase price of the **Addendum**. 2. The **Addendum** is not credit insurance, nor does it eliminate **Your** obligation to insure the **Collateral** as provided by laws of this state. Purchasing an **Addendum** does not eliminate **Your** rights and obligations under the vendor single-interest and **Collateral** protection coverage laws of this state. 3. CONDITION 1 is amended to read: This **Addendum** shall be void if any material fact(s) have been intentionally concealed or misrepresented, or in the case of fraud.

WISCONSIN: The Cancellation fee is not applicable. In the event the Finance **Agreement** is terminated early, **Financial Institution/Lender** will initiate the refund of the GAP **Addendum**. According to the cancellation provisions of the **Addendum**, there is no obligation on the part of the Customer to request a refund due to the early termination of the Finance **Agreement**. In the event of a cancellation, **Your Financial Institution/Lender** will be named sole payee. **You** are entitled to a full refund plus any applicable finance charges if the cancellation occurs within the first 30 days and the refund is being credited to **Your** account.



Better Business Bureau
Serving Eastern Missouri & Southern Illinois
211 N. Broadway, Suite 2060
St. Louis, MO 63102
ph 314-645-3300
<http://www.bbb.org/stlouis>

4/28/2020

Francine Gaillard
222 Keystone Drive
Hopkins, SC 29061

Dear Francine Gaillard:

This message is in regard to your complaint submitted on 4/27/2020 against Axiom Product Administration. Your complaint was assigned ID 14315689.

The Better Business Bureau has received a response from the business in the above-referenced complaint case. Please review their response to your complaint and advise us of your position in the matter within 7 calendar days. If we do not hear back from you, the BBB will assume you are satisfied and will close your complaint.

Please be sure to indicate whether the business' response is satisfactory or not and how you would like to proceed in this matter.

Please note the text of your response will be publicly posted on the BBB website (BBB reserves the right to not post in accordance with BBB policy). Please do not include any personally identifiable information in your response. By submitting your response, you are representing that it is a truthful account of your experience with the business. BBB may edit your complaint to protect privacy rights and to remove inappropriate language.

If you are unable to respond using the internet, then please respond in writing to the address above or Fax to (314) 645-2666.

Sincerely,

Dispute Resolution Department
Better Business Bureau
314-645-3300
314-645-2666 Fax
bbb@stlouisbbb.org

MESSAGE FROM BUSINESS:

MRS. Gaillard you are stating that you purchased GAP to provide coverage for a total loss situation and we are providing that coverage per the terms of the GAP contract that you purchased.

We use NADA to determine the value of the vehicle at the time of loss. This is spelt out in the attached contract on page 2 "Actual Cash Value".

Unfortunately your insurance company used a vehicle comparison evaluation and also took \$849.00 in condition adjustments (I have attached their evaluation for your review).

Your insurance company valued your vehicle at \$10,315 and NADA (that we use per the terms of the contract) valued your vehicle at \$12,700.

I do understand that you feel that your insurance company paid what they owe but Axiom has also paid what we owe towards the total loss per the terms of your contract.

I have also attached a copy of the GAP worksheet showing how we determined the GAP benefit that we paid out.

Thanks,

Axiom

Re: Claim Message from USAA

gaillardf@att.n.../Sent



Francine Gaillard <gaillardf@att.net>
To: USAA Claims <42lg7d42zpvb@claims.usaa.com>

Apr 12 at 10:25 AM

Good morning, my point was to get the situation resolved between to two companies and fix it , but its still the same result, nothing fixed,

On Friday, April 10, 2020, 11:41:26 PM EDT, USAA Claims <42lg7d42zpvb@claims.usaa.com> wrote:

To ensure delivery to your inbox, please add 42lg7d42zpvb@claims.usaa.com to your address book.



Claim Message

Dear Sergeant Gaillard,

This correspondence is regarding the following USAA claim:

USAA policyholder: Hakeem A Coffeil
Claim number: 018613981-003

Good Afternoon,

I hope to address any concerns you have as it pertains to your total loss settlement. I did speak to the Gap company-Axiom. USAA and Axiom each ran a valuation on your vehicle. Axiom uses the NADA system and USAA uses CCC, a market valuation system that is used by many insurance companies.

The CCC valuation is actually more accurate than NADA, as it compares your vehicle with other 2015 Kias in your surrounding area. It also considers factors specific to your vehicle (such as mileage and condition).

Our policy pays total losses based on Actual Cash Value; this is contractual.

The following is a breakdown of each company's figures:

USAA EVAL
BASE VEHICLE VALUE (CCC) : \$ 11,164.00
CONDITION ADJUSTMENT: -\$ 849.00 (what we subtracted for interior
TAXES- \$500.00;(Per your state guidelines, what is owed)
DEDUCTIBLE: \$500.00 (what was subtracted)
TITLE/REGISTRATION FEE: 25.00

TOTAL: \$ 10,340.00

AXIOM EVAL
NADA VALUE: \$ 12,700.00
ADJUSTMENT : \$ 1,666.82 - Difference of what was paid for value per Axiom)

PRE ACCIDENT VALUE PER CAPITAL ONE : \$ 15,134.31
POST ACCIDENT AND BALANCE NOT PAID BY AXIOM : \$ 2555.12 - (Your balance after USAA and AXIOM applied payments)

We have paid what we owe for your vehicle. Unfortunately, we simply use different valuation methods, each of which is acceptable in the industry. If you have further concerns about what your GAP covered, this would need to be escalated with Axiom for further review.

You may reply to this message. If you need to provide documentation, you can attach documents to your email. We can't guarantee the security of any medical, financial or other personally identifiable information sent by email.

Email Delivery Criteria

To ensure delivery of your email, please make sure it meets the following criteria:

- The size of the message can't exceed 30 MB.
- These attachments are supported: .bmp, .jpe, .jpeg, .jpg, .pdf, .doc, .docx, .xls and .xlsx.
- Individual attachments must not exceed 7 MB.
- Include no more than 10 attachments.
- Attachments can't be password-protected.

Sincerely,

Dashea Madison-Jackson
Non-Injury Unit 5
USAA Casualty Insurance Company

[04765:037:71]

4.2 CAPITAL ONE AUTO FINANCE (CLOSED)

Summary

Your debt-to-credit ratio represents the amount of credit you're using and generally makes up a percentage of your credit score. It's calculated by dividing an account's reported balance by its credit limit.

| | | | |
|-------------------------|-------------------|-----------------------------|---------|
| Account Number | xxxxxxxxxxxx 1001 | Reported Balance | \$2,297 |
| Account Status | CHARGE_OFF | Debt-to-Credit Ratio | N/A |
| Available Credit | | | |

Account History

The tables below show up to 2 years of the monthly balance, available credit, scheduled payment, date of last payment, high credit, credit limit, amount past due, activity designator, and comments.

Balance

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------|---------|-----|---------|-----|-----|-----|----------|----------|----------|----------|----------|-----|
| 2019 | | | | | | | \$15,971 | \$15,783 | \$15,590 | \$15,399 | \$15,310 | |
| 2020 | \$4,246 | | \$2,297 | | | | | | | | | |
| 2021 | | | | | | | | | | | | |

Available Credit

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 2019 | | | | | | | | | | | | |
| 2020 | | | | | | | | | | | | |
| 2021 | | | | | | | | | | | | |

Scheduled Payment

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------|-------|-----|-----|-----|-----|-----|-------|-------|-------|-------|-------|-----|
| 2019 | | | | | | | \$295 | \$295 | \$295 | \$295 | \$295 | |
| 2020 | \$295 | | | | | | | | | | | |
| 2021 | | | | | | | | | | | | |

Actual Payment

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 2019 | | | | | | | | | | | | |
| 2020 | | | | | | | | | | | | |
| 2021 | | | | | | | | | | | | |

| | | | | | | | | | | | | |
|------|--|--|--|--|--|--|-------|-------|-------|-------|--|--|
| 2019 | | | | | | | \$300 | \$300 | \$300 | \$300 | | |
| 2020 | | | | | | | | | | | | |
| 2021 | | | | | | | | | | | | |

High Credit

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------|----------|-----|-----|-----|-----|-----|----------|----------|----------|----------|----------|-----|
| 2019 | | | | | | | \$17,194 | \$17,194 | \$17,194 | \$17,194 | \$17,194 | |
| 2020 | \$17,194 | | | | | | | | | | | |
| 2021 | | | | | | | | | | | | |

Credit Limit

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 2019 | | | | | | | | | | | | |
| 2020 | | | | | | | | | | | | |
| 2021 | | | | | | | | | | | | |

Amount Past Due

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------|-----|---------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 2019 | | | | | | | | | | | | |
| 2020 | | \$2,297 | | | | | | | | | | |
| 2021 | | | | | | | | | | | | |

Activity Designator

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 2019 | | | | | | | | | | | | |
| 2020 | | | | | | | | | | | | |
| 2021 | | | | | | | | | | | | |

Comments 1

| Date | Comment |
|---------|------------|
| 07/2019 | Fixed rate |
| 08/2019 | Fixed rate |
| 09/2019 | Fixed rate |

| Date | Comment |
|---------|--|
| 10/2019 | Fixed rate |
| 11/2019 | Fixed rate |
| 01/2020 | Fixed rate |
| 03/2020 | Consumer disputes this account information |

Comments 2

| Date | Comment |
|---------|---------------------|
| 02/2020 | Charged off account |

Comments 3

| Date | Comment |
|---------|------------|
| 02/2020 | Fixed rate |

Payment History

View up to 7 years of monthly payment history on this account. The numbers indicated in each month represent the number of days a payment was past due; the letters indicate other account events, such as bankruptcy or collections.

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 2021 | CO | CO | CO | CO | CO | ⊗ | ⊗ | ⊗ | ⊗ | ⊗ | ⊗ | ⊗ |
| 2020 | ✓ | ✓ | ✓ | CO | CO | CO | CO | CO | CO | CO | CO | CO |
| 2019 | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 2018 | ⊗ | ⊗ | ⊗ | ⊗ | ⊗ | ⊗ | ⊗ | ⊗ | ⊗ | ⊗ | ⊗ | ✓ |

| | | | | |
|------------------------------|---------------------------------|------------------------------|----------------------------|------------------------------|
| ✓ Paid on Time | 30 30 Days Past Due | 60 60 Days Past Due | 90 90 Days Past Due | 120 120 Days Past Due |
| 150 150 Days Past Due | 180 180 Days Past Due | V Voluntary Surrender | F Foreclosure | C Collection Account |
| CO Charge-Off | B Included in Bankruptcy | R Repossession | TN Too New to Rate | ⊗ No Data Available |

Account Details

View detailed information about this account. Contact the creditor or lender if you have any questions about it.

| | | |
|------------------------|---------------------|-----------------------------|
| High Credit | Owner | JOINT_CONTRACTUAL_LIABILITY |
| Credit Limit | Account Type | INSTALLMENT |
| Terms Frequency | MONTHLY | Term Duration 7 |



Personal Credit Report for Francine D Gaillard

Report Date: 07/20/2021
Source: TransUnion

File Number: 328169040

Personal Information

You have been on our files since 05/01/1987

[REDACTED]

Account Information

Typically, creditors report any changes made to your account information monthly. This means that some accounts listed below may not reflect the most recent activity until the creditor's next reporting. This information may include things such as balances, payments, dates, remarks, ratings, etc. The rating key is provided to help you understand some of the account information that could be reported. Pay Status represents the current status of accounts and indicates how you are currently paying. For accounts that have been paid and closed, sold, or transferred, Pay Status represents the last reported status of the account.

You have no Account Information reported.

Account Information

Typically, creditors report any changes made to your account information monthly. This means that some accounts listed below may not reflect the most recent activity until the creditor's next reporting. This information may include things such as balances, payments, dates, remarks, ratings, etc. The rating key is provided to help you understand some of the account information that could be reported. Pay Status represents the current status of accounts and indicates how you are currently paying. For accounts that have been paid and closed, sold, or transferred, Pay Status represents the last reported status of the account.

Rating Key

Some creditors report the timeliness of your payments each month in relation to your agreement with them. The ratings in the key below describe the payments that may be reported by your creditors. Please note: Some but not all of these ratings may be present in your credit report.

| | | | | | | | | | | | |
|--------------|---------|---------|--------------|--------------|--------------|----------------|------------|---------------------|---------------|------------|-------------|
| N/R | X | OK | 30 | 60 | 90 | 120 | COL | VS | RPO | C/O | FC |
| Not Reported | Unknown | Current | 30 days late | 60 days late | 90 days late | 120+ days late | Collection | Voluntary Surrender | Repo-ssession | Charge Off | Foreclosure |

Accounts with Adverse Information

Adverse information typically remains on your credit file for up to 7 years from the date of the delinquency. To help you understand what is generally considered adverse, we have added >brackets< to those items in this report. For your protection, your account numbers have been partially masked, and in some cases scrambled.

CAPITAL ONE AUTO FINANCE #6207340798827****

CB DISPUTES TEAM
P O BOX 259407
PLANO, TX 75025
(800) 946-0332

| | | | | | |
|-----------------|---------------------|--------------------|------------|--------------|---|
| Date Opened: | 12/13/2018 | Date Updated: | 06/30/2021 | Pay Status: | >Charged Off< |
| Responsibility: | Joint Account | Payment Received: | \$0 | Terms: | \$0 per month, paid Monthly for 75 months |
| Account Type: | Installment Account | Last Payment Made: | 03/26/2020 | Date Closed: | 04/30/2020 |

Loan Type: AUTOMOBILE
High Balance: High balance of \$17,194 from 01/2019 to 06/2021
Estimated month and year that this item will be removed: 12/2026

| | 06/2021 | 05/2021 | 04/2021 | 03/2021 | 02/2021 | 01/2021 | 12/2020 | 11/2020 | 10/2020 | 09/2020 |
|--------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|---------|---------|
| Balance | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 |
| Scheduled Payment | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Amount Paid | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Past Due | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,297 |
| Remarks | AID >PRL< | AID >PRL< | AID >PRL< | AID >PRL< | AID >PRL< | AID >PRL< | AID >PRL< | AID >PRL< | >PRL< | >PRL< |
| Rating | C/O | C/O | C/O | C/O | C/O | C/O | C/O | C/O | C/O | C/O |

| | 08/2020 | 07/2020 | 06/2020 | 05/2020 | 04/2020 | 03/2020 | 02/2020 | 01/2020 | 12/2019 | 11/2019 |
|--------------------------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|
| Balance | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,530 | \$2,555 | \$4,246 | \$4,246 | \$15,310 | \$15,203 |
| Scheduled Payment | \$0 | \$0 | \$0 | \$0 | \$0 | \$295 | \$295 | \$295 | \$295 | \$295 |
| Amount Paid | \$0 | \$0 | \$0 | \$0 | \$0 | \$1,666 | \$0 | \$11,107 | \$0 | \$300 |
| Past Due | \$2,297 | \$2,297 | \$2,297 | \$2,297 | \$2,530 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Remarks | >PRL< | >PRL< | >PRL< | >PRL< | >PRL< | | | | | |
| Rating | C/O | C/O | C/O | C/O | C/O | OK | OK | OK | OK | OK |

| | 10/2019 | 09/2019 | 08/2019 | 07/2019 | 06/2019 | 05/2019 | 04/2019 | 03/2019 | 02/2019 | 01/2019 |
|--------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Balance | \$15,399 | \$15,590 | \$15,783 | \$15,971 | \$16,158 | \$16,346 | \$16,530 | \$16,717 | \$16,898 | \$17,090 |
| Scheduled Payment | \$295 | \$295 | \$295 | \$295 | \$295 | \$295 | \$295 | \$295 | \$295 | \$295 |
| Amount Paid | \$300 | \$300 | \$300 | \$300 | \$300 | \$300 | \$300 | \$300 | \$300 | \$300 |
| Past Due | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Rating | OK | OK | OK | OK | OK | OK | OK | OK | OK | OK |

| | 12/2018 |
|---------------|---------|
| Rating | OK |

Satisfactory Accounts

[Redacted]

[Redacted]

| | 12/2018 | 11/2018 | 10/2018 | 09/2018 | 08/2018 | 07/2018 | 06/2018 | 05/2018 | 04/2018 | 03/2018 | 02/2018 | 01/2018 |
|--------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Balance | | | | | | | | | | | | |
| Scheduled Payment | | | | | | | | | | | | |
| Amount Paid | | | | | | | | | | | | |
| Past Due | | | | | | | | | | | | |
| Rating | | | | | | | | | | | | |

| | 12/2018 | 11/2018 | 10/2018 |
|---------------|---------|---------|---------|
| Rating | | | |

[Redacted]

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Axiom, Capital One Underpaid GAP Waiver Claims](#)
