

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

FORD MOTOR CREDIT COMPANY LLC,	§	
Plaintiff,	§	
	§	
v.	§	
	§	
REAGOR-DYKES AMARILLO, L.P.,	§	
REAGOR DYKES AUTO COMPANY, L.P.,	§	
REAGOR-DYKES II, L.L.C.,	§	Civil Action No.: 5:18-cv-00186
REAGOR-DYKES FLOYDADA, L.P.,	§	
REAGOR-DYKES IMPORTS, L.P.,	§	
REAGOR AUTO MALL I, L.L.C.,	§	
REAGOR-DYKES MOTORS, L.P.,	§	
REAGOR-DYKES PLAINVIEW, L.P.,	§	
REAGOR-DYKES III, L.L.C.,	§	
BART REAGOR AND RICK DYKES	§	
Defendants.		

ORIGINAL COMPLAINT AND APPLICATION FOR WRIT OF SEQUESTRATION

Plaintiff, Ford Motor Credit Company LLC (“Ford Credit”) files this Original Complaint and Application for Writ of Sequestration against Defendants Reagor-Dykes Amarillo, L.P., Reagor-Dykes Auto Company, L.P., Reagor-Dykes II, L.L.C., Reagor-Dykes Floydada, L.P., Reagor-Dykes Imports, L.P., Reagor Auto Mall I, L.L.C., Reagor-Dykes Motors, L.P., Reagor-Dykes Plainview, L.P., Reagor-Dykes III, L.L.C., and Bart Reagor and Rick Dykes (collectively, “Defendants”), alleges, upon information and belief:

NATURE OF THE ACTION

1. Ford Credit brings this action to, among other things, enforce its rights as a secured creditor under a series of agreements with defendant automobile dealerships Reagor-Dykes Amarillo, L.P., Reagor-Dykes Auto Company, L.P., Reagor-Dykes Floydada, L.P., Reagor-Dykes Imports, L.P., Reagor-Dykes Motors, L.P., and Reagor-Dykes Plainview, L.P. (collectively,

the “Reagor-Dykes Dealerships”), all of which received floorplan (vehicle inventory) financing through Ford Credit.

2. The Reagor-Dykes Dealerships and their principals, individual defendants Bart Reagor and Rick Dykes, are in default, having breached their agreements with Ford Credit by, among other breaches, selling vehicles “out of trust,” failing to make required payments to Ford Credit as and when due, and submitting false or inaccurate information to Ford Credit in order to delay paying amounts due to Ford Credit and/or to obtain financing from Ford Credit under false pretenses.

3. Accordingly, Ford Credit brings this action seeking: (a) immediate possession of all collateral that is in the possession, custody or control of Defendants, and in which Ford Credit has a first-priority, properly-perfected security interest (as further defined below, the “Collateral” or “Reagor-Dykes Collateral”); (b) recovery of the outstanding indebtedness owed by Defendants; (c) enforcement of a series of personal guaranties that were executed by the defendant guarantors, each of whom guaranteed payment of the Dealerships’ respective and/or collective indebtedness owed to Ford Credit; and (d) any other relief to which Ford Credit may be entitled.

THE PARTIES

A. Plaintiff Ford Motor Credit Company LLC

4. Plaintiff Ford Credit is a Delaware limited liability company, with its principal place of business at One American Road, Dearborn, Michigan 48126.

5. Ford Credit’s only member is Ford Holdings LLC, which is a Delaware limited liability company with its principal place of business at One American Road, Dearborn, Michigan 48126.

6. Ford Holdings LLC's only member is Ford Motor Company, which is a Delaware corporation with its principal place of business at One American Road, Dearborn, Michigan 48126.

7. Accordingly, for jurisdictional purposes, Ford Credit is a citizen of Delaware and Michigan.

B. The Individual Defendants

8. Defendant Bart Reagor is a citizen of the United States and a domiciliary of Texas, with a permanent residence in Lubbock, Texas.

9. Accordingly, for jurisdictional purposes, Bart Reagor is a citizen of Texas.

10. Defendant Rick Dykes is a citizen of the United States and a domiciliary of Texas, with a permanent residence in Lubbock, Texas.

11. Accordingly, for jurisdictional purposes, Rick Dykes is a citizen of Texas.

C. Reagor-Dykes III, LLC

12. Reagor-Dykes III, LLC ("RD III") is a Texas limited liability company, with its principal place of business at 1111 19th Street, Lubbock, Texas 79401.

13. The managers and members of RD III are Bart Reagor, Rick Dykes, and Shane Smith.

14. Shane Smith is a citizen of the United States and a domiciliary of Texas, with a permanent address in Texas.

15. Accordingly, for jurisdictional purposes, RD III is a citizen of Texas.

D. Reagor Auto Mall I, LLC

16. Reagor-Dykes Auto Mall I, LLC ("Reagor Auto Mall") is a Texas limited liability company, with its principal place of business at 1211 19th Street, Lubbock, Texas 79401.

17. The managers and members of Reagor Auto Mall I are Bart Reagor and Rick Dykes.

18. Accordingly, for jurisdictional purposes, Reagor-Dykes Auto Mall I is a citizen of Texas.

E. Reagor-Dykes Plainview, L.P.

19. Reagor-Dykes Plainview, L.P. (“RD Plainview”) is a Texas limited partnership with a principal place of business located at 1111 19th Street, Lubbock, Texas 79401.

20. RD III is the general partner of RD Plainview, with a principal place of business located at 1111 19th Street, Lubbock, Texas 79401, and Bart Reagor and Rick Dykes are limited partners.

21. Accordingly, for jurisdictional purposes, RD Plainview is a citizen of Texas.

F. Reagor-Dykes Amarillo, L.P.

22. Reagor-Dykes Amarillo, L.P. (“RD Amarillo”) is a Texas limited partnership, with a principal place of business located at 1111 19th Street, Lubbock, Texas 79401.

23. Reagor Auto Mall I is the general partner of RD Amarillo, with a principal place of business located at 1211 19th Street, Lubbock, Texas 79401, and Bart Reagor and Rick Dykes are limited partners.

24. Accordingly, for jurisdictional purposes, RD Amarillo is a citizen of Texas.

G. Reagor-Dykes Auto Company, L.P.

25. Reagor-Dykes Auto Company, L.P. (“RD Auto”) is a Texas limited partnership, with a principal place of business located at 1211 19th Street, Lubbock, Texas 79401.

26. Reagor-Dykes II, L.L.C. is the general partner of RD Auto, with a principal place of business located at 1211 19th Street, Lubbock, Texas 79401, and Bart Reagor and Rick Dykes are limited partners.

27. Accordingly, for jurisdictional purposes RD Auto is a citizen of Texas.

H. Reagor-Dykes Imports, L.P.

28. Reagor-Dykes Imports, L.P. (“RD Imports”) is a limited partnership organized under the laws of Texas, with a principal place of business located at 1211 19th Street, Lubbock, Texas 79401.

29. Reagor Auto Mall is the general partner of RD Imports, with a principal place of business located at 1211 19th Street, Lubbock, Texas 79401, and Bart Reagor and Rick Dykes are limited partners.

30. Accordingly, for jurisdictional purposes, RD Amarillo is a citizen of Texas.

I. Reagor-Dykes Floydada, L.P.

31. Reagor-Dykes Floydada, L.P. (“RD Floydada”) is a Texas Limited Partnership, with a principal place of business located at 1111 19th Street, Lubbock, Texas 79401.

32. Reagor Auto Mall is the general partner of RD Imports, with a principal place of business located at 1211 19th Street, Lubbock, Texas 79401, and Bart Reagor and Rick Dykes are limited partners.

33. Accordingly, for jurisdictional purposes, RD Amarillo is a citizen of Texas.

J. Reagor-Dykes Motors, L.P.

34. Reagor-Dykes Motors, L.P. d/b/a Spikes Dykes Ford Lincoln Mercury (“RD Motors”) is a Texas limited partnership, with a principal place of business located at 1207 S. Lynn, Lamesa, Texas 79331.

35. Reagor Auto Mall is the general partner of RD Motors, with a principal place of business located at 1211 19th Street, Lubbock, Texas 79401, and Bart Reagor and Rick Dykes are limited partners.

36. Accordingly, for jurisdictional purposes, RD Motors is a citizen of Texas.

K. Reagor-Dykes II, LLC

37. Reagor-Dykes II, LLC (“RD II”) is a Texas limited liability company, with its principal place of business at 1211 19th Street, Lubbock, Texas 79401.

38. The managers and members of Reagor Auto Mall I are Bart Reagor and Rick Dykes.

39. Accordingly, for jurisdictional purposes, Reagor-Dykes Auto Mall I is a citizen of Texas.

JURISDICTION AND VENUE

40. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

41. This Court has general and specific jurisdiction over all Defendants because they are all citizens of Texas, have continuous and systematic contacts with Texas, are entities formed under the laws of Texas and/or have purposefully availed themselves of the privilege of conducting business in Texas, and the events, transactions, and omissions giving rise to the claims in this action occurred in Texas.

42. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events, transactions and omissions giving rise to the claims in this action occurred in the District.

**THE AGREEMENTS BY OR BETWEEN FORD CREDIT,
RD PLAINVIEW, RD III, AND THE RD PLAINVIEW GUARANTORS**

A. The Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement

43. On or about June 22, 2015, RD Plainview executed and delivered to Ford Credit an Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement (the “RD Plainview Wholesale Agreement”). A copy of the Wholesale Agreement is attached as Exhibit A.

44. RD Plainview executed the RD Plainview Wholesale Agreement to induce Ford Credit to extend a wholesale line of credit to RD Plainview, to be used to finance new and used motor vehicles (commonly known as floor-plan financing).

45. The RD Plainview Wholesale Agreement required RD Plainview to pay to Ford Credit the balance of any advance, plus unpaid interest and flat charges, with respect to any financed motor vehicle on or before the date on which it was sold. *See id.* at ¶ 3.

46. In exchange for the financing provided under the RD Plainview Wholesale Agreement, RD Plainview granted Ford Credit a security interest in the motor vehicles financed, their proceeds, and any rebates or refunds owed to RD Plainview. *See id.* at ¶ 4.

47. Further, RD Plainview agreed to keep the vehicles “free from all taxes, liens and encumbrances.” *See id.* at ¶ 5.

48. The RD Plainview Wholesale Agreement defines default as, among other things, failure “to promptly pay any amount now or hereafter owing to Ford Credit as and when

the same shall become due and payable” or “to duly observe or perform any other obligation secured hereby.” *See id.* at ¶ 9.

49. Upon default, Ford Credit is entitled to accelerate any or all of any unpaid balance and take immediate possession of all property in which it has a security interest. *See id.*

B. The RD Plainview Security Agreement

50. On or about June 22, 2015, RD Plainview executed and delivered a Security Agreement to Ford Credit (the “RD Plainview Security Agreement”). A copy of the RD Plainview Security Agreement is attached as Exhibit B.

51. Pursuant to the RD Plainview Security Agreement, RD Plainview granted Ford Credit a security interest in:

- (a) All equipment, fixtures, furniture, demonstrators and service vehicles, supplies and machinery and other goods of every kind;
- (b) All motor vehicles, tractors, trailers, service parts and accessories and other inventory of every kind and any accessories thereto; and
- (c) All accounts, instruments, chattel paper, general intangibles, contract rights, documents and supporting obligations thereto.

52. The term “RD Plainview Collateral” refers, collectively, to all property, accounts, papers, and rights in which RD Plainview granted Ford Credit a security interest pursuant to the RD Plainview Wholesale Agreement and the RD Plainview Security Agreement.

C. The RD III Security Agreement

53. On or about June 19, 2015, RD III executed and delivered a Security Agreement to Ford Credit (the “RD III Security Agreement”). A copy of the RD III Security Agreement is attached as Exhibit C.

54. Pursuant to the RD III Security Agreement, RD III granted Ford Credit a security interest in:

- (a) All equipment, fixtures, furniture, demonstrators and service vehicles, supplies and machinery and other goods of every kind;
- (b) All motor vehicles, tractors, trailers, service parts and accessories and other inventory of every kind and any accessories thereto; and
- (c) All accounts, instruments, chattel paper, general intangibles, contract rights, documents and supporting obligations thereto.

55. The term “RD III Collateral” refers, collectively, to all property, accounts, papers, and rights in which RD III granted Ford Credit a security interest pursuant to the RD III Wholesale Agreement and the RD III Security Agreement.

D. Guaranties of RD Plainview’s Indebtedness

56. On or about June 19, 2015, Bart Reagor and Rick Dykes, as individuals, and as managers and members of RD III, executed and delivered to Ford Credit a Continuing Guaranty (the “RD Plainview Guaranty”).

57. The individuals and entity who executed the RD Plainview Guaranty are referred to collectively as the “RD Plainview Guarantors.” A copy of the RD Plainview Guaranty is attached as Exhibit D.

58. The RD Plainview Guaranty was expressly made “to induce Ford Credit to make loans to and/or make advances” to RD Plainview under its agreements with Ford Credit, and

“to purchase or otherwise acquire retail installment sale contracts, conditional sale contracts, chattel mortgages, or other security instruments, or to otherwise extend credit to or do business with” RD Plainview.

59. Pursuant to the RD Plainview Guaranty, the RD Plainview Guarantors “jointly and severally, and unconditionally” guaranteed to Ford Credit, its successors or assigns, that RD Plainview (defined as the “Dealer”) would:

[F]ully, promptly, and faithfully perform, pay and discharge all Dealer’s present and future obligations to you; and agrees, without your first having to proceed against Dealer or to liquidate paper or any security therefore, to pay on demand all sums due and to become due to you from Dealer and all losses, costs, attorneys’ fees or expenses which you may suffer by reason of Dealer’s default; and agrees to be bound by and on demand to pay any deficiency established by a sale of paper or security held with or without notice to us; together with a reasonable attorney’s fee (15% if permitted by law) if placed with an attorney for collection from us.

See Exhibit D.

60. The RD Plainview Guaranty also provided that it was contemplated and intended to be a “personal guaranty of payment and performance” and not of collection. *See* Exhibit D.

61. Bart Reagor as president for RD III executed a Limited Liability Certificate in connection with the RD Plainview Guaranty on October 12, 2015 (the “RD III Certificate”). A copy of the RD III Certificate is attached as Exhibit E.

62. The RD III Certificate certifies that members, managers, and officers of RD III had the power to “guaranty to [Ford Credit] any and all obligations now or hereafter owing by [RD Plainview] to Ford Credit.” *See* Exhibit E. It also certifies that each of RD III’s members, managers and officers are authorized to pledge the assets of RD III to secure the guaranty. *Id.*

E. The RD Plainview Wholesale Guaranty

63. On or about June 19, 2015, and in order to induce Ford Credit to extend financing to RD Plainview under the RD Plainview Wholesale Agreement, Bart Reagor and Rick Dykes, as individuals, and as managers and members of RD III executed and delivered to Ford Credit a Wholesale Financing Guaranty (the “RD Plainview Wholesale Guaranty”). A copy of the RD Plainview Wholesale Guaranty is attached as Exhibit F.

64. Under the RD Plainview Wholesale Guaranty, the RD Plainview Guarantors “unconditionally” guaranteed the “prompt and unconditional payment, performance and discharge of all Dealer’s present and future obligations . . . arising out of or in connection with financing provided by Ford Credit to RD Plainview. *See* Exhibit F.

65. The RD Plainview Guarantors also agreed “to pay on demand all sums due and to become due to [Ford Credit] from [RD Plainview] with respect to the Wholesale Obligations together with a reasonable attorney’s fee (15% of the amount then owing by the Dealer, if permitted)” if referred to an attorney for collection.

**THE AGREEMENTS BY OR BETWEEN FORD CREDIT,
RD IMPORTS, AND THE RD IMPORTS GUARANTORS**

A. The Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement

66. On or about October 13, 2014, RD Imports executed and delivered to Ford Credit an Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement (the “RD Imports Wholesale Agreement”). A copy of the RD Imports Wholesale Agreement is attached as Exhibit G.

67. RD Imports executed the RD Imports Wholesale Agreement to induce Ford Credit to extend a wholesale line of credit to RD Imports, to be used to finance new and used motor vehicles (commonly known as floor-plan financing).

68. The RD Imports Wholesale Agreement required RD Imports to pay to Ford Credit the balance of any advance, plus unpaid interest and flat charges, with respect to any financed motor vehicle on or before the date on which it was sold. *See id.* at ¶ 3.

69. In exchange for the financing provided under the RD Imports Wholesale Agreement, RD Imports granted Ford Credit a security interest in the motor vehicles financed, their proceeds, and any rebates or refunds owed to RD Imports. *See id.* at ¶ 4.

70. Further, RD Imports agreed to keep the vehicles “free from all taxes, liens and encumbrances.” *See id.* at ¶ 5.

71. The RD Imports Wholesale Agreement defines default as, among other things, failure “to promptly pay any amount now or hereafter owing to Ford Credit as and when the same shall become due and payable” or “to duly observe or perform any other obligation secured hereby.” *See id.* at ¶ 9.

72. Upon default, Ford Credit is entitled to accelerate any or all of any unpaid balance and take immediate possession of all property in which it has a security interest. *See id.*

B. The Security Agreement

73. On or about October 13, 2014, RD Imports executed and delivered a Security Agreement to Ford Credit (the “RD Imports Security Agreement”). A copy of the Security Agreement is attached as Exhibit H.

74. Pursuant to the Security Agreement, RD Imports granted Ford Credit a security interest in:

- (a) All equipment, fixtures, furniture, demonstrators and service vehicles, supplies and machinery and other goods of every kind;
- (b) All motor vehicles, tractors, trailers, service parts and accessories and other inventory of every kind and any accessories thereto; and

- (c) All accounts, instruments, chattel paper, general intangibles, contract rights, documents and supporting obligations thereto.

75. The term “RD Imports Collateral” refers, collectively, to all property, accounts, papers, and rights in which RD Imports granted Ford Credit a security interest pursuant to the RD Imports Wholesale Agreement and the RD Imports Security Agreement.

C. Guaranty of RD Imports Indebtedness

76. On or about October 13, 2014, Bart Reagor, and Rick Dykes, as individuals, and as members of Reagor Auto Mall, executed and delivered to Ford Credit a Continuing Guaranty.

77. On or about November 13, 2014, RD Auto Co., RD Motors, and RD Amarillo executed and delivered to Ford Credit a Continuing Guaranty.

78. The individuals and entities who executed the October 13, 2014 and November 13, 2014 Continuing Guaranties (together the “RD Imports Guaranties”) are referred to collectively as the “RD Imports Guarantors.” A copy of the RD Imports Guaranties are attached as Exhibits I and J.

79. The RD Imports Guaranties were expressly made “to induce [Ford Credit] to make loans to and/or make advances” to RD Imports under its agreements with Ford Credit, and “to purchase or otherwise acquire retail installment sale contracts, conditional sale contracts, chattel mortgages, or other security instruments, or to otherwise extend credit to or do business with” RD Imports.

80. Pursuant to the RD Imports Guaranties, the RD Imports Guarantors “jointly and severally, and unconditionally” guaranteed to Ford Credit, its successors or assigns, that RD Imports (defined as the “Dealer”) would:

[F]ully, promptly, and faithfully perform, pay and discharge all Dealer's present and future obligations to you; and agrees, without your first having to proceed against Dealer or to liquidate paper or any security therefore, to pay on demand all sums due and to become due to you from Dealer and all losses, costs, attorneys' fees or expenses which you may suffer by reason of Dealer's default; and agrees to be bound by and on demand to pay any deficiency established by a sale of paper or security held with or without notice to us; together with a reasonable attorney's fee (15% if permitted by law) if placed with an attorney for collection from us.

See Exhibits I and J.

81. The RD Imports Guaranties also provided that they were contemplated and intended to be a "personal guaranty of payment and performance" and not of collection. *See* Exhibits I and J.

82. Bart Reagor and Rick Dykes, as managing members of Reagor Auto Mall, executed a Limited Liability Certificate in connection with their RD Imports Guaranty on October 13, 2014 (the "LLC Certificate"). A copy of the LLC Certificate is attached as Exhibit K.

83. The LLC Certificate certifies that the members who signed the RD Imports Guaranty had the power to "guaranty to [Ford Credit] any and all obligations now or hereafter owing by [RD Imports] to Ford Credit." *See* Exhibit K. The LLC Certificate also certifies that the signing members have the authority to pledge Reagor Auto Mall's assets to secure the RD Imports Guaranty.

**THE AGREEMENTS BY OR BETWEEN FORD CREDIT,
RD MOTORS, AND THE RD MOTORS GUARANTORS**

A. The RD Motors Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement

84. On or about March 3, 2008, RD Motors executed and delivered to Ford Credit an Automotive Wholesale Plan Application for Wholesale Financing and Security

Agreement (the “RD Motors Wholesale Agreement”). A copy of the Rd Motors Wholesale Agreement is attached as Exhibit L.

85. RD Motors executed the RD Motors Wholesale Agreement to induce Ford Credit to extend a wholesale line of credit to RD Motors, to be used to finance new and used motor vehicles (commonly known as floor-plan financing).

86. The RD Motors Wholesale Agreement required RD Motors to pay to Ford Credit the balance of any advance, plus unpaid interest and flat charges, with respect to any financed motor vehicle on or before the date on which it was sold. *See id.* at ¶ 3.

87. In exchange for the financing provided under the RD Motors Wholesale Agreement, RD Motors granted Ford Credit a security interest in the motor vehicles financed, their proceeds, and any rebates or refunds owed to RD Motors. *See id.* at ¶ 4.

88. Further, RD Motors agreed to keep the vehicles “free from all taxes, liens and encumbrances.” *See id.* at ¶ 5.

89. The RD Motors Wholesale Agreement defines default as, among other things, failure “to promptly pay any amount now or hereafter owing to Ford Credit as and when the same shall become due and payable” or “to duly observe or perform any other obligation secured hereby.” *See id.* at ¶ 9.

90. Upon default, Ford Credit is entitled to accelerate any or all of any unpaid balance and take immediate possession of all property in which it has a security interest. *See id.*

B. The RD Motors Security Agreements

91. RD Motors executed and delivered to Ford Credit a Security Agreement on or about March 3, 2008, and a Master Security Agreement (Ford/Lincoln Rent-A-Car) (the “RD Motors Master Security Agreement”) on or about December 15, 2011 (collectively, the “RD

Motors Security Agreements”). Copies of the RD Motors Security Agreements are attached as Exhibit M.

92. Pursuant to the RD Motors Security Agreements, RD Motors granted Ford

Credit a security interest in:

- (a) All equipment, fixtures, furniture, demonstrators and service vehicles, supplies and machinery and other goods of every kind;
- (b) All motor vehicles, tractors, trailers, service parts and accessories and other inventory of every kind and any accessories thereto; and
- (c) All accounts, instruments, chattel paper, general intangibles, contract rights, documents and supporting obligations thereto.

93. In addition, pursuant to the RD Motors Master Security Agreement, RD

Motors granted Ford Credit a security interest in its:

- (a) Present and future Inventory, rental agreements, leases, chattel paper, documents, general intangibles, instruments, accounts, contract rights and supporting obligations then existing or arising thereafter with respect thereto (collectively, the “Documents”);
- (b) all cash and non-cash proceeds of any of the foregoing, including rental payments and other amount due or to become due;
- (c) all rights under and benefits of the terms, covenants and provisions of the Documents; and
- (d) all legal and other remedies available for enforcement of the terms, covenants and provisions of the Documents.

94. The term “RD Motors Collateral” refers, collectively, to all property, accounts, papers, and rights in which RD Motors granted Ford Credit a security interest pursuant to the RD Motors Wholesale Agreement and the RD Motors Security Agreements.

C. The Master Loan and Security Agreement and Loan Supplements

95. On or about November 21, 2011, RD Motors executed and delivered to Ford Credit a Master Loan and Security Agreement (the “Master Loan Agreement”). A true and correct copy of the master Loan Agreement is attached as Exhibit N.

96. On or about November 21, 2011, RD Motors also executed and delivered to Ford Credit a Loan Supplement to Master Loan and Security Agreement (Revolving Line of Credit) (the “Loan Supplement”). A copy of the Loan Supplement is attached as Exhibit O.

97. On or about April 30, 2014, RD Motors further executed and delivered to Ford Credit a Loan Supplement Master Loan and Security Agreement (Revolving Line of Credit Amendment) (the “Second Loan Supplement”). A copy of the Second Loan Supplement is attached as Exhibit P.

98. On or about November 24, 2014, RD Motors, RD Auto, RD Imports, RD Amarillo, executed and delivered to Ford Credit an Amendment (Master Loan and Security Agreement) (the “Amendment”). A copy of the Amendment is attached as Exhibit Q.

99. On or about November 24, 2014, RD Motors, RD Auto, RD Imports, and RD Amarillo executed and delivered to Ford Credit a third Loan Supplement (Master Loan and Security Agreement) (Revolving Line of Credit Increase) (the “Third Loan Supplement”). A copy of the Third Loan Supplement is attached as Exhibit R.

100. On or about January 14, 2017, RD Motors, RD Auto, RD Imports, RD Amarillo, RD Plainview, and RD Floydada (collectively the “Borrowers”) executed and delivered to Ford Credit a Second Amendment (Master Loan and Security Agreement) (the “Second Amendment”). A copy of the Second Amendment is attached as Exhibit S.

101. On or about January 14, 2017, the Borrowers, executed and delivered to Ford Credit a Fourth Loan Supplement (Master Loan and Security Agreement) (Revolving Line

of Credit – Amendment) (the “Fourth Loan Supplement”). A copy of the Fourth Loan Supplement is attached as Exhibit T.

102. Collectively, the Master Loan Agreement, Amendment, Second Amendment, Loan Supplement, Second Loan Supplement, Third Loan Supplement, and Fourth Loan Supplement are referred to as the “Loan Agreement”.

103. Pursuant to the Loan Agreement, Ford Credit agreed to provide the Borrowers with a revolving line of credit of \$1,500,000.00. Exhibit T ¶ 2(a).

104. An “Event of Default” is defined by the Loan Agreement as, among other things:

(1) Default under Other Agreements. If a default shall occur under the Security Documents, the Other Loans or any other agreement between Borrower and Lender, or if any other indebtedness of Borrower to Lender shall be accelerated, or if payment of any other indebtedness of Borrower to Lender which is payable on demand shall be demanded.

(2) Payment of Indebtedness. If Borrower shall default in the due and punctual payment of all or any portion of any installment of the Indebtedness and such default shall continue for a period of ten days after written notice thereof by Lender to Borrower.

(3) Performance of Obligation. If Borrower shall default in the due observance or performance of any of the Obligations other than payment of money and such default shall not be curable, or if curable shall continue for a period of thirty days after written notice thereof from Lender to Borrower.

Exhibit N at ¶ 7(a).

105. In the event of a default, the Borrowers agreed to “pay interest on the Principal Balance of a Loan at the rate of three percent (3%) per annum over the Applicable Interest Rate or the Maximum Legal Rate, whichever is less, for such Loan from the date such Event of Default occurred and thereafter.” *Id.* at ¶ 7(f).

106. The Fourth Loan Supplement defined the “Applicable Interest Rate” as “the Maximum Legal Rate or 1.50% above the Prime Interest Rate (as defined herein) in effect from time to time.” *See* Exhibit T at ¶ 1(b). The applicable interest rate was adjusted monthly. *Id.*

D. The Cross-Default Agreement

107. On or about November 21, 2011, RD Motors, Bart Reagor and Rick Dykes executed and delivered to Ford Credit a Cross-Default and Cross-Collateralization Agreement (“the Cross-Default Agreement”). A copy of the Cross-Default Agreement is attached as Exhibit U.

108. On or about November 24, 2014, RD Motors, RD Auto, RD Imports, RD Amarillo, Bart Reagor and Rick Dykes executed and delivered to Ford Credit a second Cross-Default and Cross-Collateralization Agreement (the “Second Cross-Default Agreement”). A copy of the Second Cross-Default Agreement is attached as Exhibit V.

109. On or about January 14, 2017, the Borrowers, Bart Reagor, and Rick Dykes executed and delivered to Ford Credit an Amended and Restated Cross-Default and Cross-Collateralization Agreement (the “Amended Cross-Default Agreement”). A copy of the Amended Cross-Default Agreement is attached as Exhibit W.

110. The Amended Cross-Default Agreement applied to the Borrowers’ indebtedness under their respective Wholesale Agreements, the Loan Agreement, and any other loans Ford Credit made thereafter to the Borrowers (collectively, the “Loans”). *See Id.*, Schedule A.

111. The Amended Cross-Default Agreement provided that “[a]n Event of Default with respect to any Loan shall be an Event of Default with respect to all Loans, and upon the occurrence of an Event of Default, Lender shall have the right to exercise any and all remedies granted to Lender under the Security Documents in accordance with the terms and conditions of

such Security Documents. The collateral securing each of the Loans shall secure all the other Loans.” *Id.* at ¶ 2.

E. The Continuing Guaranties and Reaffirmations

112. On or about November 21, 2011, and in order to induce Ford Credit to extend financing to the dealerships under the Loan Agreement, Bart Reagor and Rick Dykes executed, and delivered to Ford Credit, a Continuing Guaranty (the “Loan Guaranty”). A copy of the Loan Guaranty is attached as Exhibit X and is incorporated by reference.

113. Under the Loan Guaranty, Bart Reagor and Rick Dykes guaranteed “the due and punctual payment of the Indebtedness now or hereafter outstanding” from the dealerships under the Loan Agreement, and agreed that they would pay the Indebtedness to Ford Credit upon demand without Ford Credit first having to proceed against the Dealership. *Id.* ¶¶ 2(a)-(b).

114. Bart Reagor and Rick Dykes also agreed to pay “reasonable attorneys’ fees and expenses” that Ford Credit incurred to enforce the Loan Agreement and the Loan Guaranty. *Id.* ¶ 5(g).

115. Bart Reagor and Rick Dykes further agreed to waive, among other things, all “rights and defenses, the assertion or exercise of which would in any way diminish their liability under the Loan Guaranty. *Id.* ¶ 2(c).

116. The Loan Guaranty is a guaranty of payment, not collection. *Id.* ¶ 2(b).

117. Mr. Reagor and Mr. Dykes reaffirmed their Loan Guaranty on April 30, 2014, November 24, 2014 and January 14, 2017 by executing, and delivering to Ford Credit Reaffirmations of Guaranties (the “Reaffirmations”). Copies of the Reaffirmations are attached as Exhibit Y.

118. On or about April 5, 2007, Bart Reagor, Rick Dykes, and Reagor Auto Mall executed and delivered to Ford Credit a Continuing Guaranty and a Wholesale Financing Guaranty (the “4/5/07 RD Motors Guaranties”).

119. On or about November 13, 2014, RD Auto and RD Amarillo executed and delivered to Ford Credit a Continuing Guaranty (the “11/13/14 RD Motors Guaranty”).

120. On or about October 12, 2015, RD Auto executed and delivered to Ford Credit a Continuing Guaranty (the “10/12/15 RD Motors Guaranty”).

121. Collectively, the 4/5/07 RD Motors Guaranties, 11/13/14 RD Motors Guaranty, and 10/12/15 RD Motors Guaranty are referred to as the “RD Motors Guaranties,” and are attached as Exhibit Z

122. The individuals and entities who executed the RD Motors Guaranties are referred to collectively as the “RD Motors Guarantors.”

123. The RD Motors Guaranties were expressly made “to induce [Ford Credit] to make loans to and/or make advances” to RD Motors under its agreements with Ford Credit, and “to purchase or otherwise acquire retail installment sale contracts, conditional sale contracts, chattel mortgages, or other security instruments, or to otherwise extend credit to or do business with” RD Motors. *See*, Exhibit Z.

124. Pursuant to the RD Motors Guaranties, the RD Motors Guarantors “jointly and severally, and unconditionally” guaranteed to Ford Credit, its successors or assigns, that RD Motors (defined as the “Dealer”) would:

[F]ully, promptly, and faithfully perform, pay and discharge all Dealer’s present and future obligations to you; and agrees, without your first having to proceed against Dealer or to liquidate paper or any security therefore, to pay on demand all sums due and to become due to you from Dealer and all losses, costs, attorneys’ fees or expenses which you may suffer by reason of Dealer’s default; and

agrees to be bound by and on demand to pay any deficiency established by a sale of paper or security held with or without notice to us; together with a reasonable attorney's fee (15% if permitted by law) if placed with an attorney for collection from us.

See Exhibit Z.

125. The RD Motors Guaranties also provided that they were contemplated and intended to be a "personal guaranty of payment and performance" and not of collection. *See* Exhibit Z.

126. Bart Reagor, as president for Reagor Auto, executed a Limited Liability Certificate in connection with its RD Motors Guaranties on September 29, 2016 (the "Reagor Auto Certificate"). A copy of the Reagor Auto Certificate is attached as Exhibit AA.

127. The Reagor Auto Certificate certifies that members, managers, and officers of Reagor Auto had the power to "guaranty to [Ford Credit] any and all obligations now or hereafter owing by [RD Motors] to Ford Credit." *See* Exhibit AA. It also certifies that each of Reagor Auto's members, managers and officers are authorized to pledge the assets of Reagor Auto to secure the guaranty. *Id.*

**THE AGREEMENTS BY OR BETWEEN FORD CREDIT,
RD AMARILLO, AND THE GUARANTORS**

A. The Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement

128. On or about October 13, 2014, RD Amarillo executed and delivered to Ford Credit an Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement (the "RD Amarillo Wholesale Agreement"). A copy of the RD Amarillo Wholesale Agreement is attached as Exhibit BB.

129. RD Amarillo executed the RD Amarillo Wholesale Agreement to induce Ford Credit to extend a wholesale line of credit to RD Amarillo, to be used to finance new and used motor vehicles (commonly known as floor-plan financing).

130. The RD Amarillo Wholesale Agreement required RD Amarillo to pay to Ford Credit the balance of any advance, plus unpaid interest and flat charges, with respect to any financed motor vehicle on or before the date on which it was sold. *See id.* at ¶ 3.

131. In exchange for the financing provided under the Wholesale Agreement, RD Amarillo granted Ford Credit a security interest in the motor vehicles financed, their proceeds, and any rebates or refunds owed to RD Amarillo. *See id.* at ¶ 4.

132. Further, RD Amarillo agreed to keep the vehicles “free from all taxes, liens and encumbrances.” *See id.* at ¶ 5.

133. The RD Amarillo Wholesale Agreement defines default as, among other things, failure “to promptly pay any amount now or hereafter owing to Ford Credit as and when the same shall become due and payable” or “to duly observe or perform any other obligation secured hereby.” *See id.* at ¶ 9.

134. Upon default, Ford Credit is entitled to accelerate any or all of any unpaid balance and take immediate possession of all property in which it has a security interest. *See id.*

B. The Security Agreement

135. On or about October 13, 2014, RD Amarillo executed and delivered to Ford Credit a Security Agreement (the “RD Amarillo Security Agreement”), and a Master Security Agreement (the “RD Amarillo Master Security Agreement”) (collectively, the “RD Amarillo Security Agreements”). Copies of the RD Amarillo Security Agreements are attached as Exhibit CC.

136. Pursuant to the RD Amarillo Security Agreement, Reagor-Dykes Amarillo granted Ford Credit a security interest in:

- (a) All equipment, fixtures, furniture, demonstrators and service vehicles, supplies and machinery and other goods of every kind;
- (b) All motor vehicles, tractors, trailers, service parts and accessories and other inventory of every kind and any accessories thereto; and
- (c) All accounts, instruments, chattel paper, general intangibles, contract rights, documents and supporting obligations thereto.

137. In addition, pursuant to the RD Amarillo Master Security Agreement, RD Motors granted Ford Credit a security interest in its:

- (a) Present and future Inventory, rental agreements, leases, chattel paper, documents, general intangibles, instruments, accounts, contract rights and supporting obligations then existing or arising thereafter with respect thereto (collectively, the “Documents”);
- (b) all cash and non-cash proceeds of any of the foregoing, including rental payments and other amount due or to become due;
- (c) all rights under and benefits of the terms, covenants and provisions of the Documents; and
- (d) all legal and other remedies available for enforcement of the terms, covenants and provisions of the Documents.

138. The term “RD Amarillo Collateral” refers, collectively, to all property, accounts, papers, and rights in which RD Amarillo granted Ford Credit a security interest pursuant to the RD Amarillo Wholesale Agreement and the RD Amarillo Security Agreements.

C. Guaranties of RD Amarillo’s Indebtedness

139. On or about October 13, 2014, Bart Reagor and Rick Dykes, individually, and Reagor Auto Mall, executed and delivered to Ford Credit a Continuing Guaranty and a

Wholesale Financing Guaranty (collectively, the “RD Amarillo Guaranties I”). Copies of the RD Amarillo Guaranties are attached as Exhibit DD.

140. On or about November 13, 2014, RD II, L.L.C., RD Motors, and RD Imports executed and delivered to Ford Credit a Continuing Guaranty (the “RD Amarillo Guaranty II”). A copy of the RD Amarillo Guaranty II is attached as Exhibit EE.

141. Together, the RD Amarillo Guaranty I and RD Amarillo Guaranty II are referred to as the “RD Amarillo Guaranties,” and the signatories to the RD Amarillo Guaranties are referred to as the “RD Amarillo Guarantors.”

142. The RD Amarillo Guaranties were expressly made “to induce Ford Credit to make loans to and/or make advances” to RD Amarillo under its agreements with Ford Credit, and “to purchase or otherwise acquire retail installment sale contracts, conditional sale contracts, chattel mortgages, or other security instruments, or to otherwise extend credit to or do business with” RD Amarillo.

143. Pursuant to the RD Amarillo Guaranties, the RD Amarillo Guarantors “jointly and severally, and unconditionally” guaranteed to Ford Credit, its successors or assigns, that RD Amarillo (defined as the “Dealer”) would:

[F]ully, promptly, and faithfully perform, pay and discharge all Dealer’s present and future obligations to you; and agrees, without your first having to proceed against Dealer or to liquidate paper or any security therefore, to pay on demand all sums due and to become due to you from Dealer and all losses, costs, attorneys’ fees or expenses which you may suffer by reason of Dealer’s default; and agrees to be bound by and on demand to pay any deficiency established by a sale of paper or security held with or without notice to us; together with a reasonable attorney’s fee (15% if permitted by law) if placed with an attorney for collection from us.

See Exhibits DD and EE.

144. The RD Amarillo Guaranties also provided that they were contemplated and intended to be personal guaranties of “payment and performance” and not of collection. *See* Exhibits DD and EE.

145. Bart Reagor and Rick Dykes, as managing members of Reagor Auto Mall executed a Limited Liability Certificate in connection with its RD Amarillo Guaranties on October 1, 2014 (the “Reagor Auto Mall Certificate”). A copy of the Reagor Auto Mall Certificate is attached as Exhibit FF.

146. The Reagor Auto Mall Certificate certifies that members, managers, and officers of Reagor Auto Mall had the power to “guaranty to [Ford Credit] any and all obligations now or hereafter owing by [RD Amarillo] to Ford Credit.” *See* Exhibit FF. It also certifies that each of Reagor Auto Mall’s members, managers and officers are authorized to pledge the assets of Reagor Auto Mall to secure the guaranty. *Id.*

**THE AGREEMENTS BY OR BETWEEN FORD CREDIT,
RD FLOYDADA, AND THE RD FLOYDADA GUARANTORS**

A. The RD Floydada Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement

147. On or about October 1, 2015, RD Floydada executed and delivered to Ford Credit an Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement (the “RD Floydada Wholesale Agreement”). A copy of the RD Floydada Wholesale Agreement is attached as Exhibit GG.

148. RD Floydada executed the RD Floydada Wholesale Agreement to induce Ford Credit to extend a wholesale line of credit to RD Floydada, to be used to finance new and used motor vehicles (commonly known as floor-plan financing).

149. The RD Floydada Wholesale Agreement required RD Floydada to pay to Ford Credit the balance of any advance, plus unpaid interest and flat charges, with respect to any financed motor vehicle on or before the date on which it was sold. *See id.* at ¶ 3.

150. In exchange for the financing provided under the RD Floydada Wholesale Agreement, RD Floydada granted Ford Credit a security interest in the motor vehicles financed, their proceeds, and any rebates or refunds owed to RD Floydada. *See id.* at ¶ 4.

151. Further, RD Floydada agreed to keep the vehicles “free from all taxes, liens and encumbrances.” *See id.* at ¶ 5.

152. The RD Floydada Wholesale Agreement defines default as, among other things, failure “to promptly pay any amount now or hereafter owing to Ford Credit as and when the same shall become due and payable” or “to duly observe or perform any other obligation secured hereby.” *See id.* at ¶ 9.

153. Upon default, Ford Credit is entitled to accelerate any or all of any unpaid balance and take immediate possession of all property in which it has a security interest. *See id.*

B. The RD Floydada Security Agreement

154. On or about October 1, 2015, RD Floydada executed and delivered a Security Agreement to Ford Credit (the “RD Floydada Security Agreement”). A copy of the RD Floydada Security Agreement is attached as Exhibit HH.

155. Pursuant to the RD Floydada Security Agreement, RD Floydada granted Ford Credit a security interest in:

- (a) All equipment, fixtures, furniture, demonstrators and service vehicles, supplies and machinery and other goods of every kind;
- (b) All motor vehicles, tractors, trailers, service parts and accessories and other inventory of every kind and any accessories thereto; and

- (c) All accounts, instruments, chattel paper, general intangibles, contract rights, documents and supporting obligations thereto.

156. The term “RD Floydada Collateral” refers, collectively, to all property, accounts, papers, and rights in which RD Floydada granted Ford Credit a security interest pursuant to the RD Floydada Wholesale Agreement and the RD Floydada Security Agreement.

C. Guaranty of RD Floydada’s Indebtedness

157. On or about January 8, 2016, Bart Reagor and Rick Dykes, as individuals, and Reagor Auto Mall, executed and delivered to Ford Credit a Continuing Guaranty (the “RD Floydada Guaranty”).

158. The individuals and entity who executed the RD Floydada Guaranty are referred to collectively as the “RD Floydada Guarantors.” A copy of the RD Floydada Guaranty is attached as Exhibit II.

159. The RD Floydada Guaranty was expressly made “to induce Ford Credit to make loans to and/or make advances” to RD Floydada under its agreements with Ford Credit, and “to purchase or otherwise acquire retail installment sale contracts, conditional sale contracts, chattel mortgages, or other security instruments, or to otherwise extend credit to or do business with” RD Floydada.

160. Pursuant to the RD Floydada Guaranty, the RD Floydada Guarantors “jointly and severally, and unconditionally” guaranteed to Ford Credit, its successors or assigns, that RD Floydada (defined as the “Dealer”) would:

[F]ully, promptly, and faithfully perform, pay and discharge all Dealer’s present and future obligations to you; and agrees, without your first having to proceed against Dealer or to liquidate paper or any security therefore, to pay on demand all sums due and to become due to you from Dealer and all losses, costs, attorneys’ fees or expenses which you may suffer by reason of Dealer’s default; and agrees to be bound by and on demand to pay any deficiency

established by a sale of paper or security held with or without notice to us; together with a reasonable attorney's fee (15% if permitted by law) if placed with an attorney for collection from us.

See Exhibit II.

161. The RD Floydada Guaranty also provided that it was contemplated and intended to be a "personal guaranty of payment and performance" and not of collection. *See* Exhibit II.

162. Bart Reagor and Rick Dykes, as the Members/Managers/Officers of Reagor Auto Mall, executed a Limited Liability Certificate in connection with the RD Floydada Guaranty on October 1, 2015 (the "Limited Liability Certificate"). A copy of the Limited Liability Certificate is attached as Exhibit JJ.

**THE AGREEMENTS BY OR BETWEEN FORD CREDIT,
RD AUTO, AND THE RD AUTO GUARANTORS**

A. The RD Auto Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement

163. On or about October 13, 2014, RD Auto executed and delivered to Ford Credit an Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement (the "RD Auto Wholesale Agreement"). A copy of the RD Auto Wholesale Agreement is attached as Exhibit KK.

164. RD Auto executed the RD Auto Wholesale Agreement to induce Ford Credit to extend a wholesale line of credit to RD Auto, to be used to finance new and used motor vehicles (commonly known as floor-plan financing).

165. The RD Auto Wholesale Agreement required RD Auto to pay to Ford Credit the balance of any advance, plus unpaid interest and flat charges, with respect to any financed motor vehicle on or before the date on which it was sold. *See id.* at ¶ 3.

166. In exchange for the financing provided under the RD Auto Wholesale Agreement, RD Auto granted Ford Credit a security interest in the motor vehicles financed, their proceeds, and any rebates or refunds owed to RD Auto. *See id.* at ¶ 4.

167. Further, RD Auto agreed to keep the vehicles “free from all taxes, liens and encumbrances.” *See id.* at ¶ 5.

168. The RD Auto Wholesale Agreement defines default as, among other things, failure “to promptly pay any amount now or hereafter owing to Ford Credit as and when the same shall become due and payable” or “to duly observe or perform any other obligation secured hereby.” *See id.* at ¶ 9.

169. Upon default, Ford Credit is entitled to accelerate any or all of any unpaid balance and take immediate possession of all property in which it has a security interest. *See id.*

B. The RD Auto Security Agreement

170. On or about October 13, 2014, RD Auto executed and delivered to Ford Credit a Security Agreement (the “RD Auto Security Agreement”) and a Master Security Agreement (the “RD Auto Master Security Agreement”) (collectively, the “RD Auto Security Agreements”). A copy of the RD Auto Security Agreements are attached as Exhibit LL.

171. Pursuant to the RD Auto Security Agreement, RD Auto granted Ford Credit a security interest in:

- (a) All equipment, fixtures, furniture, demonstrators and service vehicles, supplies and machinery and other goods of every kind;
- (b) All motor vehicles, tractors, trailers, service parts and accessories and other inventory of every kind and any accessories thereto; and
- (c) All accounts, instruments, chattel paper, general intangibles, contract rights, documents and supporting obligations thereto.

172. In addition, pursuant to the RD Auto Master Security Agreement, RD Motors granted Ford Credit a security interest in its:

- (a) Present and future Inventory, rental agreements, leases, chattel paper, documents, general intangibles, instruments, accounts, contract rights and supporting obligations then existing or arising thereafter with respect thereto (collectively, the “Documents”);
- (b) all cash and non-cash proceeds of any of the foregoing, including rental payments and other amount due or to become due;
- (c) all rights under and benefits of the terms, covenants and provisions of the Documents; and
- (d) all legal and other remedies available for enforcement of the terms, covenants and provisions of the Documents.

173. The term “RD Auto Collateral” refers, collectively, to all property, accounts, papers, and rights in which RD Auto granted Ford Credit a security interest pursuant to the RD Auto Wholesale Agreement and the RD Auto Security Agreements.

C. Guaranty of RD Auto’s Indebtedness

174. On or about October 13, 2014, Bart Reagor and Rick Dykes, as individuals, and Reagor-Dykes II, L.L.C., executed and delivered to Ford Credit a Continuing Guaranty (the “RD Auto Guaranty I”). A copy of the RD Auto Guaranty I is attached as Exhibit MM.

175. On or about November 13, 2014, Reagor-Dykes Amarillo, L.P., Reagor-Dykes Motors, L.P., and Reagor-Dykes Imports, L.P. executed and delivered to Ford Credit a Continuing Guaranty (the “RD Auto Guaranty II”). A copy of the RD Auto Guaranty II is attached as Exhibit NN.

176. Bart Reagor and Rick Dykes, as the Members/Managers/Officers of Reagor-Dykes II, L.L.C. executed a Limited Liability Certificate in connection with the RD Auto

Guaranty II on October 13, 2014 (the “RD Auto Limited Liability Certificate”). A copy of the RD Auto Limited Liability Certificate is attached hereto as Exhibit OO.

177. On or about October 13, 2014, Bart Reagor and Rick Dykes, as individuals, and Reagor-Dykes II, L.L.C. executed and delivered to Ford Credit a Wholesale Financing Guaranty (the “RD Auto Guaranty III”). A copy of the RD Auto Guaranty III is attached as Exhibit PP.

178. The RD Auto Guaranty I, RD Auto Guaranty II, and RD Auto Guaranty III are referred to collectively as the “RD Auto Guaranties,” and the signatories to the RD Auto Guaranties are referred to collectively as the “RD Auto Guarantors.”

179. The RD Auto Guaranties were expressly made “to induce Ford Credit to make loans to and/or make advances” to RD Auto under its agreements with Ford Credit, and “to purchase or otherwise acquire retail installment sale contracts, conditional sale contracts, chattel mortgages, or other security instruments, or to otherwise extend credit to or do business with” RD Auto.

180. Pursuant to the RD Auto Guaranties, the RD Auto Guarantors “jointly and severally, and unconditionally” guaranteed to Ford Credit, its successors or assigns, that RD Auto (defined as the “Dealer”) would:

[F]ully, promptly, and faithfully perform, pay and discharge all Dealer’s present and future obligations to you; and agrees, without your first having to proceed against Dealer or to liquidate paper or any security therefore, to pay on demand all sums due and to become due to you from Dealer and all losses, costs, attorneys’ fees or expenses which you may suffer by reason of Dealer’s default; and agrees to be bound by and on demand to pay any deficiency established by a sale of paper or security held with or without notice to us; together with a reasonable attorney’s fee (15% if permitted by law) if placed with an attorney for collection from us.

See Exhibits MM, NN, and PP.

181. The RD Auto Guaranties also provided that they were contemplated and intended to be personal guaranties of “payment and performance” and not of collection. *See* Exhibits MM, NN, and PP.

FORD CREDIT’S SECURITY INTERESTS

182. The RD Plainview Collateral, RD III Collateral, RD Imports Collateral, RD Motors Collateral, RD Amarillo Collateral, RD Floydada Collateral, and RD Auto Collateral are referred to collectively as the “Reagor-Dykes Collateral.”

183. Throughout its history with the Reagor-Dykes Dealerships and other entities, Ford Credit has maintained a first priority, perfected security interest in the Reagor-Dykes Collateral by filing financing statements, continuations, and amendments with the Texas Secretary of State.

184. Ford Credit filed initial financing statements in Texas to perfect its security interests in the Reagor-Dykes Collateral. Copies of Ford Credit’s financing statements are attached as Exhibit QQ

THE REAGOR-DYKES DEALERSHIP DEFAULTS

185. After a June 2018 audit of the inventory of the Reagor-Dykes Dealerships, Ford Credit undertook an initial analysis of the audit results and sales and registration data from the Texas DMV and other publicly available sources.

186. In the course of Ford Credit’s initial analysis of sales data for the Reagor-Dykes Dealerships, Ford Credit reviewed sales information for one hundred fifty (150) reported sales by those dealerships.

187. Based upon both Texas DMV and other publicly-available sales and registration sources, Ford Credit determined that the sales dates reported by the dealerships for one

hundred forty-seven (147) of these vehicles did not match the sales and/or registration dates reported by the Texas DMV and/or other publicly-available sources. This analysis is ongoing.

188. Based upon Ford Credit's initial analysis, substantial variances existed between the dealership's reported sales dates and the other records that Ford Credit reviewed, with an average violation discrepancy of fifty-five (55) days (across all of the dealerships).

189. In other words, the initial analysis that Ford Credit performed indicated that one hundred forty-seven (147) of the one hundred fifty (150) vehicles sold by the dealerships were sold, on average, fifty-five (55) days before the date upon which the dealerships paid them off.

190. As a result, the dealerships were able to delay making payments to Ford Credit for extended periods of time, well beyond the seven (7) processing days permitted under their agreements with Ford Credit.

191. In addition, Ford Credit's initial analysis identified several instances where the Reagor-Dykes Dealerships double-floored vehicles (this analysis is ongoing).

192. In those instances, the Reagor-Dykes Dealerships submitted information to Ford Credit to obtain floorplan (vehicle inventory) financing at one of the dealerships, and then did so again at a second dealership – thereby obtaining double financing from Ford Credit.

193. In fifteen (15) other instances, Ford Credit's initial analysis indicated that the Reagor-Dykes Dealerships sold a vehicle and then, after it was sold, floorplanned that vehicle with Ford Credit even though it was no longer in inventory, thus obtaining financing payments from Ford Credit under false pretenses.

194. By providing Ford Credit with false and/or incorrect information concerning the sales date of certain vehicles, the Reagor-Dykes Dealerships were able to avoid and/or delay paying Ford Credit the amounts owed to it for such vehicles.

195. On July 26 and 27, 2018, a further audit of the vehicle inventory at the various Reagor-Dykes Dealerships' locations revealed that each dealership was out of trust, having sold vehicles that were subject to Ford Credit's security interests without remitting proceeds from those sales to Ford Credit.

196. Selling vehicles out of trust is a violation of the Reagor-Dykes Dealerships' agreements with Ford Credit, and constitutes a default under those agreements.

197. After these defaults were discovered, the Reagor-Dykes Dealerships authorized electronic funds transfers ("EFTs") to Ford Credit totaling over \$41 Million.

198. EFTs are now being returned for insufficient funds and/or because payment on at least some of them has been stopped by Defendants.

199. As of July 31, 2018, the estimated total amounts owed by the Reagor-Dykes Dealerships to Ford Credit totaled \$116,168,000.00, and the amounts currently due are believed to exceed \$40,000,000.00.

200. Upon information and belief, as of July 31, 2018, and subject to Ford Credit's continuing investigation, the estimated amounts owed by each dealership are set below:

Dealership	Estimated Amount Outstanding	Amount currently due
RD Motors	\$ 38,983,000.00	\$ 8,472,000.00
RD Amarillo	\$ 9,565,000.00	\$ 4,207,000.00
RD Imports	\$ 12,895,000.00	\$ 6,728,000.00
RD Auto	\$ 19,747,000.00	\$ 5,410,000.00
RD Plainview	\$ 15,805,000.00	\$ 4,993,000.00
RD Floydada	\$ 19,173,000.00	\$11,924,000.00

	\$116,168,000.00	\$41,734,000.00
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201. Ford Credit has demanded that the Reagor-Dykes dealerships cure their defaults, and pay all amounts currently due to Ford Credit, but they have failed to do so.

202. On or about July 31, 2018, Ford Credit also delivered Voluntary Surrender Agreements to counsel representing the Defendants, requesting that Defendants voluntarily surrender the Reagor-Dykes Collateral to Ford Credit. Copies of the Voluntary Surrenders are attached as Exhibit RR.

203. As of the filing of this Complaint, the Reagor-Dykes Collateral has not been surrendered.

204. As of the date of this complaint, the Reagor-Dykes Guarantors have not paid the amounts currently due.

FIRST CAUSE OF ACTION
(Sequestration – RD Plainview and RD III)

205. Paragraphs 1 through 204 are realleged.

206. The Reagor-Dykes Dealerships continue to hold and possess the Reagor-Dykes Collateral, which is subject to Ford Credit's first-priority, properly perfected security interest – including, without limitation, the Reagor-Dykes Dealerships' new and used vehicle inventory and the dealerships' equipment, fixtures, furniture, demonstrators, service vehicles, supplies and machinery.

207. The new and used motor vehicles that remain in the dealerships' inventory, and which are subject to Ford Credit's security interests, are sorted by dealership and listed on the attached Exhibit SS.

208. The value of the Reagor-Dykes Collateral is believed to total in excess of \$116,168,000.00.

209. The Reagor-Dykes Collateral has not been taken for any tax, assessment or fine levied by virtue of any law of this State against the property of Ford Credit, or against it individually, nor seized under any lawful process or against the goods and chattels of Ford Credit subject to such lawful process, nor held by virtue of any order of replevin against Ford Credit.

210. As a result of the Reagor-Dykes Dealerships' defaults, their continued possession of the Reagor-Dykes Collateral would be wrongful.

211. As a result of the Reagor-Dykes Dealerships' defaults, Ford Credit is entitled to immediate possession of the Reagor-Dykes Collateral pursuant to the agreements of the parties, including the Wholesale Agreements, and Section 62.001(1) of the Texas Civil Practice and Remedies Code.

212. Because the Reagor-Dykes Dealerships have breached their agreements with Ford Credit, including the Wholesale Agreements, in failing to turn over the Reagor-Dykes Collateral, there is an immediate danger that the Defendants will conceal, dispose of, ill-treat, waste or destroy the Collateral. As a result, Ford Credit is entitled to immediate possession of the Collateral.

213. The Declarations of Ford Credit representatives Gary K. Byrd, Jr., James Conlan, and Rene Leal in support of Ford Credit's Application for Writ of Sequestration are attached as Exhibits TT, UU, and VV.

SECOND CAUSE OF ACTION
(Breach of Contract)

214. Paragraphs 1 through 212 are realleged.

215. The Reagor-Dykes Dealerships have failed to perform their obligations under their respective Wholesale Agreements specifically, but without limitation, by selling vehicles out of trust and by failing to pay wholesale and other charges as and when due.

216. Upon information and belief, as of July 31, 2018, and subject to Ford Credit's continuing investigation, the estimated amounts owed by each dealership are set below:

Dealership	Estimated Amount Outstanding	Amount currently due
RD Motors	\$ 38,983,000.00	\$ 8,472,000.00
RD Amarillo	\$ 9,565,000.00	\$ 4,207,000.00
RD Imports	\$ 12,895,000.00	\$ 6,728,000.00
RD Auto	\$ 19,747,000.00	\$ 5,410,000.00
RD Plainview	\$ 15,805,000.00	\$ 4,993,000.00
RD Floydada	\$ 19,173,000.00	\$11,924,000.00
	\$116,168,000.00	\$41,734,000.00

217. Interest continues to accrue on the principal amount of such indebtedness at post-default rates.

218. In addition, the Reagor-Dykes Dealerships' outstanding principal indebtedness to Ford Credit pursuant to the Loan Agreement, as of July 31, 2018, was \$3,916,671.00.

219. Interest continues to accrue on the principal amount of the Loan Agreement indebtedness at the post-default rate.

220. All amounts due and owing under the Reagor-Dykes Dealerships' Wholesale Agreements, plus the amount owed by the Reagor-Dykes Dealerships pursuant to the Loan Agreement will be referred to as the "Reagor-Dykes Indebtedness."

221. Ford Credit has demanded payment of all amounts currently due from the Reagor-Dykes Dealerships.

222. The Reagor-Dykes Dealerships have not paid the amounts currently due to Ford Credit and have thereby breached their agreements with Ford Credit.

223. The Reagor-Dykes Dealerships are liable to Ford Credit for breach of their respective Wholesale Agreements, their respective Security Agreements, and the Loan Agreement.

224. The Reagor-Dykes Dealerships are liable to Ford Credit for the amount owed by each under its respective Wholesale Agreement, plus the principal amount owed under the Loan Agreement, plus interest (which continues to accrue), as well as Ford Credit's costs, disbursements and attorneys' fees incurred in connection with Ford Credit's efforts to collect the Reagor-Dykes Indebtedness.

THIRD CAUSE OF ACTION
(Breach of the Reagor-Dykes Guaranties)

225. Paragraphs 1 through 224 are realleged.

226. The RD Plainview Guarantors, RD Imports Guarantors, RD Motors Guarantors, RD Amarillo Guarantors, RD Floydada Guarantors, and RD Auto Guarantors (collectively, the "Reagor-Dykes Guarantors") have failed to perform their obligations under their respective guaranties (collectively, the "Reagor-Dykes Guaranties"), specifically by not paying the outstanding amounts due to Ford Credit from Reagor-Dykes Dealerships.

227. The Reagor-Dykes Guarantors have not paid the amounts owed under the Reagor-Dykes Guaranties.

228. Accordingly, the Reagor-Dykes Guarantors have breached the Reagor-Dykes Guaranties.

229. As a result, the Reagor-Dykes Guarantors are liable to Ford Credit for breach of the Reagor-Dykes Guaranties in the amount of the Reagor-Dykes Indebtedness, plus interest (which continues to accrue), costs, disbursements and attorneys' fees incurred in connection with Ford Credit's efforts to collect the Reagor-Dykes Indebtedness.

REQUEST FOR RELIEF

For the foregoing reasons, Ford Credit respectfully requests that:

- (1) The Defendants be cited to appear and answer;
- (2) The Court issue a writ of sequestration for the Reagor-Dykes Collateral, including but not limited to the vehicles set forth the Leal Affidavit and incorporated by reference herein;
- (3) Ford Credit be granted possession of the Reagor-Dykes Collateral, including but not limited to the vehicles set forth in the Leal Affidavit and incorporated by reference herein;
- (4) Ford Credit be granted judgment against the Defendants, together with pre-judgment and post-judgment interest as provided by law;
- (5) Ford Credit be granted judgment for all costs of court and for reasonable attorneys' fees; and
- (6) Ford Credit be granted such other and further relief, special or general, legal or equitable, to which Ford Credit may show itself justly entitled

Respectfully submitted,

LANGLEY LLP

By: /s/ Brandon K. Bains

Keith A. Langley
State Bar No. 11919500
Brandon K. Bains
State Bar No. 24050126
1301 Solana Blvd.
Building 1, Suite 1545
Westlake, Texas 76262
214-722-7171
214-722-7161 (Fax)
klangley@l-llp.com
bbains@l-llp.com

COUNSEL FOR PLAINTIFF