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July 12, 2021

Lonnie Hannah
Mingo County Circuit Court
78 East 2nd Avenue
Room 232
Williamson, WV 25661

ADMITTED TO PROCEED
2021 JUL 14 PM 2:25
MINGO COUNTY CIRCUIT CLERK

RE: *Moore Chrysler, Inc. v. Thornhill Motor Car, Inc. dba Thornhill Chrysler
Dodge Jeep Ram
Mingo County Circuit Court
Civil Action No. 21-C-21*

Dear Mr. Hannah:

Enclosed for filing in the above styled civil action, please find:

1. An original ***MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION*** with its supportive documents attached;
2. Also enclosed is a copy the ***MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION*** for Honorable Miki Thompson; and
3. ***MOTION FOR PROTECTIVE ORDER.***

Counsel of record have been served with a complete copy of the same.

Should you have any questions, please feel free to contact me.

Very truly yours,

Johnnie E. Brown

JEB/jc

Lonnie Hannah

July 12, 2021

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Enclosure(s)

cc: Honorable Miki Thompson
Charles R. Bailey, Esquire
John P. Fuller, Esquire
Jim DiVita (via email only)
Wally Thornhill (via email only)

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.,

Plaintiff,

v.

**CIVIL ACTION NO.: 21-C-21
HONORABLE MIKI THOMPSON**

**THORNHILL MOTOR CAR, INC. d/b/a/
THORNHILL CHRYSLER DODGE JEEP
RAM,**

Defendant.

ADMITTED TO PROCEED
2021 JUL 14 PM 2:25
MINGO COUNTY CIRCUIT CLERK

MOTION FOR PROTECTIVE ORDER

COMES NOW the Defendant, Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram (“Thornhill”), by and through its counsel, Johnnie E. Brown, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, pursuant to Rule 26(c) of the West Virginia Rules of Civil Procedure and respectfully moves this Honorable Court for a protective order staying the response time to Plaintiff’s First Set of Requests for Production of Documents to Defendant Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram., until the Chief Justice of the Supreme Court of Appeals of West Virginia rules on this Defendant’s “Motion to Refer Case to the Business Court Division.” In further support of its Motion, this Defendant states and avers as follows:

1. The Verified Complaint, Petition for Declaratory Judgment and Motion for Injunctive Relief was filed by Plaintiff in the Circuit Court of Mingo County, West Virginia, on February 18, 2021.
2. Plaintiff instituted this civil action against Thornhill requesting a preliminary and permanent injunction, a declaratory judgment, and claims of Constructive Fraud, Punitive Damages, and Tortious Interference against Thornhill. Each claim and request

- asserted by Plaintiff arise out of Thornhill's Fountain Place Mall and Stratton Street business locations, both of which are said to violate the West Virginia Franchise law.
3. The Plaintiff served Thornhill with its First Set of Requests for Production of Documents to Defendant on March 4, 2021.
 4. Thornhill filed its 12(B)(3) Motion to Dismiss for Improper Venue and supporting Memorandum on March 12, 2021.
 5. Plaintiff filed its Response to Thornhill's Motion to Dismiss on March 18, 2021.
 6. Defendant Thornhill filed its Reply to Plaintiff's Response on March 29, 2021.
 7. The Court heard argument from both parties regarding Thornhill's Motion to Dismiss on May 11, 2021.
 8. Both parties submitted to the Court its requested Orders of Dismissal on June 24, 2021.
 9. The Court then entered its Order Denying Defendant's Motion to Dismiss on June 29, 2021.
 10. On July 2, 2021, Plaintiff filed with the Court its Motion to Compel Discovery Responses.
 11. Under West Virginia Trial Court Rule 29.06 this civil action may be referred to the West Virginia Business Court Division by filing a Motion requesting referral with the Clerk of the Supreme Court of Appeals of West Virginia.
 12. West Virginia Trial Court Rule 29.06(b) states that "The filing of a Motion to Refer shall not operate as a stay of civil actions(s), unless otherwise ordered by the Judge of the Circuit Court in which the case is pending."
 13. Thornhill submitted its Motion to Refer to the Business Court Division to the Clerk of the Supreme Court of Appeals of West Virginia on July 12, 2021.

14. Thornhill should not be required to answer this discovery pending the ruling by the Supreme Court of Appeals of West Virginia on its Motion to Refer to the Business Court. Plaintiff suffers no prejudice by this short delay. The filing of the Motion to Refer from the jurisdiction of this Honorable Court constitute due cause before this Honorable Court.

15. Thornhill does not waive any of the defenses afforded to it by the West Virginia Rules of Civil Procedure until the Chief Justice rules on Thornhill's Motion to Refer.

WHEREFORE, for good cause shown, Defendant, Thornhill Motor Car, Inc., respectfully requests that this Honorable Court grant its Motion for Protective Order and Order that the discovery not be had until such time as the Honorable Chief Justice hears argument from each party and enters an order either granting or denying Thornhill's Motion to Refer this case to the Business Court Division.

THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM

By Counsel,



Johnnie E. Brown, WV State Bar No. 4620

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC
JamesMark Building
901 Quarrier Street
Charleston, WV 25301
Telephone: (304) 344-0100
Facsimile: (304) 342-1545

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
MOORE CHRYSLER, INC.,

Plaintiff,

v.

CIVIL ACTION NO.: 21-C-21
HONORABLE MIKI THOMPSON

THORNHILL MOTOR CAR, INC. d/b/a/
THORNHILL CHRYSLER DODGE JEEP
RAM,

Defendant.

ADMITTED TO COURT
21 JUL 14 PM 2:25
MINGO COUNTY CLERK

CERTIFICATE OF SERVICE

The undersigned, counsel for Defendants, does hereby certify on this 12th day of July, 2021, that a true copy of the foregoing "*Motion For Protective Order*" was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Charles R. Bailey, Esquire,
John P. Fuller, Esquire,
Bailey & Wyant, PLLC,
P.O. Box 3710,
Charleston, WV 25337-3710
Counsel for Plaintiff



Johnnie E. Brown, WV State Bar No. 4620

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC
JamesMark Building
901 Quarrier Street
Charleston, WV 25301
Telephone: (304) 344-0100
Facsimile: (304) 342-1545

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

MOORE CHRYSLER, INC.,

Plaintiff(s),

Mingo County Circuit Court
Civil Action No. 21-C-21

ADMITTED TO RECORD
2021 JUL 14 PM 2:25
MINGO COUNTY CIRCUIT CLERK

v.

THORNHILL MOTOR CAR, INC. D/B/A
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant(s).

TO: THE HONORABLE CHIEF JUSTICE

MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram, by counsel, Johnnie E. Brown, Esq., respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- ☒ There are no known related actions.
- ☐ The following related actions could be the subject of consolidation, and are
- ☐ now pending
 - or
 - ☐ may be filed in the future. (Please list case style, number, and Court if any)
-
-

This action involves: (Please check all that apply)

- | | |
|--|--|
| <input type="checkbox"/> Breach of Contract; | <input type="checkbox"/> Non-compete Agreements; |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity; | <input type="checkbox"/> Intellectual Property, Securities, Technology Disputes; |
| <input type="checkbox"/> Sale or Purchase of Commercial Real Estate; | <input type="checkbox"/> Commercial Torts; |
| <input type="checkbox"/> Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code; | <input type="checkbox"/> Insurance Coverage Disputes in Commercial Insurance Policies; |
| <input type="checkbox"/> Terms of a Commercial Lease; | <input type="checkbox"/> Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity; |
| <input type="checkbox"/> Commercial Non-consumer debts; | <input type="checkbox"/> Anti-trust Actions between Commercial Entities; |
| <input type="checkbox"/> Internal Affairs of a Commercial Entity; | |
| <input type="checkbox"/> Trade Secrets and Trademark Infringement; | |

- | | |
|---|--|
| <input checked="" type="checkbox"/> Injunctive and Declaratory Relief Between Commercial Entities;
<input type="checkbox"/> Liability of Shareholders, Directors, Officers, Partners, etc.;
<input type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;
<input type="checkbox"/> Shareholders Derivative Claims; | <input type="checkbox"/> Commercial Bank Transactions;
<input checked="" type="checkbox"/> Franchisees/Franchisors;
<input type="checkbox"/> Internet, Electronic Commerce and Biotechnology
<input checked="" type="checkbox"/> Disputes involving Commercial Entities; or
<input type="checkbox"/> Other (Describe) _____
_____ |
|---|--|

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here:

The above styled action has been brought by the Plaintiff, Moore Chrysler, Inc. alleging violations falling under Chapter 17A Article 6 of the West Virginia Code. Specifically, Plaintiff uses West Virginia Code § 17A-6A-12 et seq to allege the unlawful relocation and establishment of Defendant Thornhill's Fountain Place Mall location ("Mall") in Logan, West Virginia. Thornhill's establishment of its Mall location was done in accordance with W. Va. Code § 17A-6A-12(1) allowing establishment within "four miles of its established place of business" without the subject location being deemed a prohibited "relocation" within Plaintiff's twenty-mile radius of "relevant market area." Thornhill's Fountain Place Mall location is within the statutory four-mile radius of its Downtown Logan location which, according to W. Va. Code § 17A-6A-12(1), is not deemed a prohibited "relocation" by Thornhill. Plaintiff challenges Thornhill's Downtown Logan location as not being "permanent", nor an "established place of business" as defined by W. Va. Code § 17A-6A-3. Thus, Plaintiff alleges Thornhill's Fountain Place Mall location is within its statutory "relevant market area" and seeks a declaratory judgment with injunctive relief.

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint, the docket sheet, and the following other documents: The Defendant's Motion to Dismiss for Lack of Venue; Plaintiff's Response in Opposition to the Motion to Dismiss; Defendant's Reply on its

Motion to Dismiss, the Court's Order denying the Motion to Dismiss for lack of Venue, and the Defendant's Answer.

In regard to expedited review, the Movant:

- ☒ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4) and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.
- ☐ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: _____
_____.

WHEREFORE, the undersigned hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 12, day of July 2021,



Johnnie E. Brown, WV State Bar No. 4620

Donovan M. Powell, WV State Bar No. 13914

PULLIN, FOWLER, FLANAGAN, BROWN, & POE, PLLC

JamesMark Building

901 Quarrier Street

Charleston, WV 25301


Telephone: (304) 344-0100

Facsimile: (304) 342-1545

CERTIFICATE OF SERVICE

I, Johnnie E. Brown, do hereby certify that on this 12th day of July 2021, I have served the foregoing “Motion to Refer Case to Business Court Division,” with attachments by either hand delivery or first-class mail to Charles R. Bailey and John P. Fuller at Bailey & Wyant, PLLC, 500 Virginia Street, East, Suite 600, Post Office Box 3710, Charleston, WV 25337;

the Mingo County Circuit Clerk’s Office; and the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401.


Sender Signature

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

USPS CERTIFIED MAIL™



9214 8901 1251 3410 0003 0808 11

THORNHILL MOTOR CAR, INC.
WALLY THORNHILL
PO BOX 340
PECKS MILL, WV 25547



Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-6000
886-767-8683
Visit us online:
www.wvsos.com

Control Number: 271152

Defendant: THORNHILL MOTOR CAR, INC.
PO BOX 340
PECKS MILL, WV 25547 US

Agent: WALLY THORNHILL

County: Mingo

Civil Action: 21-C-21

Certified Number: 92148901125134100003080811

Service Date: 2/24/2021

I am enclosing:

1 summons and verified complaint, 1 other: (MOTION FOR INJUNCTIVE RELIEF), 1 other: (PETITION FOR DECLARATORY JUDGMENT)

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

Mac Warner

Mac Warner
Secretary of State

S U M M O N S

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.,

Plaintiff,

v.

Civil Action No. 21-C-21
Honorable Miki Thompson

THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendants.

To the above-named Defendant:

Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram
c/o Wally Thornhill
P.O. Box 340
Pecks Mill, WV 25547

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Charles R. Bailey and John P. Fuller, whose address is **BAILEY & WYANT, P.L.L.C., P.O. Box 3710, Charleston, West Virginia 25337-3710**, an answer, including any related counterclaim you may have to the Complaint filed against you in the above-styled action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled action.

Dated: 02-18-21



Clerk of Court

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-C-21
Honorable Miki Thompson

THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

VERIFIED COMPLAINT, PEITION FOR DECLARATORY
JUDGMENT AND MOTION FOR INJUNCTIVE RELIEF

COMES NOW, Moore Chrysler, Inc., by counsel, the law firm of Bailey & Wyant, PLLC, Charles R. Bailey and John P. Fuller, pursuant to *Rules 57 and 65 of the West Virginia Rules of Civil Procedure, and West Virginia Code § 55-13-1 et seq.*, and hereby moves this Court for entry of an Order imposing a preliminary and permanent injunction against Defendant Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram (hereinafter "Thornhill CDJR") to enjoin Thornhill CDJR, and any other acting on behalf of Thornhill CDJR, from engaging in the sale, marketing, service, delivery or other acts and practices of a Chrysler Dodge Jeep Ram new motor vehicle dealer franchisee at, on, or adjacent to the property known as the Fountain Place Mall, situate adjacent to U.S. Route 119 in Logan, Logan County, West Virginia, and in support thereof shows this Court the following:

Parties and Facts

1. Plaintiff Moore Chrysler, Inc. (hereinafter "Moore Chrysler") is a West Virginia corporation, listing its Principal Office Address as 1123, W. 3rd Avenue, Williamson, WV, 25661 with the Office of the West Virginia Secretary of State. Moore Chrysler is engaged in the business

of selling and servicing new Fiat Chrysler Automobiles, including vehicles marketing under the brands Chrysler, Dodge, Jeep and Ram, from its physical dealership situate in Williamson, Mingo County, West Virginia. Pursuant to a franchise “dealer agreement” as that term is defined at W. Va. Code § 17A-6A-3(1), between Moore Chrysler and Fiat Chrysler Automobiles, its predecessor and assigns (the “Agreement”), Moore Chrysler is engaged in the business of selling, leasing, and servicing new Fiat Chrysler Automobiles and related service and parts products (“FCA”), including FCA brands Chrysler, Dodge, Jeep and Ram, from its physical dealership situate in Williamson, Mingo County, West Virginia. Moore Chrysler is a “new motor vehicle dealer” as that term is defined in West Virginia Code § 17A-6A-3(11). A “new motor vehicle dealer” means the following:

a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging or deal in new motor vehicles, service of said vehicles, warranty work and sale of parts who has an *established place of business* in this state and is licensed by the Division of Motor Vehicles.

WV Code § 17A-6A-3(11). Emphasis added.

Moore Chrysler has operated from its “established place of business” at 1523 W. 3rd Ave., Williamson, West Virginia since 1994. *Id.* An “established place of business” is defined at West Code § 17A-6A-3(4) as a:

permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, *including the display and repair of motor vehicles*, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances and as is licensed by the Division of Motor Vehicles.

2. Defendant Thornhill CDJR is a West Virginia Corporation. Based upon filings with the Office of the West Virginia Secretary of State, Thornhill CDJR has represented to the

State of West Virginia that its Principal Office Address is 509 Dingess Street, Logan, West Virginia. Additionally, Thornhill CDJR has represented to the State of West Virginia that its Local Office Address is 509 Dingess Street, Logan, West Virginia. Upon information and belief, the 509 Dingess Street, Logan, West Virginia property is utilized not for sales but as a service center. *See Photo of building with red roof to the immediate upper left of the Logan High School Football Field attached hereto as Exhibit A.* On its web page designed to market sales of new CDJR vehicles, Thornhill CDJR list its address as 107 Nick Savas Drive, Logan, WV 25601 (an address associated with the Fountain Place Mall). *See satellite image attached hereto as Exhibit B.* Additionally, on the same website, photographs of new CDJR vehicles offered for sale contain a watermark or banner indicating that Thornhill CDJR is situate at 500 Stratton Street, Logan, WV 25601. *See web advertisement for 2021 Jeep Compass Latitude 4x4 attached hereto as Exhibit C and web advertisement for 2020 Chrysler Voyager LX attached hereto as Exhibit D.* In addition to the other three sites, it now appears that Thornhill CDJR is offering new CDJR vehicles from an unimproved lot situate at 130 John Wes Evans Drive, Logan, West Virginia 25602. *See satellite image attached hereto as Exhibit E.* The Stratton Street location is now a vacant, gravel covered lot.

3. In approximately 2018, representatives of Fiat Chrysler Automobiles approached Moore Chrysler and requested that Moore Chrysler waive its rights under West Virginia Code § 17A-6A-3 and agree to Fiat Chrysler Automobiles permitting another CDJR dealership being placed in the “relevant market area” as defined by W.Va. Code § 17A-6A-3(14). More specifically, Fiat Chrysler Automobiles requested that Moore Chrysler agree to allow Fiat Chrysler Automobiles to place a new CDJR dealership at the Fountain Place Mall, an area within the statutorily “relevant market area.” W.Va. Code § 17A-6A-3(14) defines “relative market area” as

follows:

“Relevant market area” means the area located within a twenty air mile radius around an existing same line-make new motor vehicle dealership:....

4. When Moore Chrysler refuse to waive its rights under the statute and allow a “new” CDJR dealership within the statutory “relevant market area,” representatives of Fiat Chrysler Automobiles provided a map to Moore Chrysler with a portion of “downtown” Logan, West Virginia depicted, outside the twenty air mile radius protected by statute as Moore Chrysler’s “relevant market area,” and informed Moore Chrysler that Thornhill CDJR would be given a dealership in the area depicted in the orange block on the map. *See Orange Block Map attached hereto as Exhibit F.*

5. At some point, Thornhill CDJR obtained a lease on an old tire store situate at 509 Dingess Street, Logan, West Virginia and began operating a CDJR dealership. In addition to the service garage structure situate on the Digress Street property, Thornhill CDJR towed in a mobile home to serve as the dealership sales office situate at the Stratton Street address. Upon information and belief, this mobile home sales office was always readily mobile and was ultimately towed to the John Wes Evans Drive address at the Fountain Place Mall to serve as a sales office. While Thornhill CDJR sold new CDJR vehicles from a mobile home on a gravel lot, West Virginia Code § 17A-6A-3(4) defines an “Established place of business” as follows:

“Established place of business” means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the term of all applicable building codes, zoning and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles.

6. Upon information and belief, the lease of the property situate at Stratton Street was not a long-term lease and is indicative of an intended short-term stay at the Stratton Street address.

7. Additionally, Thornhill CDJR never made the necessary and required capital improvements routinely required by FCA of a new CDJR dealership.

8. Upon information and belief, during the entire tenancy at Stratton Street, Thornhill CDJR never erected nor created an improvement of the sales office beyond selling new CDJR vehicles from a mobile home.

9. Upon information and belief, during the entire tenancy at Stratton Street, Thornhill CDJR never acquired, installed or displayed corporate signage required by the manufacture to advertise the dealership as a new CDJR dealership.

10. Upon information and belief, Thornhill CDJR never made any significant improvements to the Stratton Street location because it was, by design, nothing more than a temporary location intended to create the facial appearance of a new CDJR dealership so that Thornhill CDJR could ultimately locate a dealership at the Fountain Place Mall, which was Thornhill CDJR true intent since at least 2018.

11. Ultimately, Thornhill CDJR moved from its temporary location at Stratton Street to a second temporary location at Nick Savas Drive, Logan, West Virginia before ultimately moving the sales location to the John Wes Evans Drive location. To effectuate this move, upon information and belief, Thornhill CDJR simply shuttled the new CDJR vehicles to the Fountain Place Mall and towed the sales office from Stratton Street location.

12. Upon information and belief, the opening of Thornhill CDJR was nothing more than a ruse perpetrated for the sole purpose of then moving the dealership to Fountain Place Mall under the guise of moving an "established place of business" as defined under West Virginia Code § 17A-6A-3. The nefarious intent is clear based upon the utter lack of investment by Thornhill CDJR and the obvious failures of the Stratton Street location to meet any of the minimal

expectations of a new car dealership, including a permanent structure as a sales office and manufacture signage. In fact, as of the date of the filing of the instant Petition, it is unclear where exactly Thornhill CDJR operates its CDJR sales location as no “established place of business” as defined in West Code § 17A-6A-3(4) has never existed, no permanent manufacture signage has ever been installed and the “dealership” could move to a new location by simply shuttling the new vehicles and towing the sales trailer to another location.

13. When Fiat Chrysler Automobiles failed to obtain the consent of Moore Chrysler for the placement of a new CDJR dealership at the Fountain Place Mall, Thornhill CDJR engaged in the ruse of creating the “Potemkin village” dealership location at Stratton Street hoping to exploit West Virginia Code § 17A-6A-12 to strip Moore Chrysler of its statutorily protected “relevant market area.”

Violation of Statute

14. Moore Chrysler re-alleges and avers all allegations contained in Paragraphs 1-13 as if fully set forth herein.

15. In enacting West Virginia Code § 17A-6A-1 et seq., the West Virginia Legislature stated the public policy behind the relevant statute, finding that:

The Legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affects the general economy and the public welfare and that in order to promote the public welfare and in exercise of its police power, it is necessary to regulate motor vehicle dealers, manufacturers, distributors and representatives of vehicle manufacturers and distributors doing business in this state in order to avoid undue control over the independent new motor vehicle dealer by the vehicle manufacturer or distributor and to ensure that dealers fulfill their obligations under the franchises and provide adequate and sufficient service to consumers generally, and to protect and preserve the investment and properties of the citizens and motor vehicle dealers of this state. *Id.*

16. West Virginia Code § 17A-6A-12(1) provides:

As used in this section “relocate” and “relocation” do not include the

relocation of a new motor vehicle dealer within four miles of its established place of business or an existing new motor vehicle dealer sells or transfers the dealership to a new owner and the successor new motor vehicle dealership owner relocates to a location within four miles of the seller's last open new motor vehicle dealership location. The relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor may not be within six air miles of another dealer of the same line-make. *Id.*

17. Prior to Fiat Chrysler Automobiles giving Thornhill CDJR permission to relocate mobile home sales office to the Fountain Place Mall, Fiat Chrysler Automobiles was statutorily obligated to provide statutory notice to Moore Chrysler pursuant to West Virginia Code § 17A-6A-12(2). To date, Fiat Chrysler Automobiles has failed to provide the notice required by West Virginia Code § 17A-6A-12(2) to Moore Chrysler.

18. Upon information and belief, during a meeting with Fiat Chrysler Automobiles representatives in 2018 and upon learning that Moore Chrysler would not consent to Thornhill CDJR being located at the Fountain Place Mall, Thornhill CDJR concocted the plan to create the Thornhill CDJR and run the same out of a mobile home at the Stratton Street location, with the ultimate goal to call the new dealership location an "established business" for the express purpose of then utilizing West Virginia Code § 17A-6A-12 et seq. to tow the mobile home sales office to the Fountain Place Mall and begin selling CDJR vehicles within the statutorily protected "relevant market area" of Moore Chrysler.

19. The Stratton Street mobile home sales office of Thornhill CDJR does not meet the definition of an "Established place of business," as defined in West Virginia Code § 17A-6A-3(4), which defines the same as:

"Established place of business" means a permanent, enclosed commercial building located with this state easily accessible and open to the public at all reasonable times and at which the new business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance

with the terms of all applicable building codes, zoning and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles. Id.

20. Clearly, the mobile home sales office of Thornhill CDJR is not a “permanent” commercial building, and this is evidenced by Thornhill CDJR’s ability to tow the mobile home sales office to the Fountain Place Mall to sell new CDJR vehicles out of the same mobile home sales office at the Fountain Place Mall location.

21. Thornhill CDJR has violated West Virginia Code § 17A-6A-12 et seq. by moving the ruse “dealership” and its mobile home sales office from the Stratton Street location to Fountain Place Mall, a location within the statutorily protected “relevant market area” of Moore Chrysler.

22. Pursuant to West Virginia Code § 17A-6A-12(3), jurisdiction and venue for this action are proper before the Circuit Court of Mingo County, West Virginia.

Motion for Preliminary and Permanent Injunction

23. Moore Chrysler re-alleges and avers all allegations contained in Paragraphs 1-22 as if fully set forth herein.

24. Moore Chrysler has attempted to resolve this dispute directly with Fiat Chrysler Automobiles prior to filing the instant action.

25. Moore Chrysler has suffered damages and will continue to suffer damages as long as Thornhill CDJR is permitted to operate a new CDJR dealership within the statutorily protected “relevant market area” of Moore Chrysler.

26. Moore Chrysler has no adequate remedy at law. No amount of money damages will restore Moore Chrysler’s statutorily protected “relevant market area.”

27. Moore Chrysler is likely to prevail on the merits. The evidence is clear that the Stratton Street location was never anything more than a sophomoric attempt to create the illusion

of a “established place of business” when the location clearly did not meet even the most minimal requirement of those typically required and expected of a new CDJR dealership.

28. Thornhill CDJR cannot demonstrate any public interest warranting a denial of the Moore Chrysler’s otherwise clear right to injunctive relief.

29. Moore Chrysler will suffer permanent harm if Thornhill CDJR is permitted to operate a new CDJR dealership at the Fountain Place Mall or at any other location within Moore Chrysler’s statutorily protected “relevant market area.” The damages caused by the wrongful and intentional conduct of Thornhill CDJR are resulting in damages in Mingo County, West Virginia.

Petition for Declaratory Judgment

30. Moore Chrysler re-alleges and avers all allegations contained in Paragraphs 1-29 as if fully set forth herein.

31. Moore Chrysler brings this Petition for Declaratory Judgment pursuant to West Virginia Code § 55-13-1 et seq. and in accordance with Rule 57 of the *West Virginia Rules of Civil Procedure*. Jurisdiction and venue are proper before the Circuit Court of Mingo County, West Virginia pursuant to West Virginia Code § 17A-6A-12(3).

32. Moore Chrysler hereby moves this Court for entry of an Order declaring that Thornhill CDJR violated West Virginia Code § 17A-6A-1 et seq. and West Virginia public policy as outlined in West Virginia Code § 17A-6A-1, by operating the ruse dealership from a mobile home sales office at the Stratton Street address and then towing the mobile home sales office to Fountain Place Mall to then sell new CDJR vehicles from the relocated mobile home sales office within the statutorily protected “relevant market area” of Moore Chrysler.

33. Moore Chrysler moves this Court to declare that Thornhill CDJR did not establish a permanent location at the Stratton Street address and that the mobile home sales office of

Thornhill CDJR is not a permanent commercial structure.

34. Moore Chrysler moves this Court to declare that Moore Chrysler was not given the statutorily required written notice that Thornhill CDJR was to be located within the statutorily protected “relevant market area” of Moore Chrysler.

Count I Constructive Fraud

35. Moore Chrysler re-alleges and avers all allegations contained in Paragraphs 1-34 as if fully set forth herein.

36. By opening the Stratton Street location with the intent to ultimately use the same as a “launching pad” to move to the Fountain Place Mall rather than establish a dealership at Stratton Street, Thornhill CDJR has breached a legal or equitably duty.

37. By opening the Stratton Street location with the intent to ultimately use the same as a “launching pad” to move to the Fountain Place Mall rather than to establish a dealership at Stratton Street, Thornhill CDJR’s actions have, or have a tendency to, deceive others, to violate public and/or private confidence, or to injure public interests. Such acts clearly violate the public policy articulated in West Virginia Code § 17A-6A-1 et seq.

38. As a result of the constructive fraud perpetrated by Thornhill CDJR, Moore Chrysler has incurred damages.

Count II Punitive Damages

39. Moore Chrysler re-alleges and avers all allegations contained in Paragraphs 1-38 as if fully set forth herein.

40. The wrongful acts of Thornhill CDJR were reckless, wanton, intentional and designed for the specific purpose of causing damages to Moore Chrysler.

41. Moore Chrysler is entitled to an award of punitive damages as a result of the

reckless, wanton and intentional acts of Thornhill CDJR designed to intentionally damage Moore Chrysler.

Count III Tortious Interference

42. Moore Chrysler re-alleges and avers all allegations contained in Paragraphs 1-41 as if fully set forth herein.

43. Thornhill CDJR and its principals hold themselves out to the world as having knowledge of the new car sales trade and engage in the sale of new CDJR vehicles, as well as the sale of new vehicles manufactured by General Motors and Ford through separate but related entities in Logan County, West Virginia.

44. Thornhill CDJR and its principals, at all times, were aware of the general nature of dealership agreements between a new car dealership and a manufacturer. Additionally, Thornhill CDJR and its principals, at all times, were aware of the statutory protections afforded to Moore Chrysler.

45. Thornhill CDJR was generally aware that Moore Chrysler had entered a dealership agreement with Fiat Chrysler Automobiles which, by operation of law, provided for the statutorily protected "relevant market area" that included the Fountain Place Mall in Logan, West Virginia.

46. Upon information and belief, Thornhill CDJR knew that Fiat Chrysler Automobiles had approached Moore Chrysler seeking approval from Moore Chrysler for Fiat Chrysler Automobiles to enter into a dealership agreement with Thornhill CDJR placing a dealership at the Fountain Place Mall and, therefore, within the statutorily protected "relevant market area" of Moore Chrysler.

47. When Moore Chrysler, well within its rights under the dealership agreement with Fiat Chrysler Automobiles, refused to provide consent to a new CDJR dealership being placed at

the Fountain Place Mall, Thornhill commenced the ruse of opening temporary location at Stratton Street with the intent to then cloak the same as an “established business” and ultimately tow the “sales office” mobile home to Fountain Place Mall.

48. The acts of Thornhill CDJR were intentional.

49. The intentional interference of Thornhill CDJR in the relationship between Moore Chrysler and Fiat Chrysler Automobiles has caused damage to Moore Chrysler.

50. As a direct and intended result of the wrongful conduct of Thornhill CDJR, Moore Chrysler has suffered damages.

51. The harm and damages caused by the intentional conduct of Thornhill CDJR has occurred in Mingo County, West Virginia.

52. As a result of the harm and damages caused by the intentional conduct of Thornhill CDJR, Moore Chrysler is entitled to past, present and future damages and well as punitive damages from Thornhill CDJR.

WHEREFORE, based upon the foregoing, Moore Chrysler hereby moves this Court for entry of an Order granting it the following relief:

A. A preliminary injunction enjoining Thornhill CDJR, or anyone acting on its behalf, from engaging the sale, delivery or service of new CDJR vehicles at the Fountain Place Mall, or anywhere within the statutorily protected “relevant market area” of Moore Chrysler.

B. A permanent injunction enjoining Thornhill CDJR, or anyone acting on its behalf, from engaging the sale, delivery or service of new CDJR vehicles at the Fountain Place Mall, or anywhere within the statutorily protected “relevant market area” of Moore Chrysler;

C. Provide the declaratory relief prayed for herein;

D. Monetary award to the Plaintiffs for any and all actual damages and punitive

damages;

E. An award to the Plaintiffs of all costs of litigation, including actual attorneys' fees and court costs; and

F. All other relief that this Court deems just and proper.

Moore Chrysler hereby demands a trial by jury on all issues so triable.

MOORE CHRYSLER, INC.,

By Counsel,



Charles E. Bailey (WV Bar #0202)

John P. Fuller (WV Bar #9116)

BAILEY & WYANT, PLLC

500 Virginia Street, East, Suite 600

Post Office Box 3710

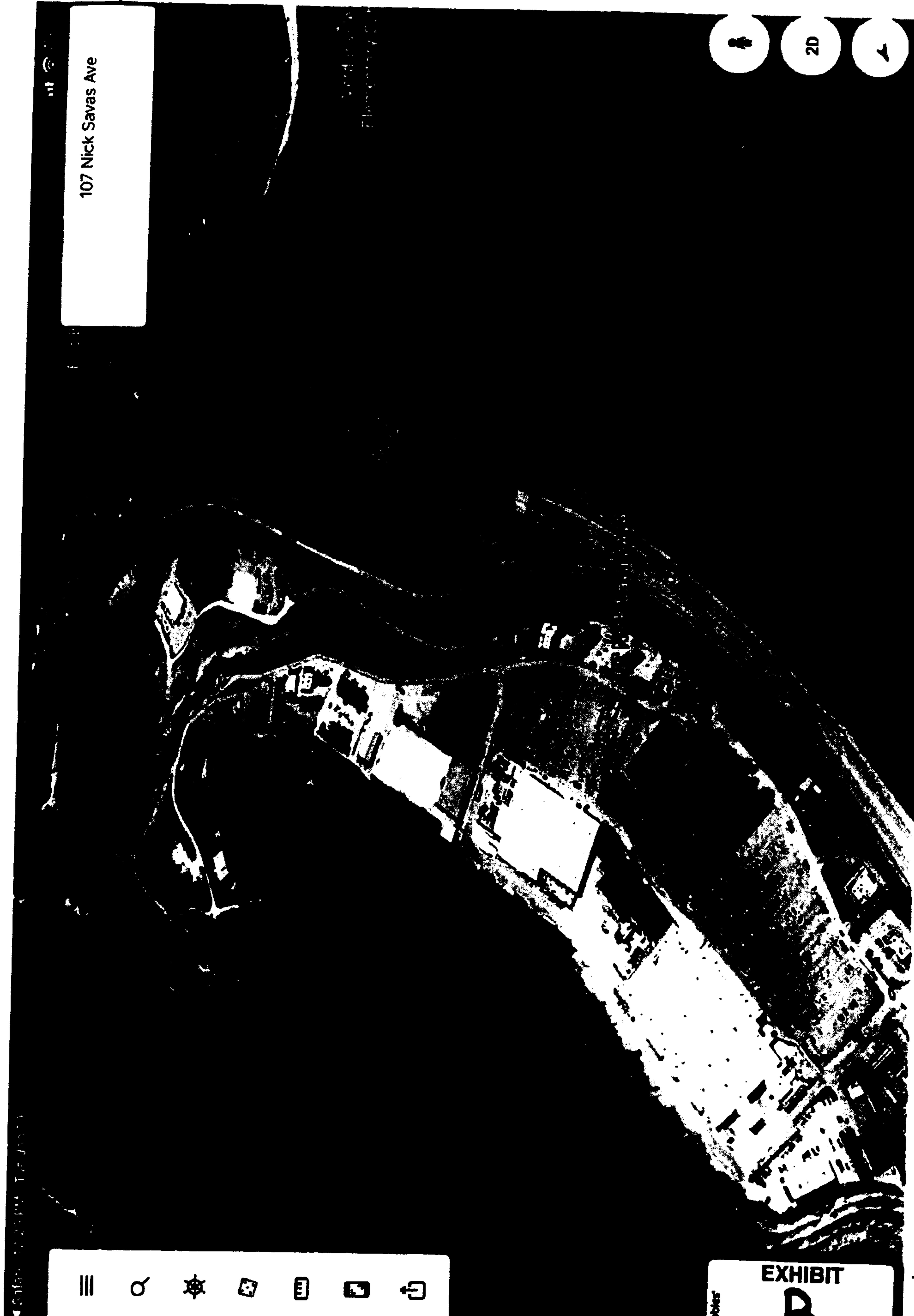
Charleston, West Virginia 25337-3710

(304) 345-4222



Distance ?
0.35 mi





107 Nick Savas Ave



EXHIBIT
B

Google

(37°51'42"N 82°03'16"W) 4,859 ft

07:57



thornhillcdjr.com Private

CALL 304-239-5048 DIRECTIONS



2021 Jeep COMPASS LATITUDE 4X4



▶ VIEW VIDEO

List Price:	\$30,330
Employee Pricing For All: ⓘ	-\$1,897
Jeep Offers: ⓘ	-\$3,500
Thornhill Price	\$23,933
Thornhill Total Savings:	\$6,397

You May Also Qualify For:

IDL Bonus Cash ⓘ	\$3,000
National Lease Cash ⓘ	\$1,250
Chrysler Capital Bonus Cash ⓘ	\$750
Military Program ⓘ	
Returning Lessee ⓘ	

Camila

How may I help
you? -

Sport Utility, MPJM74,
2.4L I4 Zero Evap MultiAir® Engine w/ Start / Stop,
9-Spd 948TE FWD/AWD Auto Transmission, 4x4,
Granite Crystal Metallic Clear-Coat Exterior Paint, Black
22 City / 30 Hwy, 3C4NJDBB8MT500666, 21001, .

Show Window Sticker



EXHIBIT

C

07:58



🔒 thornhillcdjr.com -- Private

CALL 304-239-5048

DIRECTIONS



2020 Chrysler VOYAGER LX

Thornhill

500 Stratton Street,
Logan, WV 25601
www.thornhillcdjr.com



10 YEAR 100,000 MILE LIMITED WARRANTY

▶ VIEW VIDEO

List Price:	\$32,280
Dealer Discount:	-\$850
Chrysler Offers: 0	-\$750

Thornhill Price	\$29,680
Thornhill Total Savings:	\$3,100

You May Also Qualify For:

Military Program 0	\$500
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Passenger Van, RUCL53, 3.6L V6 E
9-Speed Automatic Transmission, F
Granite Crystal Metallic Clear-Coat I
19 City / 28 Hwy, 2C4RC1CG7LR15

Camila

How may I help
you? 😊

🔗 Show Window Sticker

GET E PRICE

APPLY FOR CREDIT



EXHIBIT

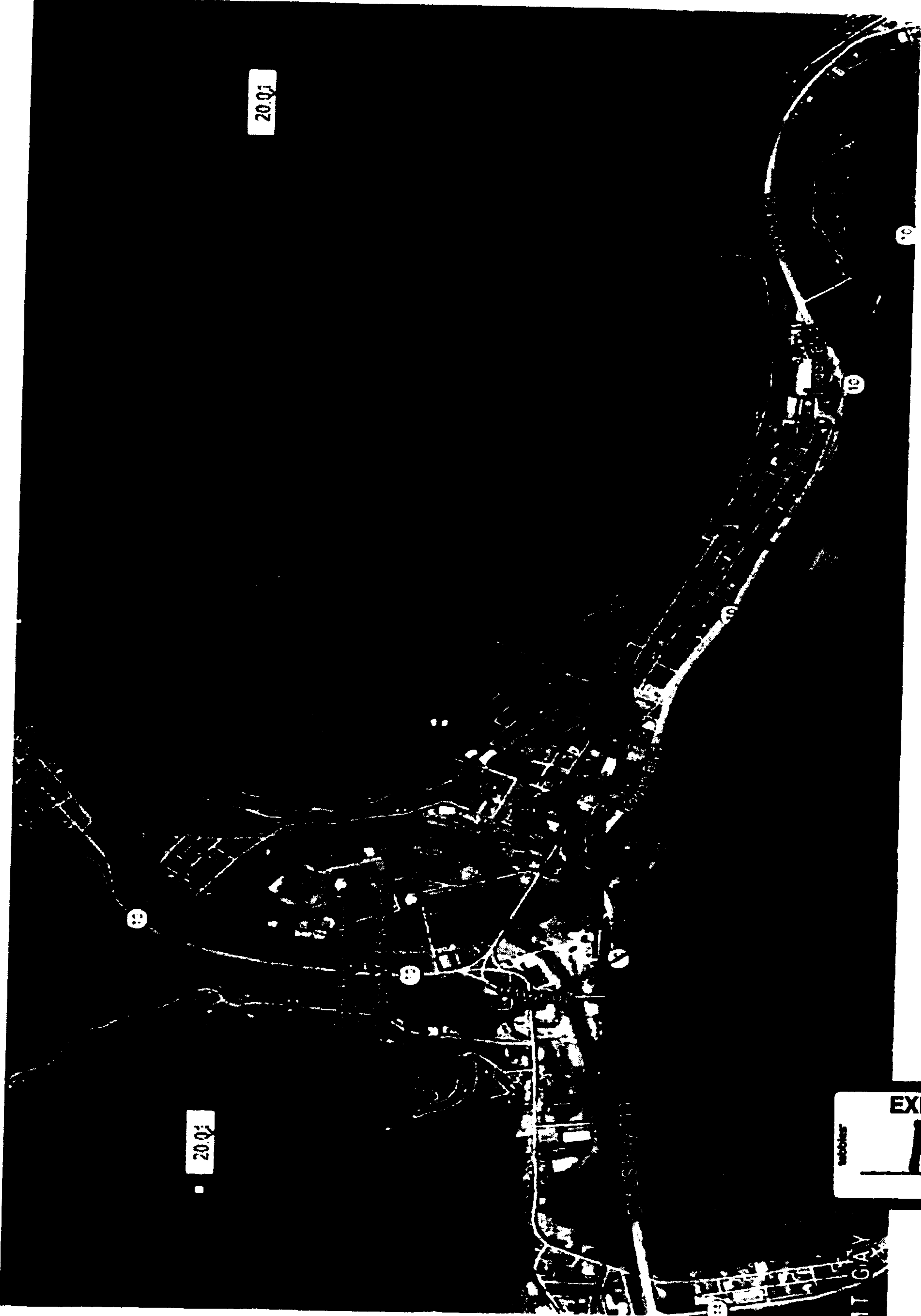
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EXHIBIT
E

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20 Q1

EXHIBIT
F

FUNCTION = CHANGE

CASE SCREEN 4

Case number : 21-C-21

Action Log

Line	Date	Action / Results
		MOORE CHRYSLER, INC. vs. THORNHILL MOTOR CAR, INC.
1	02/18/21	CIVIL CASE, SUMMONS, COMPLAINT FILED;
2	02/18/21	GAVE COPIES TO ATTORNEY FOR SERVICE
3	03/01/21	ACCEPTED SERVICE OF PROCESS SOS ON BEHALF OF THORNHILL MOTOR
4		CAR, INC. FILED;
5	03/08/21	CERTIFICATE OF SERVICE FILED;
6	03/16/21	DEFENDANT'S RULE 12(B)(3) MOTION TO DISMISS FOR IMPROPER VENUE
7		AND A MEMORANDUM OF LAW IN SUPPORT FILED;
8	03/22/21	MOORE CHRYSLER, INC.'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS,
9		CERTIFICATE OF SERVICE FILED;
10	03/31/21	DEF.'S REPLY TO MOORE CHRYSLER, INC.'S RESPONSE TO DEFENDANT'S
11		MOTION TO DISMISS NOTICE OF HEARING, CERT. OF SERVICE FILED;
12	04/28/21	AMENDED NOTICE OF HEARING, CERTIFICATE OF SERVICE FILED;
13	05/19/21	TRANSCRIPTS FROM HEARING HELD ON MAY 11, 2021 FILED;
14	06/29/21	ORDER DENYING DEFENDANT'S MOTION TO DISMISS ENTERED;
15	07/06/21	MOORE CHRYSLER, INC.'S MOTION TO COMPEL DISCOVERY RESPONSE, CERT.
16		OF SERVICE FILED;

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-2-21
Honorable Miki Thompson

THORNHILL MOTOR CAR, INC. D/B/A
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.


DEFENDANT'S RULE 12(b)(3) MOTION TO DISMISS FOR
IMPROPER VENUE

COMES NOW Defendant Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram, being a West Virginia Corporation with its principal office located in Logan County, West Virginia, by and through counsel, Johnnie E. Brown, Donovan M. Powell, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and pursuant to Rule 12(b)(3) of the West Virginia Code § 56-1-1, Defendant asserts that venue is not proper in Mingo County, West Virginia. In support of this Motion, Defendant adopts and incorporated the accompanying Memorandum of Law in Support.

WHEREFORE, Defendant respectfully requests that this Court grant this Motion to Dismiss and dismiss Plaintiff's claims pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure.

**THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM**

By Counsel,

A handwritten signature in black ink, appearing to read "Johnnie E. Brown", is written over a horizontal line.

Johnnie E. Brown, WV State Bar No. 4620
Donovan M. Powell, WV State Bar No. 13914

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC

JamesMark Building

901 Quarrier Street

Charleston, WV 25301

Telephone: (304) 344-0100

Facsimile: (304) 342-1545

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-2-21
Honorable Miki Thompson

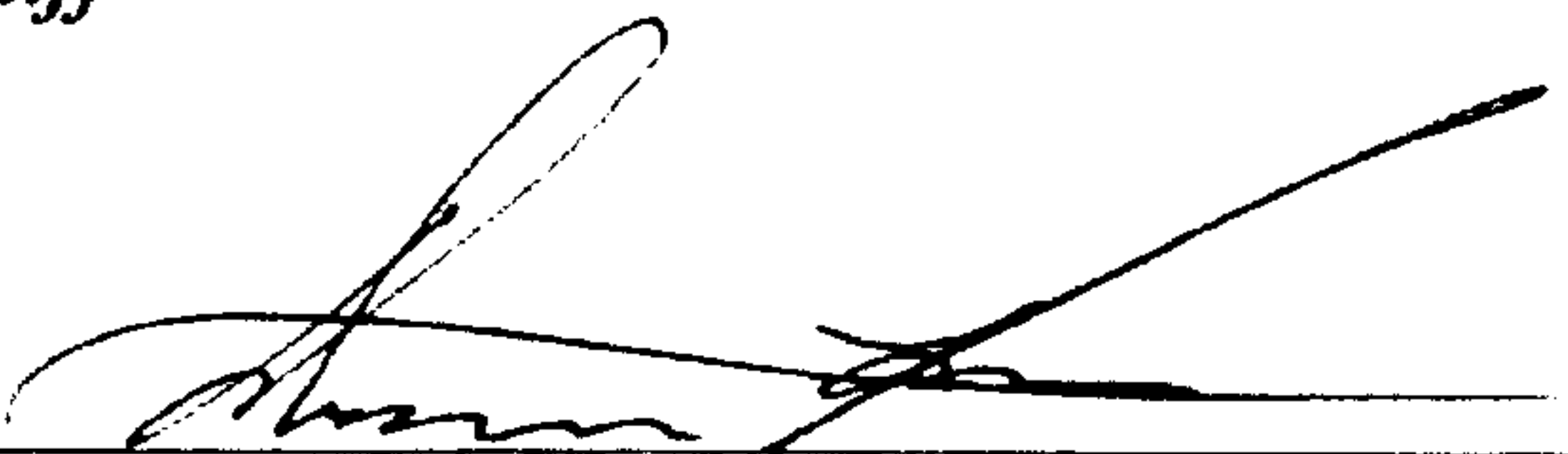
THORNHILL MOTOR CAR, INC. D/B/A
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for the Defendant, does hereby certify on this 12th day of March 2021 that a true copy of the foregoing **“Defendant’s Rule 12(B)(3) Motion To Dismiss For Improper Venue”** was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Charles R. Bailey
John P. Fuller
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
Counsel for Plaintiff



Johnnie E. Brown, WV State Bar No. 4620
Donovan M. Powell, WV State Bar No. 13914

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC

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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-2-21
Honorable Miki Thompson

THORNHILL MOTOR CAR, INC. D/B/A
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

MEMORANDUM IN SUPPORT OF DEFENDANT THORNHILL MOTOR CAR, INC.'S
MOTION TO DISMISS FOR IMPROPER VENUE

NOW COMES the Defendant, Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram ("Thornhill"), through counsel, Johnnie E. Brown, Donovan M. Powell, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure, and hereby submits its Memorandum in Support of Defendant Thornhill Motor Car, Inc.'s Motion to Dismiss for Improper Venue asking this Honorable Court to dismiss Plaintiff's suit in its entirety. In support of its Motion to Dismiss, this Defendant submits the attached memorandum of law. In further support thereof, this Defendant states as follows.

I. BACKGROUND

Plaintiff filed this action with the Court on February 18, 2021 wherein it asks, among other things, that Thornhill have a preliminary and permanent injunction ordered against it. Plaintiff asks

that these injunctions prohibit Thornhill from engaging in the sale, marketing, service, delivery or “other acts and practices of a Chrysler Dodge Jeep Ram new motor vehicle dealer franchisee at, on, or adjacent to the property known as the Fountain Place Mall, situate adjacent to U.S. Route in 119 in Logan, Logan County, West Virginia.” *See* Complaint ¶ 1.

Plaintiff’s claims arise from three properties that it alleges Thornhill is currently using, or which have been used in the past, to facilitate the sale of Fiat Chrysler Automobiles (FCA). These locations: Stratton Street, Nick Savas Drive, and John Wes Evans Drive are located within Logan County. It is alleged that Thornhill’s Stratton Street location is not an “established business” per West Virginia Code § 17A-6A-3(4). Further, the Nick Savas Drive and John Wes Evans Drive locations, where Thornhill is alleged to do business, are within the statutory twenty mile “relevant market area.” Because the Stratton Street location was never an “established business”, Plaintiffs assert the dealership cannot be subject to § 17A-6A-12(1). This exception allows a dealership to circumvent the 20-mile rule. Thus, the Plaintiffs conclude Thornhill is in violation of the “relevant market area” statute § 17A-6A-3(14). *Id.*, 5-7. Plaintiff further alleges that FCA representatives and Thornhill conspired to “concoct” a plan which ultimately resulted in Thornhill illegally selling vehicles within the protected relevant market area of Plaintiff’s. *Id.*, 7.

Although Plaintiff is a resident of Mingo County, this fact has no impact on venue. Rather all relevant actions giving rise to Plaintiff’s claims were within Logan County. Moreover, Defendant Thornhill is a resident of Logan County. For the reasons stated herein this Defendant avers Plaintiff’s case was brought in the wrong venue and should be dismissed in accordance with the State’s general venue statute.

II. ARGUMENT

Because Thornhill Motor Car, Inc. is a corporate entity, under West Virginia law, this action should be brought where Defendant's principal office is located or where its "chief officer" resides. Specifically, W. Va. Code § 56-1-1(a)(2) states:

(a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:

(1) Wherein any of the defendants may reside or the cause of action arose . . . ;

(2) If a corporation or other corporate entity is a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides . . .

Here, as stated in Plaintiff's *Verified Complaint, Petition for Declaratory Judgment and Motion for Injunctive Relief*, Defendant Thornhill Motor Car, Inc.'s principal office is located in Logan County, West Virginia. Moreover, Defendant's chief officer resides in Logan County. These facts coupled with the Plaintiff's own allegations that all relevant actions occurred in Logan County make Plaintiff's claims defective as a matter of law.

Commenting specifically on the intent of § 56-1-1(a)(2) the Supreme court of Appeals has provided the following:

Rather than discarding established common law principles of venue concerning where the cause of action arose, W. Va. Code § 56-1-1(a)(2) (2012), is intended to amplify upon the language of the former § 56-1-1, which dealt with venue based on the location of the defendant and was not intended to affect venue based on where the cause of action arose. The 1986 amendments to § 56-1-1 allow an action to be brought in the county in which the action arose when a corporate defendant has been sued in addition to the "residency" locations specified in § 56-1-1 (a)(2). *State ex rel. Thornhill Group, Inc. v. King*, 233 W. Va. 564, 565

The current facts at issue mirror those presented in *State ex rel. Thornhill Group, Inc. v. King*. Just as in *Thornhill*, the individual defendant is Wally Thornhill. Mr. Thornhill remains and continues to reside in Logan County. Providing guidance on venue the *Thornhill* Supreme Court noted that “Although the residency of the defendants clearly points to Logan County for venue purposes, the general venue statute provides an alternate basis for determining venue that must be considered: where the cause of action arose.” *Id.* at 568.

The *Thornhill* Court concluded that the two controlling factors for venue are the place of the defendant’s residence and the place where the cause of action arose. *Id.* at 571. Given the fact that residency unquestionably favors dismissal, Plaintiff must establish that the actions at issue were somewhere other than Logan County. If no defendants live in the venue that Plaintiff brings suit and if it is undisputed that the corporate or individual defendant resides in another county, the only way the case can remain in that which plaintiff brings it is if the cause of action arose there. *Id.* The Supreme Court has already dealt with this exact venue issue. “Venue lies in Logan County.” *Id.* at 568.

As the *Thornhill* Court reasoned, subsection (a)(2) has been interpreted to allow a case against a corporate defendant to be brought in the county in which the action arose. The residency requirements have no bearing on an extra-jurisdictional defendant’s ability to seek redress where the action arose.

Similarly, subpart (b) of the general venue statute also deems venue in Mingo County to be defective as a matter of law. As stated previously, the two primary factors to be used in determining venue under § 56-1-1 are where the defendant resides and where the cause of action arose. See *State ex rel. Airsquid Ventures, Inc. v. Hummel*, 236 W. Va. 142, 146. In *Airsquid Ventures*, the factual allegations in Plaintiff’s Complaint giving rise to the causes of action therein took place

in Logan County and Defendant resided in Logan County. Simply put, there is no justification for going forward with this case in Mingo County, a county where the Defendant does not reside and a county where the actions did not occur.

Under W. Va. Code § 56-1-1(b):

Whenever a civil action or proceeding is brought in the county where the cause of action arose under the provisions of subsection (a) of this section, if no defendant resides in the county, a defendant to the action or proceeding may move the court before which the action is pending for a change of venue to a county where one or more of the defendants resides and upon a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by the change of venue, the court may grant the motion.

Importantly, the West Virginia Supreme Court of Appeals has recognized that circuit courts have broad discretion under W. Va. Code § 56-1-1(b) to dismiss this action for improper venue.

If suit is brought in the county where the cause of action arose and if none of the defendants reside in that county, W. Va. Code, 56-1-1(b) (1986), permits a defendant to move the circuit court to transfer the case to a county wherein one or more of the defendants reside. For the circuit court to grant the motion, a defendant must demonstrate that the proposed county would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by such change. *State ex rel. Smith v. Maynard*, 193 W. Va. 1, 2.

Further, the Court has held that when the Legislature enacted § 56-1-1(b), they did so with the intent to give circuit courts “broader discretion than was permissible under the old rule of forum non conveniens.” *State ex rel. Thornhill Grp., Inc. v. King*, 233 W. Va. 564, 570 (2014) This gives the circuit court discretion to decide the forum which previously had been chosen by the plaintiff. Thus, under § 56-1-1(b), “the plaintiff’s choice of forum is no longer the dominant factor that it was prior to the adoption of this section.” *Id.* The Court continues on to state that under the general

venue statute, “the place of the plaintiff’s residency has no independent bearing on where an action may be maintained. The plaintiff’s residence, without more, does not establish venue in the absence of statute or other principle of law.” *Id.* at 564, 565

Here, the factual allegations occurred in Logan County. Moreover, it is uncontroverted that Wally Thornhill and Thornhill Motor Car, Inc. reside in Logan County as per. *State ex rel. Airsquid Ventures, Inc. v. Hummel*, 236 W. Va. 142, 146.

CONCLUSION

Thornhill’s principal office is in Logan County and all three property locations referenced in Plaintiff’s Complaint giving rise to the claims therein are located in Logan County. Additionally, the alleged activity of Thornhill took place in Logan County and all of Thornhill’s officers reside in Logan County, including its President, Wally L. Thornhill. Although the parties have not commenced discovery, it could be presumed that the majority of witnesses who would testify regarding Thornhill’s activities will also be from Logan County.

It appears that Plaintiff selected Mingo County as the venue for this action based on its own principal office being located in the same. However, the fact that Plaintiff’s principal office is located in Mingo County is not material under West Virginia law and does not render venue proper in Mingo County. “Under the provisions of our general venue statute, the place of the Plaintiff’s residency has no independent bearing on where an action may be maintained.” *State ex rel. Thornhill Grp., Inc. v. King* at 570–571, 801–802 (citing “Syl. Pt. 2, *Crawford v. Carson*, 138 W.Va. 852, 78 S.E.2d 268 (1953).

Because the causes of action arose in, the witnesses are located in, and this Defendant’s principal office and chief officer are all located in Logan County, venue in this action is improper and dismissal of Plaintiff’s Complaint based on the above stated grounds is necessary. The facts

show that in the interest of convenience and justice the law requires dismissal of Plaintiff's suit. Therefore, under West Virginia Code § 56-1-1(a)(1), (a)(2), and (b) Defendant respectfully requests that this matter be dismissed on that ground that venue is improper in Mingo County.

**THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM**

By Counsel,



Johnnie E. Brown, WV State Bar No. 4620
Donovan M. Powell, WV State Bar No. 13914

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC

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Telephone: (304) 344-0100

Facsimile: (304) 342-1545

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-2-21
Honorable Miki Thompson

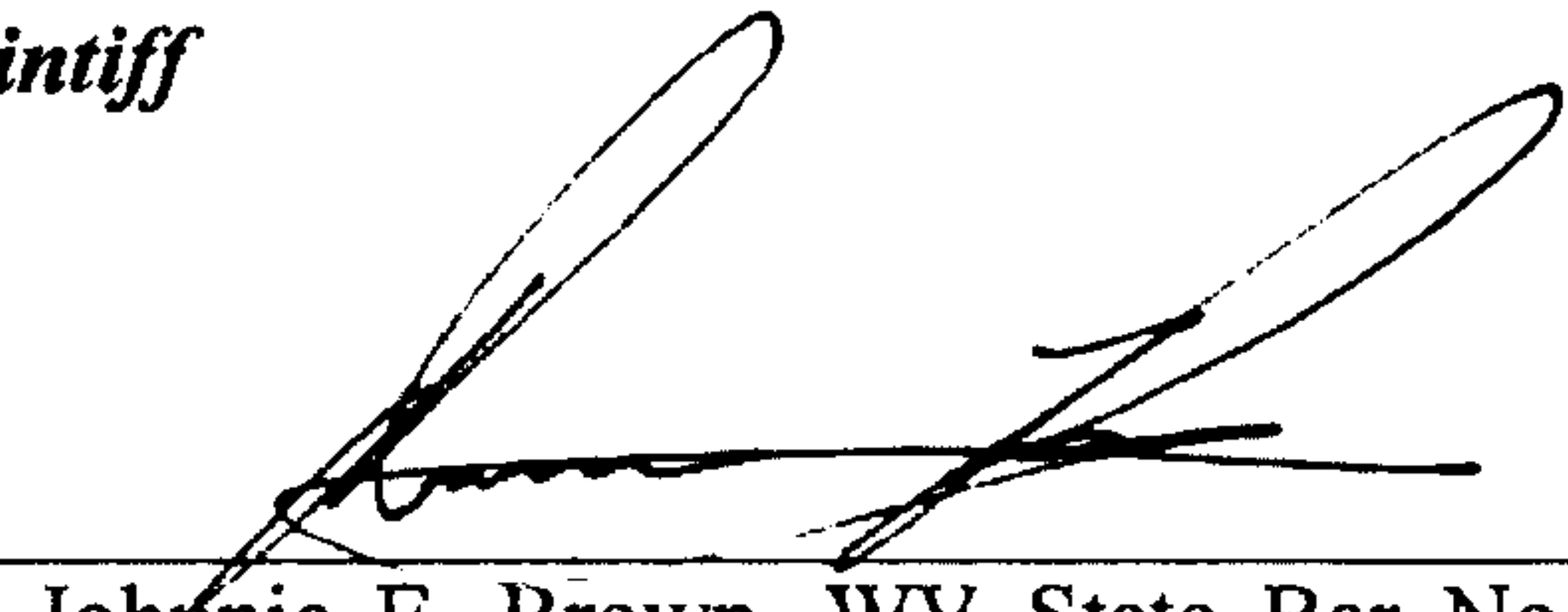
THORNHILL MOTOR CAR, INC. D/B/A
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for the Defendant, does hereby certify on this 12th day of March 2021 that a true copy of the foregoing *“Memorandum In Support Of Defendant Thornhill Motor Car, Inc.’s Motion To Dismiss For Improper Venue”* was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Charles R. Bailey
John P. Fuller
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
Counsel for Plaintiff



Johnnie E. Brown, WV State Bar No. 4620
Donovan M. Powell, WV State Bar No. 13914

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Facsimile: (304) 342-1545

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-C-21
Honorable Miki Jane Thompson

THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

MOORE CHRYSLER, INC.'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

COMES NOW, Moore Chrysler, Inc., by counsel, the law firm of Bailey & Wyant, PLLC, Charles R. Bailey and John P. Fuller, and for its Response to Defendant's Motion to Dismiss and shows this Court the following:

I. The Instant Suit is properly Before the Circuit Court of Mingo County, West Virginia pursuant to W.Va. Code § 17A-6A-12(3)

In the Motion to Dismiss the Defendant relies, almost entirely upon State ex rel. Thornhill Group, Inc. v. King, 233 W.Va. 564, 759 S.E.2d 795 (2014) in asserting its position that this action may only be brought in the Circuit Court of Logan County, West Virginia. However, State ex rel. Thornhill Group, Inc. v. King relies upon the general venue statute to determine the venue of a case alleging breach of contract as well as other torts related to the alleged breach of contract. In the instant action, Moore Chrysler, Inc. has brought an action to enforce *W.Va. § 17A-6A-1 et seq.*, which specifically provides that the venue for the instant action is before the Circuit Court of Mingo County, West Virginia.

More specifically, in the Verified Complaint, Petition for Declaratory Judgment and Motion for Injunctive Relief, Plaintiff specifically alleges that Thornhill Motor Cars, Inc. has violated *W.Va. § 17A-6A-1 et seq.* by towing its mobile home sales office and shuttling new FCA

vehicles from the Stratton Street, Logan, WV address to various addresses associated with the Fountain Place Mall in Logan, WV. *See Verified Complaint, Petition for Declaratory Judgment and Motion for Injunctive Relief, generally and specifically at Paragraphs 14-22.* In bringing an action to enforce the statute, the Legislature provided that the declaratory judgment action be brought in the Circuit Court for the county in which the new motor vehicle dealer is located. *See W.Va. § 17A-6A-12(3).*

West Virginia Code § 17A-6A-3(11) defines a “new motor vehicle dealer” as:

a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging or deal in new motor vehicles, service of said vehicles, warranty work and sale of parts who has an established place of business in this state and is licensed by the Division of Motor Vehicles.

WV Code § 17A-6A-3(11). Clearly, Moore Chrysler, Inc. is a new motor vehicle dealer as defined by the statute.

W.Va. Code § 17A-6A-3(14) defines “relative market area” as follows:

“Relevant market area” means the area located within a twenty air mile radius around an existing same line-make new motor vehicle dealership:....

In the instant action, Moore Chrysler, Inc. alleges that Thornhill Motor Cars, Inc. has located various sales locations, by towing its mobile home sales office to various locations at the Fountain Place Mall, within the statutorily protected “relevant market area” of Moore Chrysler, Inc., in violation of *W.Va. § 17A-6A-1 et seq.*

Moore Chrysler, Inc. is a “new motor vehicle dealer” bringing a declaratory judgment action seeking to enforce *W.Va. § 17A-6A-1 et seq.*, and specifically to have the Court protect its statutorily protected “relevant market area” as defined by code, *W.Va. § 17A-6A-12(3).* This statute, through its specific venue provision, directs that the Circuit Court of Mingo County, West

Virginia is the proper venue for the instant action.

W.Va. Code § 17A-6A-12(3), with regard to the specific venue, provides that:

..., a new motor vehicle dealer of the same line-make within the affected relevant market area may bring a declaratory judgment action ***in the circuit court for the county in which the new motor vehicle dealer is located*** to determine whether good cause exists for the establishment or relocating of the proposed new motor vehicle dealer. (*emphasis added*).

It is clear that Moore Chrysler, Inc. is a “new motor vehicle dealer” as defined in the statute. It is clear that both Moore Chrysler, Inc. and Thornhill Motor Cars, Inc. are “same line-make” dealers as both offer new Chrysler Dodge Jeep Ram vehicles manufactured by FCA. Thornhill Motor Cars, Inc. is either an “established relocating” new motor vehicle dealer or a “proposed new motor vehicle dealer.” The Verified Complaint, Petition for Declaratory Judgment and Motion for Injunctive Relief clearly alleges that the various Thornhill Motor Cars, Inc.’s locations at Fountain Place Mall are within the statutorily defined and protected “relevant market area” of Moore Chrysler, Inc. It is clear that the statute directs Moore Chrysler, Inc. to bring the instant action in the Circuit Court of Mingo County, West Virginia as that is the county in which Moore Chrysler, Inc. (the “new motor vehicle dealer”) is located. Simply put, the statute provides specifically that venue for the instant action is before the Circuit Court of Mingo County, West Virginia. As the statute does not confer venue before the Circuit Court of the county where the “established relocating” dealer or the “proposed new motor vehicle dealer” is located, the instant action could not be brought before the Circuit Court of Logan County, West Virginia.

Because there is a specific venue statute controlling venue of the instant action, the general venue statute is nonapplicable to the instant action. As a general rule, statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled. *See UMW v Kingdon*, 174 W.Va. 330, 332,

325 S.E.2d 120, 121 (1984). See also Barber v. Camden Clark Mem. Hosp. Corp., 240 W.Va. 663, 670, 815 S.E.2d 474, 481 (2018); Zimmer v. Romano, 223 W.Va. 769, 784, 679 S.E.2d 601, 616 (2009); State ex rel. Tucker County Solid Waste Authority v. W.Va. Div. of Labor, 222 W.Va. 588, 598, 668 S.E.2d 217, 227 (2008).

In fact, *W.Va. Code* § 56-1-1, the general venue statute, clearly yields to *W.Va. Code* § 17A-6A-12(3) by providing that:

(a) Any action or other proceeding, ***except where it is otherwise specifically provided***, may hereafter be brought in the circuit court of any county:....
(emphasis added).

Therefore, it is clear from the language used by the Legislature that it specifically intended for *W.Va. Code* § 56-1-1 to be subordinate to specific venue statutes; such as *W.Va. Code* § 17A-6A-12(3).

While King involved a breach of contract claim and allegations that Thornhill had manipulated sales records to avoid paying an employee; venue was controlled by the general venue statute, while the instant action is controlled by a specific venue statute. This action is brought to enforce provisions of *W.Va. § 17A-6A-1 et seq.* and, therefore, is controlled by the specific venue provided for in *W.Va. Code* § 17A-6A-12(3). Simply put, when Thornhill Motor Cars, Inc. towed its mobile home sales office to Fountain Place Mall, situate within the statutorily protected “relevant market area” of Moore Chrysler, Inc., Thornhill Motor Cars, Inc. also conferred venue of this matter to the arms of the Circuit Court of Mingo County, West Virginia.

WHEREFORE, Plaintiff hereby moves this Court for entry of an Order denying the Defendant’s Motion to Dismiss and all other relief that this Court deems just and proper.

MOORE CHRYSLER, INC.,

By Counsel,



Charles R. Bailey (WV Bar #0202)

John P. Fuller (WV Bar #9116)

BAILEY & WYANT, PLLC

500 Virginia Street, East, Suite 600

Post Office Box 3710

Charleston, West Virginia 25337-3710

(304) 345-4222

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-C-21
Honorable Miki Jane Thompson

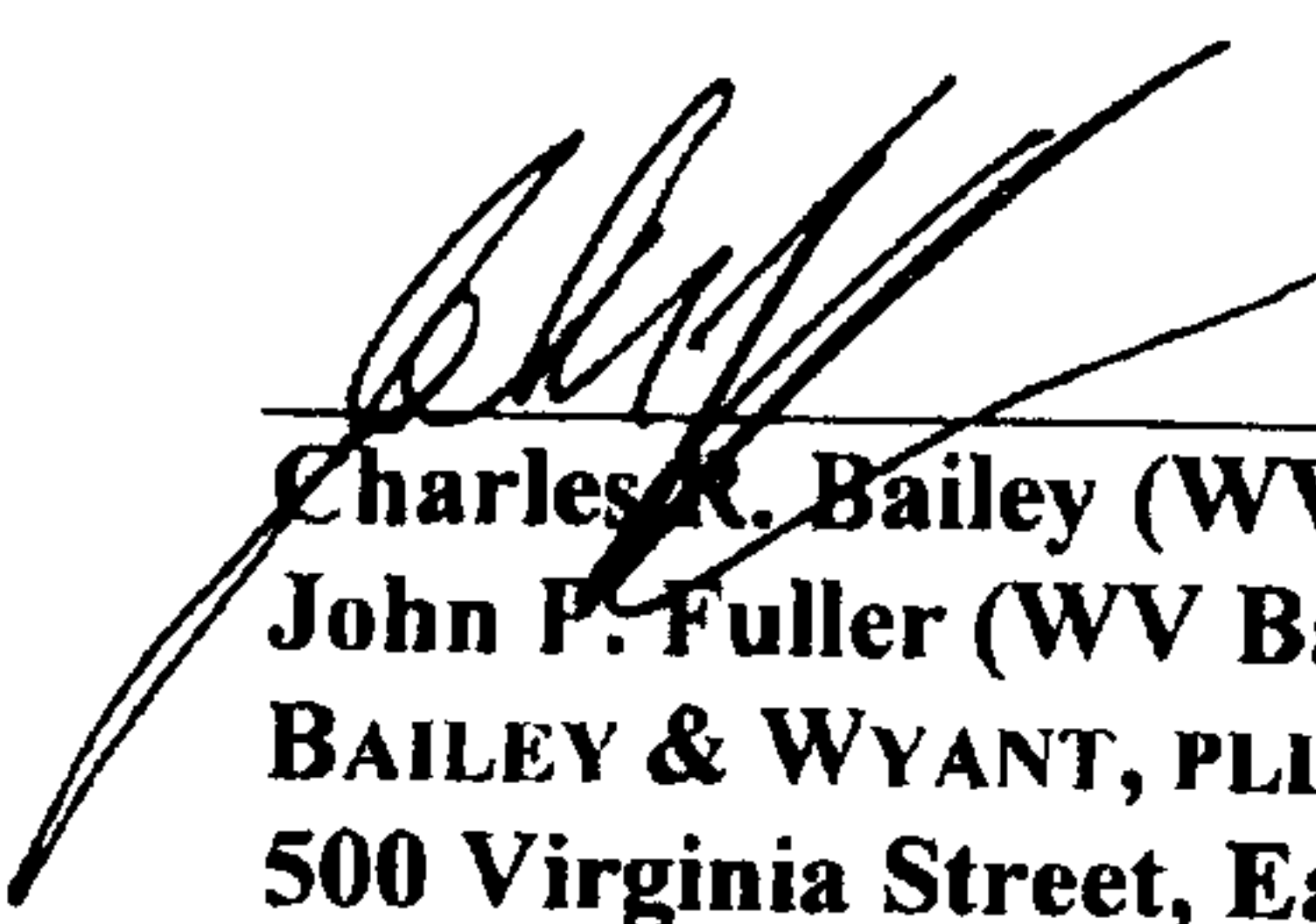
THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing “**Moore Chrysler, Inc.’s Response to Defendant’s Motion to Dismiss**” was served upon the following parties by U.S. Mail on this day, Thursday, March 18, 2021:

Johnnie E. Brown
Pullin Fowler Flanagan Brown & Poe PLLC
901 Quarrier Street
Charleston, WV 25301
Counsel for Thornhill Motor Car, Inc. d/b/a
Thornhill Chrysler Dodge Jeep Ram



Charles R. Bailey (WV Bar #0202)
John P. Fuller (WV Bar #9116)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.,

Plaintiff,

v.

**CIVIL ACTION NO.: 21-C-21
HONORABLE MIKI THOMPSON**

**THORNHILL MOTOR CAR, INC. d/b/a/
THORNHILL CHRYSLER DODGE JEEP
RAM,**

Defendant.

AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing on *Defendant's Motion to Dismiss* will take place before the Honorable MIKI THOMPSON, Judge of the Circuit Court of Mingo County. Said hearing will take place via Microsoft Teams, beginning at 1:15 p.m. on May 11, 2021.

**THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM**

By Counsel,



**Johnnie E. Brown, WV State Bar No. 4620
Donovan M. Powell, WV State Bar No. 13914**

**PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC
JamesMark Building
901 Quarrier Street
Charleston, WV 25301
Telephone: (304) 344-0100
Facsimile: (304) 342-1545**

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.,

Plaintiff,

v.

**CIVIL ACTION NO.: 21-C-21
HONORABLE MIKI THOMPSON**


**THORNHILL MOTOR CAR, INC. d/b/a/
THORNHILL CHRYSLER DODGE JEEP
RAM,**

Defendant.

CERTIFICATE OF SERVICE

The undersigned, counsel for Defendants, does hereby certify on this 26th day of April, 2021, that a true copy of the foregoing "*Amended Notice of Hearing*" was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Charles R. Bailey, Esquire,
John P. Fuller, Esquire,
Bailey & Wyant, PLLC,
P.O. Box 3710,
Charleston, WV 25337-3710
Counsel for Plaintiff


Johnnie E. Brown, WV State Bar No. 4620
Donovan M. Powell, WV State Bar No. 13914

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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-2-21
Honorable Miki Thompson

THORNHILL MOTOR CAR, INC. D/B/A
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

DEFENDANT'S REPLY TO MOORE CHRYSLER, INC.'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS

NOW COMES the Defendant Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram, by and through counsel, Johnnie E. Brown, Donovan M. Powell, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe PLLC, and for its Reply to Moore Chrysler, Inc.'s Resposne to Defendant's Motion to Dismiss, this Defendant states the following:

ARGUMENT IN REPLY

In Plaintiff's Response to Defendant's Motion to Dismiss it argues that because this action is brought under *W. Va. § 17A-6A-1 et seq.*, it is subject to the statute's specific venue provision making venue proper in Mingo County, West Virginia. Specifically, Plaintiff relies on and quotes *W. Va. § 17A-6A-12(3)* asserting that the statute explicitly provides that venue is proper "in the circuit court for the county in which the new motor vehicle dealer is located." See Moore Chrysler, Inc.'s Response to Defendant's Motion to Dismiss, p. 3. However, in relying on *W. Va. § 17A-6A-12(3)* Plaintiff only partially quotes the statute, leaving out important language giving context to the statute's application. The relevant sections of *W. Va. § 17A-6A-12(3)* regarding venue reads in

its entirety as follows:

Within sixty days after receiving the notice provided in subsection (2) of this section, or within sixty days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer of the same line-make within the affected relevant market area may bring a declaratory judgment action in the circuit court for the county in which the affected relevant market area may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of the proposed new motor vehicle dealer.

And;

Once an action has been filed, the manufacturer or distributor may not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter.

(emphasis added)

W. Va. § 17A-6A-12(3) makes clear that the language Plaintiff relies upon to assert proper venue in Mingo County is only applicable to suits between a “manufacturer or distributor” and “a new motor vehicle dealer.” The only language applicable to Defendant in *W. Va. § 17A-6A-12(3)* is that which references the “proposed new motor vehicle dealer” and the statute only refers to a “proposed new motor vehicle dealer” as being the motivating cause for which a suit can be brought. A “proposed new motor vehicle dealer” is never used to represent or reference a named party in any suit or action authorized under Article 6A. Plaintiff acknowledges that for purposes of interpreting *W. Va. § 17A-6A-12(3)* Defendant is referred to as a “proposed new motor vehicle dealer” and Plaintiff is the “new motor vehicle dealer.” See Plaintiff’s Response at 3. The first sentence in *W. Va. § 17A-6A-12(3)* specifically references a dispute between a manufacturer and new motor vehicle dealer as it allows the new motor vehicle dealer to bring an action against a manufacturer after notice or 60 days after an appeal to the manufacturer, never is “the proposed new motor vehicle dealer” referenced as a party to any suit or cause of action which the statute

allows. If *W. Va. § 17A-6A-12(3)* and the venue provision therein serve as the basis for which Plaintiff brings its claims then Plaintiff has sued the wrong party. Plaintiff's cause of action under *W. Va. Code 17A-6A-12* authorizes suit against a manufacturer or distributor, not this Defendant. The language relied upon by Plaintiff is completely inapplicable in this case.

Additionally, Section 12 of Article 6A further shows that Article 6A specifically applies to the relationship between the manufacturer and dealership. As Plaintiff asserts in their Response, Article 6A deems Defendant a "proposed new motor vehicle dealer" and thus Plaintiff is to be considered a "new motor vehicle dealer."

Other language within *W. Va. Code 17A-6A-1 et seq.* demonstrates that this code section is clearly intended to govern the legal responsibilities between the manufacturer/distributor and the new motor vehicle dealer, and not create causes of actions between two new motor vehicle dealers. While common law can give rise to disputes between dealers, *W. Va. Code 17A-6A-1 et seq.* does not.

For example, in *W. Va. § 17A-6A-18*, the Code again references as relevant parties only "...a new motor vehicle dealer and a manufacturer..." while never referring to this Defendant, a "proposed new motor vehicle dealer," as a party in any action.

Plaintiff asserts that because it asks the Court for injunctive relief according to *W. Va. § 17A-6A* the specific venue provision therein controls. However, *W. Va. § 17A-6A-17, Injunctive Relief* specifically provides in relevant part as follows:

Upon proper application to the circuit court, a manufacturer or distributor or new motor vehicle dealer may obtain appropriate injunctive relief against termination, cancelation, nonrenewal or discontinuance of a dealer agreement or any other violation of this article.

(emphasis added)

This language shows that this statute is only applicable to actions between “a manufacturer or distributor or new motor vehicle dealer...” attempting to “obtain appropriate injunctive relief against any other violation of this article” for specific reasons related to “termination, cancelation, nonrenewal or discontinuance,” none of which applies. This language is simply not applicable to this civil action against this Defendant.

As further example, *W. Va. § 17A-6A-14a* states:

If there is a dispute between the manufacturer, factory branch, distributor or distributor branch and the dealer with respect to any matter referred to this article, either party may notify, in writing, the other party of its request to challenge, through the manufacturer’s appeal process or the circuit courts of the state of West Virginia.

(emphasis added)

Addressing indemnification in all suits and actions brought under Article 6A, *W. Va. § 17A-6A-15* refers to any “complaint, claim or action” being between that of a “new motor vehicle dealer” and a “manufacturer or distributor.” Article 6A does not provide a cause of action for any suit between two dealerships nor does it specifically address venue for any action between two motor vehicle dealers. The general venue statute of West Virginia Code controls.

CONCLUSION

Article 6A is part of a comprehensive statute intended to regulate the relationship and conduct of business between motor vehicle dealers on the one hand, and automobile manufacturers and automobile manufacturers and distributors on the other. *City Nat’l Bank v. Wells*, 181 W. Va. 763, 775. Plaintiff has not sued the manufacturer, it has sued Thornhill Motor Car, Inc. Article 6A does not give Plaintiff any statutory right to sue Defendant.

If Plaintiff is intent on bringing an action against this Defendant rather than the

manufacturer, the general venue statute should apply as suits between two dealerships are not subject to the venue provision in *W. Va. § 17A-6A-12(3)* making Plaintiff's action subject to the general venue statute. Thus, the general venue statute applies as it did in *State ex rel. Thornhill Group, Inc. v. King*, making venue for Plaintiff's claims improper in Mingo County and warranting this Court to dismiss said claims in their entirety.



Johnnie E. Brown, WV State Bar No. 4620
Donovan M. Powell, WV State Bar No. 13914

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Facsimile: (304) 342-1545

Email: jeb@pffwv.com

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-2-21
Honorable Miki Thompson

THORNHILL MOTOR CAR, INC. D/B/A
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for the Defendant, does hereby certify on this 29th day of March 2021 that a true copy of the foregoing *Defendant's Reply to Moore Chrysler, Inc.'s Response to Defendant's Motion to Dismiss* was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Charles R. Bailey
John P. Fuller
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
jfuller@baileywyant.com
Counsel for Plaintiff



Johnnie E. Brown, WV State Bar No. 4620
Donovan M. Powell, WV State Bar No. 13914

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC

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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINA
MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-2-21
Honorable Miki Thompson

THORNHILL MOTOR CAR, INC. D/B/A
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant, Thornhill Motor Car, Inc., by and through counsel, Johnnie E. Brown, Donovan M. Powell, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe PLLC bring on for a hearing its previously filed Defendant's Motion to Dismiss before Honorable Miki Thompson, Judge of the Circuit Court of Mingo County. Said hearing will take place via Microsoft Teams, beginning at 1:30 p.m. on April 29, 2021.

THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM
By Counsel,



Johnnie E. Brown, WV State Bar No. 4620
Donovan M. Powell, WV State Bar No. 13914

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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-2-21
Honorable Miki Thompson

THORNHILL MOTOR CAR, INC. D/B/A
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for the Defendant, does hereby certify on this 29th day of March 2021 that a true copy of the foregoing *Notice of Hearing* was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Charles R. Bailey
John P. Fuller
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
jfuller@baileywyant.com
Counsel for Plaintiff



Johnnie E. Brown, WV State Bar No. 4620
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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.,

Plaintiff,

v.

**CIVIL ACTION NO.: 21-C-21
HONORABLE MIKI THOMPSON**

**THORNHILL MOTOR CAR, INC. d/b/a/
THORNHILL CHRYSLER DODGE JEEP
RAM,**

Defendant.

ORDER OF DISMISSAL

THIS DAY came the Defendant, Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram (“Thornhill”), through counsel, Johnnie E. Brown, Donovan M. Powell, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure and moved this Honorable Court to **DISMISS** the present action in its entirety for improper venue. Upon hearing oral argument and reviewing the motions of the parties, the Court **FINDS** as follows:

1. Plaintiff filed its Petition for Declaratory Judgment and Motion for Injunctive Relief in the Circuit Court of Mingo County against Thornhill on February 18, 2021.

2. Among other allegations, the Plaintiff alleges Thornhill has violated West Virginia Code §17A-6A-12 et seq., perpetrated constructive fraud, violated public policy as articulated in §17A-6A-1, and tortiously interfered with the business relationship between Moore Chrysler, Inc. and Fiat Chrysler Automobiles.

3. Defendant Thornhill filed its Motion to Dismiss and Memorandum in Support of the same on March 12th, 2021.

4. Plaintiff maintains its principal place of business in Mingo County, West Virginia.
5. Defendant Thornhill Motor Car, Inc. is a West Virginia corporation with its principal place of business in Logan County, West Virginia.
6. Thornhill Motor Car, Inc.'s President and Chief Officer, Wally Thornhill, is a resident of Logan County, West Virginia.
7. All acts complained of occurred in Logan County, West Virginia.
8. Defendant, Thornhill Motor Car, Inc., moved this Court to Dismiss the action against them pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure and West Virginia Code §56-1-1 on the ground that venue in Mingo County is improper.
9. The West Virginia Venue statute, W. Va. Code §56-1-1, solely determines proper venue in the present action:
 - (a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:
 - (1) Wherein any of the defendants may reside or the cause of action arose...
 - (2) If a corporation or other corporate entity is a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides; or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it is a corporation or other corporate entity organized under the laws of this state which has its principal office located outside of this state and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides.
10. The statute relied upon by Plaintiff to assert proper venue in Mingo County is not applicable in determining venue in this case and therefore does not apply. W. Va. Code § 17A-6A-12(3) makes clear that the language Plaintiff relies upon to assert proper venue in Mingo County is only applicable to suits between a "manufacturer or distributor" and "a new motor vehicle dealer." No manufacturer or distributor has been named as a party to this civil action.

11. W. Va. Code §17A-6A- 12 does not provide a cause of action for any suit between two dealerships nor does it specifically address venue for any action between two motor vehicle dealers.

12. For proper venue to be determined under W. Va. Code §17A-6A-12(3) Plaintiff must have brought its suit against a “manufacturer or distributor.” Otherwise, the general venue statute W. Va. Code §56-1-1 determines where venue is proper.

13. Plaintiff did not bring suit against a “manufacturer or distributor.” Rather, Moore Chrysler brought suit against “a new motor vehicle dealer,” Thornhill Motor Car. Thus, this Court does not use W. Va. §17A-6A-12(3) to determine proper venue.

14. The fact that Plaintiff seeks injunctive relief is irrelevant for purposes of determining proper venue in this action.

15. The Court FINDS and ORDERS that W. Va. Code §56-1-1 controls the determination of venue for this civil action.

16. Thornhill’s principal office is located in Logan County, West Virginia as is Thornhill’s President and Chief Officer, Wally Thornhill’s residence located in Logan County, West Virginia.

17. All facts which Plaintiff alleges and relies upon to form his causes of action allegedly occurred in Logan County; indeed, the cause of action arose in Logan County. Presumably, most if not all witnesses are in Logan County.

18. The Court FINDS that for the reasons stated above venue in Mingo County is improper.

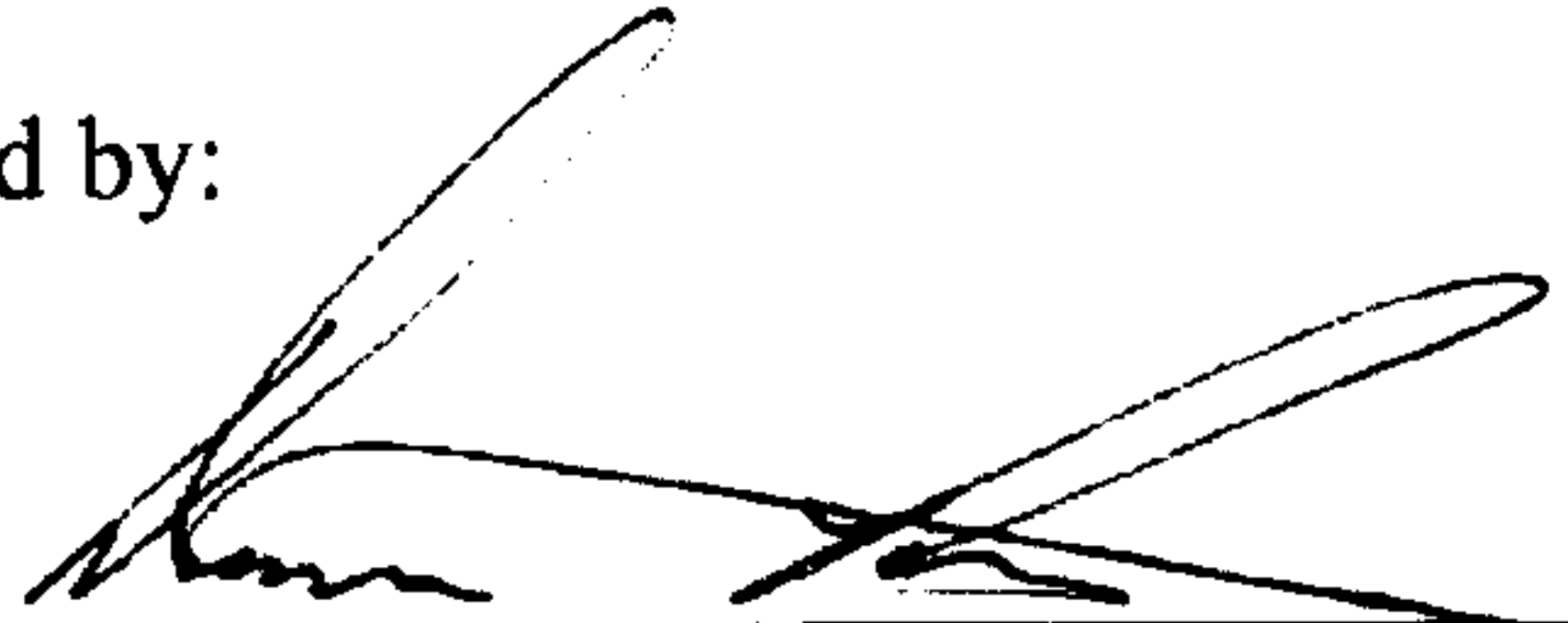
Accordingly, Defendants’ Motion to Dismiss is **GRANTED** and it is hereby **ORDERED** that this civil action is **DISMISSED** without prejudice from the Court’s docket, with the parties

to bear their own costs and attorneys' fees.

Entered this _____ day of _____, 2021.

Honorable Miki Thompson

Prepared by:



Johnnie E. Brown, WV State Bar No. 4620
Donovan M. Powell, WV State Bar No. 13914

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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.,

Plaintiff,

v.

**CIVIL ACTION NO.: 21-C-21
HONORABLE MIKI THOMPSON**

**THORNHILL MOTOR CAR, INC. d/b/a/
THORNHILL CHRYSLER DODGE JEEP
RAM,**

Defendant.

CERTIFICATE OF SERVICE

The undersigned, counsel for Defendants, does hereby certify on this 24th day of June, 2021, that a true copy of the foregoing "***ORDER OF DISMISSAL***" was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Charles R. Bailey, Esquire,
John P. Fuller, Esquire,
Bailey & Wyant, PLLC,
P.O. Box 3710,
Charleston, WV 25337-3710
Counsel for Plaintiff



Johnnie E. Brown, WV State Bar No. 4620
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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA
MOORE CHRYSLER, INC.

Plaintiff,

v.

THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

Civil Action No. 21-C-21
Honorable Miki Jane Thompson

ADMITTED TO RECORD
2021 JUN 29 PM 4:08
MINGO COUNTY CIRCUIT CLERK

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

On May 11, 2021, this matter came before the Court for hearing on the Defendant's Motion to Dismiss. The Plaintiff appeared remotely, by counsel, the law firm of Bailey & Wyant, PLLC, Charles R. Bailey, Esq., and John P. Fuller, Esq. The Defendant appeared remotely, by counsel, Johnnie E. Brown, Esq.

After review of the parties' pleadings, review of the Court's file, hearing arguments of the parties, and after careful and mature consideration, the Court **FINDS** as follows:

1. The primary issue before this Court on the Defendant's Motion is whether the Court should apply the specific venue provision of W.Va. Code § 17A-6A-12(3) or West Virginia's general venue statute in determining whether the Circuit Court of Mingo County, West Virginia is a proper venue for the instant action.

2. *W.Va. Code § 17A-6A-12(3)*, with regard to the specific venue, provides that:

..., a new motor vehicle dealer of the same line-make within the affected relevant market area may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishment or relocating of the proposed new motor vehicle dealer.

3. In applying *W.Va. Code § 17A-6A-12(3)* to the facts alleged in the Verified Complaint, Petition for Declaratory Judgment and Motion for Injunctive Relief, the Court **FINDS** that (1) Moore Chrysler, Inc. is a “new motor vehicle dealer,” (2) that Moore Chrysler, Inc. and Thornhill Motor Car, Inc. are dealers of the “same line-make,” (3) that both are located within the same “relevant market area,” and that Moore Chrysler, Inc. is a “new motor vehicle dealer” located in Williamson, Mingo County, West Virginia.

4. Finding that, if *W.Va. Code § 17A-6A-12(3)* is applicable to the instant action, it would provide for venue in the Circuit Court of Mingo County, West Virginia, this court must next determine if venue in the instant action is controlled by West Virginia’s general venue statute, *W.Va. Code § 56-1-1*, or by the specific venue provision of *W.Va. Code § 17A-6A-12(3)*.

5. In asserting that the general venue statute controls, the Defendant relies upon *State ex rel. Thornhill Group, Inc. v. King*, 233 *W.Va.* 564, 759 *S.E.2d* 795 (2014), primarily a case asserting a breach of contract action, for the proposition that the Circuit Court of Logan County, West Virginia is the only proper venue for the instant action.

6. The Plaintiff asserts that, as the instant action is brought seeking to enforce the provisions of *W.Va. § 17A-6A-1 et seq.*, venue is controlled by the specific venue provision contained in *W.Va. Code § 17A-6A-12(3)*.

7. Clearly, there is a conflict between the general venue statute and the specific venue provision contained in *W.Va. Code § 17A-6A-12(3)*. As a general rule, statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled. See *UMWA v Kingdon*, 174 *W.Va.* 330, 332, 325 *S.E.2d* 120, 121 (1984). See also *Barber v. Camden Clark Mem. Hosp. Corp.*, 240 *W.Va.* 663, 670, 815 *S.E.2d* 474, 481 (2018); *Zimmer v. Romano*, 223 *W.Va.* 769, 784, 679 *S.E.2d* 601, 616 (2009); *State ex rel.*

Tucker County Solid Waste Authority v. W. Va. Div. of Labor, 222 W. Va. 588, 598, 668 S.E.2d 217, 227 (2008).

8. In fact, *W. Va. Code* § 56-1-1, the general venue statute, clearly yields to *W. Va. Code* § 17A-6A-12(3) by providing that:

(a) Any action or other proceeding, except where it is otherwise specifically provided, may hereafter be brought in the circuit court of any county:....

9. Therefore, it is clear from the language used by the Legislature that it specifically intended for *W. Va. Code* § 56-1-1 to be subordinate to specific venue statutes; such as *W. Va. Code* § 17A-6A-12(3).

10. While the Defendant has argued, asserting that counsel for the Defendant drafted *W. Va. § 17A-6A-1 et seq.*, that *W. Va. § 17A-6A-1 et seq.* is only applicable to suits between a new motor vehicle dealer and a manufacturer, there is nothing in the statute imposing such a limitation. To infer such a limitation, when no such limitation is explicit in the statute, would frustrate the clear public policy set out by the Legislature in *W. Va. § 17A-6A-1* and negatively affect the general economy and public welfare of the State of West Virginia.

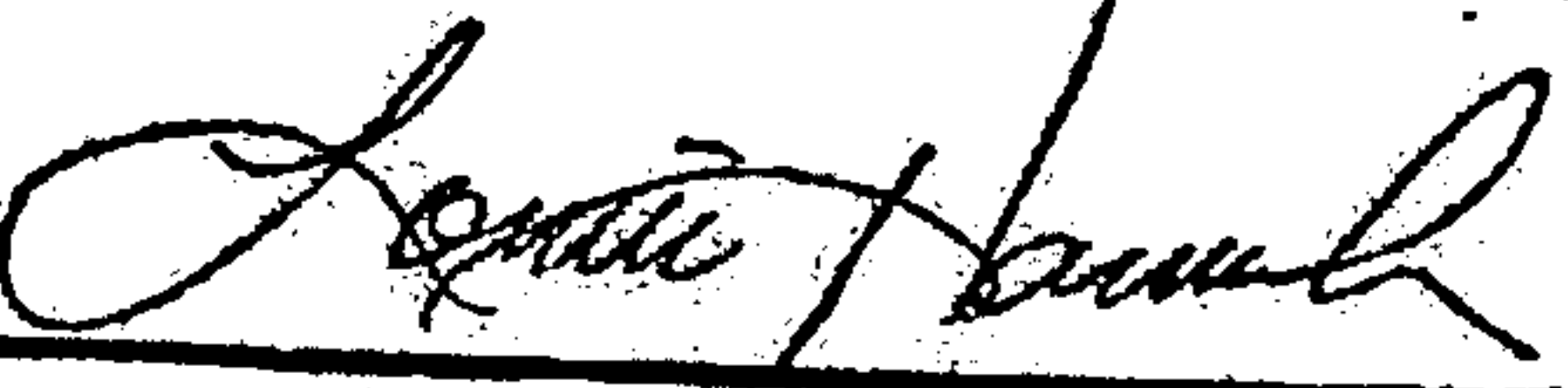
Based upon the foregoing, the Court hereby **DENIES** the Defendant's motion to dismiss or, in the alternative, transfer this matter to the Circuit Court of Logan County, West Virginia. The objections and exceptions of the Defendant are hereby noted.

Upon entry of this Order, the Clerk of the Court shall provide a copy to all counsel of record.

ENTERED this 29th, day of June, 2021.

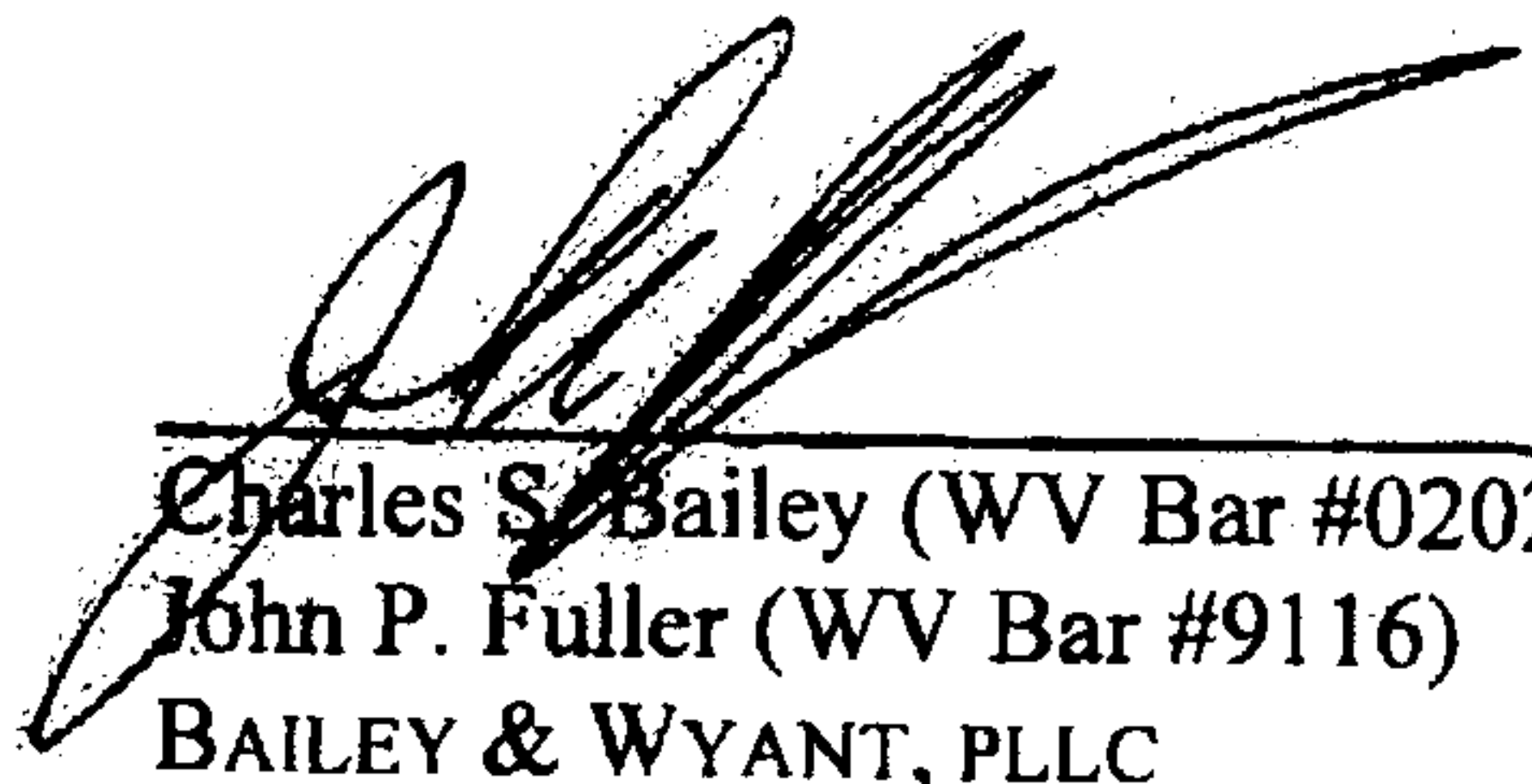

Honorable Miki Jane Thompson

A COPY TESTE



CIRCUIT CLERK, MINGO COUNTY, WV

Prepared and Submitted by:



Charles S. Bailey (WV Bar #0202)

John P. Fuller (WV Bar #9116)

BAILEY & WYANT, PLLC

500 Virginia Street, East, Suite 600

Post Office Box 3710

Charleston, West Virginia 25337-3710

(304) 345-4222

Counsel for Moore Chrysler, Inc.

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.

Plaintiff,

v.

**Civil Action No. 21-C-21
Honorable Miki Jane Thompson**

**THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,**

Defendant.

MOORE CHRYSLER, INC.'S MOTION TO COMPEL DISCOVERY RESPONSE

COMES NOW, Plaintiff Moore Chrysler, Inc., by counsel, the law firm of Bailey & Wyant, PLLC, Charles R. Bailey and John P. Fuller, pursuant to *Rule 37 of the West Virginia Rules of Civil Procedure*, and hereby moves this Court for entry of an Order Compelling Responses from Thornhill Motor Car, Inc. to the Requests for Production of Documents served on March 4, 2021, and in support thereof shows this Court the following:

1. On March 4, 2021, Plaintiff served "Plaintiff Moore Chrysler, Inc.'s First Set of Requests for Production of Documents to Defendant Thornhill Motor Cars, Inc., d/b/a Thornhill Chrysler Dodge Jeep Ram." See Certificate of Service of March 4, 2021 attached hereto as Exhibit A.
2. On March 12, 2021, Defendant filed a motion to dismiss challenging venue in the instant action. See Court file.
3. Pursuant to *Rule 34 of the West Virginia Rules of Civil Procedure*, Defendant had 30 days to serve written responses to the discovery requests of March 4, 2021. Because the Plaintiff had mailed the requests to the Defendant, the Defendant was, pursuant to the *West Virginia Rules of Civil Procedure*, permitted an additional 3 days to serve responses.

4. By correspondence of April 9, 2021, sent via U.S. Mail and electronic mail, counsel for the Plaintiff requested that the Defendant provide responses that were, by then, overdue. *See Correspondence of April 9, 2021 attached hereto as Exhibit B.*

5. By correspondence of April 12, 2021, counsel for the Defendant asserted that while the discovery was indeed due under the *West Virginia Rules of Civil Procedure*, that because of the pending Motion to Dismiss challenging venue, the Defendant believed said motion would be negatively impacted by the Defendant responding to written discovery. The Defendant, noting that a hearing on said motion was approximately one month in the future at that time, requested that discovery responses be delayed until the Motion to Dismiss was addressed by the Court. *See Correspondence of April 12, 2021 attached hereto as Exhibit C.*

6. On May 11, 2021, the Court held a hearing on Defendant's Motion to Dismiss for lack of venue or, in the alternative, transfer to Logan County, West Virginia. Essentially, the Defendant was not seeking to have the case dismissed on its merits, rather, had the Defendant's motion been granted, this matter would have been transferred to the Circuit Court of Logan County, West Virginia where discovery would also be controlled by the *West Virginia Rules of Civil Procedure*.

7. By correspondence of June 11, 2021, Plaintiff again requested that Defendant respond to the discovery request that had been unanswered for over three months. By the same correspondence counsel for the Plaintiff specifically stipulated that Defendant responding to the outstanding discovery would not be a waiver of venue by the Defendant. Plaintiff requested that Defendant provide written responses to the discovery requests by Friday, June 25, 2021. Finally, Plaintiff requested that, if the Defendant was not amenable to the proposal in said correspondence that Defendant's counsel please respond as such in writing. *See Correspondence of June 11, 2021*

attached hereto as Exhibit D.

8. To date, Defendant has failed to provide responses to the outstanding discovery and had failed to respond to the good faith letter of June 11, 2021.

9. On June 29, 2021, this Court entered an Order denying Defendant's motion to dismiss.

10. Defendant's refusal to respond to discovery in the instant action only works to frustrate the discovery process. Even if the Defendant's motion had been granted, this matter would have simply been transferred to Logan County, West Virginia, a venue that is also governed by the *West Virginia Rules of Civil Procedure*.

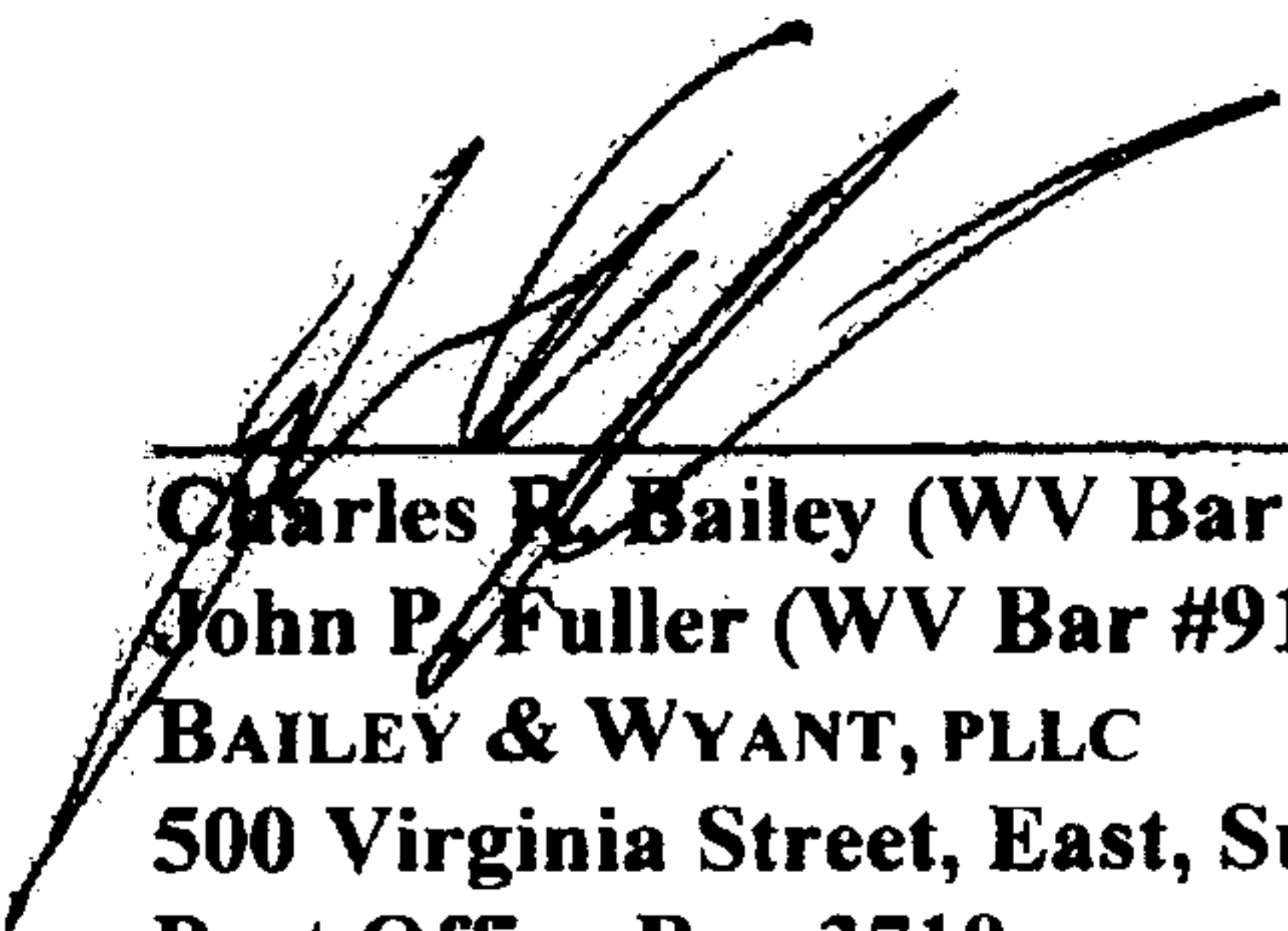
11. As the Defendant has had nearly four months to gather responsive documents, Defendant should be able to provide responses in less than 10 days.

12. Plaintiff is specifically not seeking cost, expenses or any discovery sanction at this time.

WHEREFORE, Plaintiff hereby moves this Court for entry of an Order compelling the Defendant to provide proper responses to the outstanding Requests for Production and all other relief this Court deems just and proper.

MOORE CHRYSLER, INC.,

By Counsel,



Charles R. Bailey (WV Bar #0202)
John P. Fuller (WV Bar #9116)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.

Plaintiff,

v.

**Civil Action No. 21-C-21
Honorable Miki Thompson**

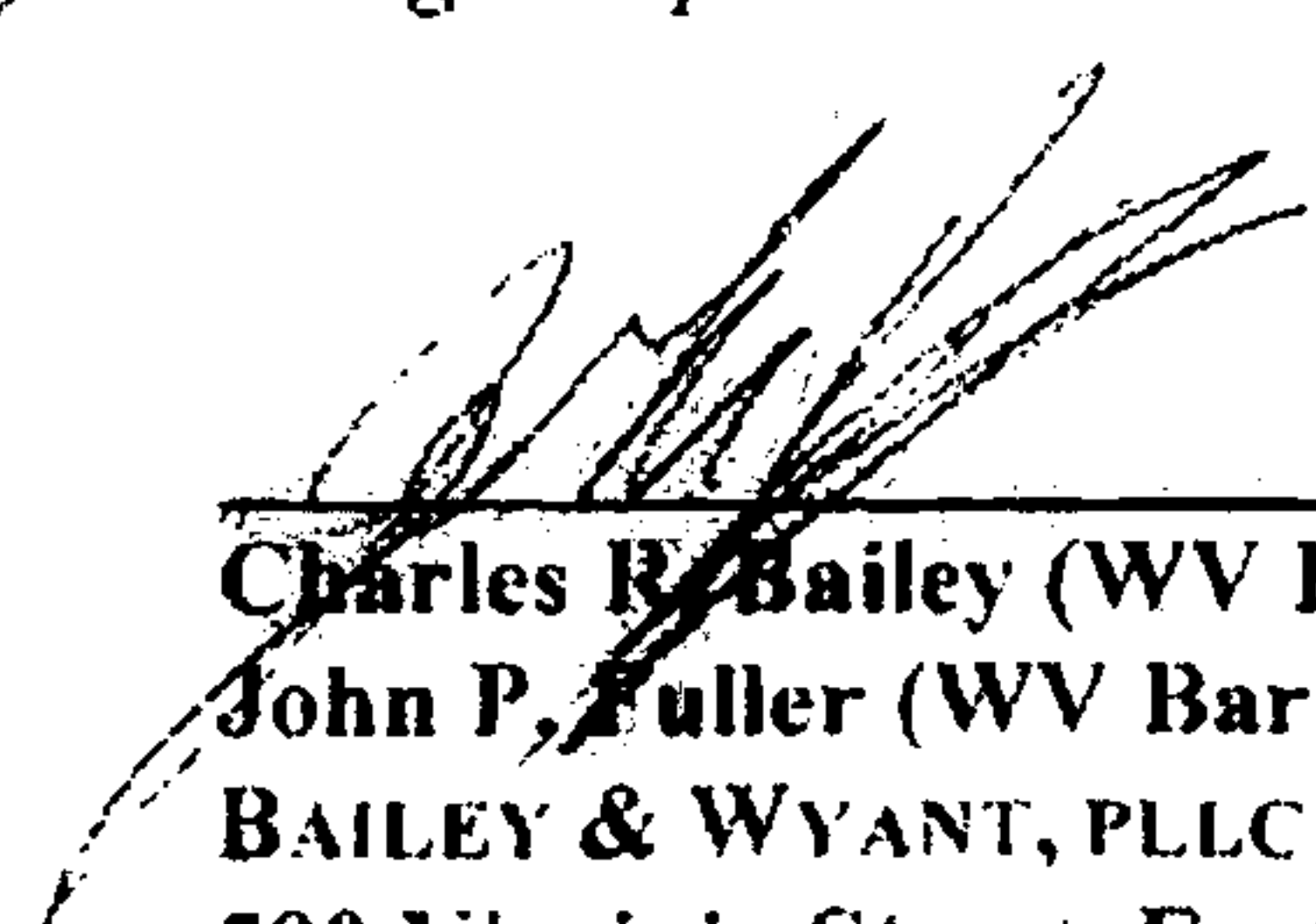
**THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,**

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing "**Plaintiff Moore Chrysler, Inc.'s First Set of Requests for Production of Documents to Defendant Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram**" was served upon the following parties by U.S. Mail on this day, March 4, 2021:

Johnnie E. Brown, Esq.
Pullin Fowler Flanagan Brown & Poe, PLLC
901 Quarrier Street
Charleston, WV 25301
*Counsel for Thornhill Motor Car, Inc. d/b/a
Thornhill Chrysler Dodge Jeep Ram*



**Charles R. Bailey (WV Bar #0202)
John P. Fuller (WV Bar #9116)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222**



IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.

Plaintiff,

v.

Civil Action No. 21-C-21
Honorable Miki Thompson

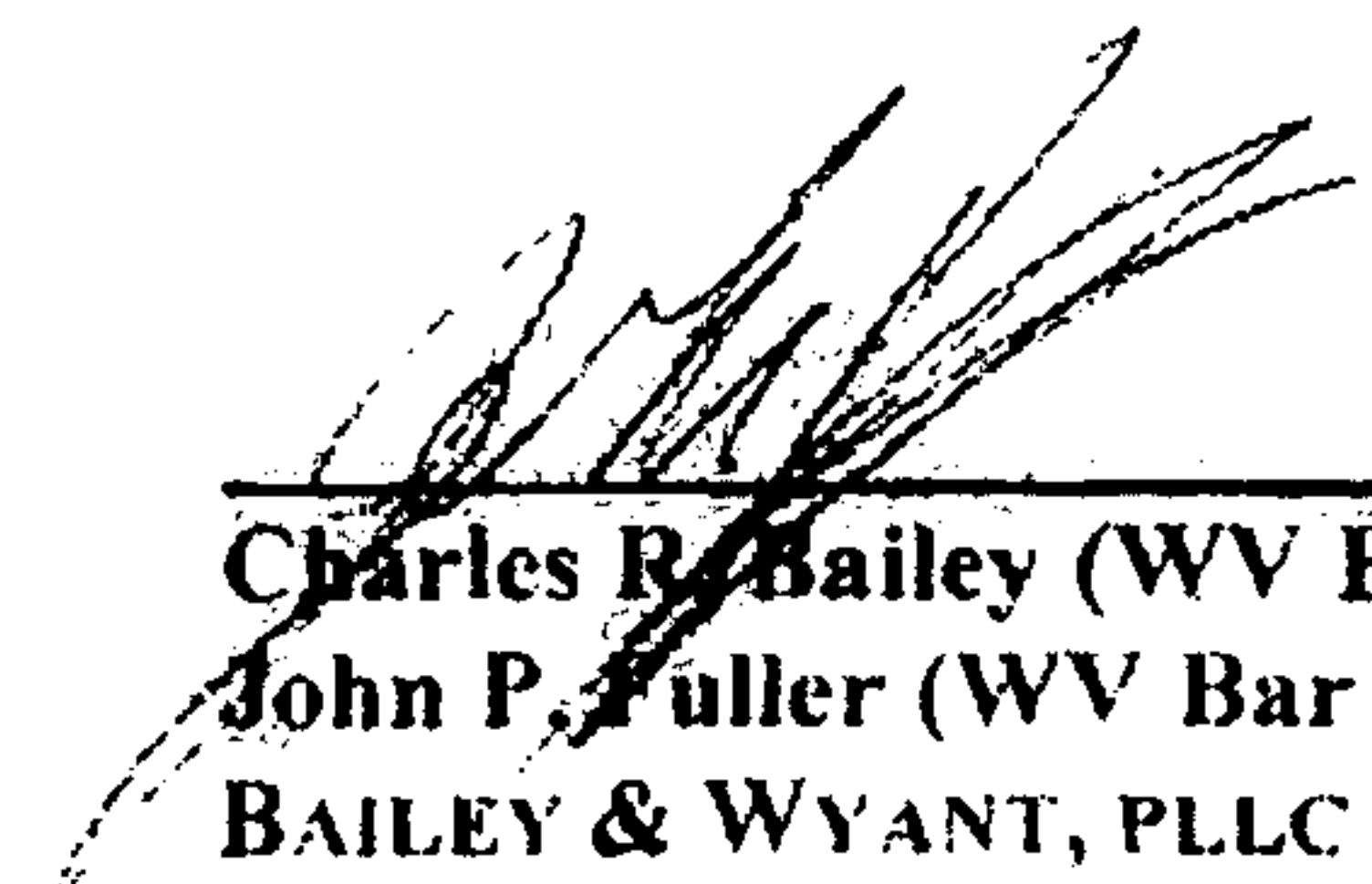
THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing "Plaintiff Moore Chrysler, Inc.'s First Set of Requests for Production of Documents to Defendant Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram" was served upon the following parties by U.S. Mail on this day, March 4, 2021:

Johnnie E. Brown, Esq.
Pullin Fowler Flanagan Brown & Poe, PLLC
901 Quarrier Street
Charleston, WV 25301
*Counsel for Thornhill Motor Car, Inc. d/b/a
Thornhill Chrysler Dodge Jeep Ram*



Charles R. Bailey (WV Bar #0202)
John P. Fuller (WV Bar #9116)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222





500 Virginia Street East, Suite 600 • P.O. Box 3710
Charleston, West Virginia 25337-3710
T: (304) 345-4222 • F: (304) 343-3133
www.baileywyant.com

John P. Fuller, Esq.
Email: jfuller@baileywyant.com
Direct Dial: (304) 720-0704

Friday, April 9, 2021

Via U.S. Mail and Electronic Mail

Johnnie E. Brown
Pullin Fowler Flanagan Brown & Poe PLLC
901 Quarrier Street
Charleston, WV 25301

Re: Moore Chrysler, Inc. v. Thornhill Chrysler
Circuit Court of Mingo County, WV
Our File No. 6500-2663

Dear Mr. Brown:

As you are likely aware, by Certificate of Service dated March 4, 2021, Plaintiff served "Plaintiff Moore Chrysler, Inc.'s First Set of Requests for Production of Documents to Defendant Thornhill Motor Car, Inc., d/b/a Thornhill Chrysler Dodge Jeep Ram". I have enclosed a copy of the Certificate of Service for your review. Per the *West Virginia Rules of Civil Procedure*, Defendant had thirty (30) days from the date of service to respond to the same. With the additional three (3) days provided pursuant to the Rules based upon service by U.S. Mail, Defendant's responses were due on Tuesday, April 6, 2021. As of today's date, I have not seen responses to the same. While I understand Defendant has a Motion to Dismiss pending, I do not believe there is anything within the Rules that automatically stays discovery based upon a Defendant's filing of a Motion to Dismiss. I would request that you please provide me with responses to the Request for Production of Documents in the immediate future.

If you have any questions, please feel free to call.

My kindest regards,


John P. Fuller

JPF/rb





JAMESMARK BUILDING
901 QUARRIER STREET
CHARLESTON, WV 25301

PHONE: (304) 344-0100
FAX: (304) 342-1545

252 GEORGE STREET
BECKLEY, WV 25801

PHONE: (304) 254-9300
FAX: (304) 255-5519

2414 CRANBERRY SQUARE
MORGANTOWN, WV 26508

PHONE: (304) 225-2200
FAX: (304) 225-2214

261 AIKENS CENTER
SUITE 301
MARTINSBURG, WV 25404

PHONE: (304) 260-1200
FAX: (304) 260-1208

REPLY TO: Charleston
SENDERS E-MAIL: jbrown@pffwv.com
www.pffwv.com

April 12, 2021

VIA EMAIL ONLY

John P. Fuller, Esquire
500 Virginia Street East, Suite 600
P.O. Box 3710
Charleston, West Virginia 25337

RE: *Moore Chrysler, Inc. v. Thornhill Chrysler*
Circuit Court of Mingo County
Civil Action No. 21-2-21

Dear John:

I acknowledge receipt of your letter of April 9, 2021 concerning your discovery. While I would generally agree with your position, I do believe some exceptions do exist, such as qualified immunity and venue questions. Specific to venue, the issue raised here, we do not voluntarily subject ourselves to the venue of the Circuit Court of Mingo County. If we were to begin engaging in discovery in the Circuit Court of Mingo County, I do believe it would negatively interfere with the venue question pending before the Court.

In light of the venue issue, I would respectfully request that we agree to hold our answers in abeyance until the Court rules and venue is decided. I agree you do not waive any of your rights by this agreement, and neither would Thornhill Motor Car, Inc. Since the hearing is May 11, 2021, we are talking much of a delay.

Thanks in advance for considering.

Very truly yours,

JOHNNIE E. BROWN

JEB/jc





Charleston, West Virginia 25337-3710
T: (304) 345-4222 • F: (304) 343-3133
www.baileywyant.com

John P. Fuller, Esq.
Email: jfuller@baileywyant.com
Direct Dial: (304) 720-0704

VIA ELECTRONIC MAIL ONLY

June 11, 2021

Johnnie E. Brown
Pullin Fowler Flanagan Brown & Poe PLLC
901 Quarrier Street
Charleston, WV 25301

Re: **Moore Chrysler, Inc. v. Thornhill Chrysler**
Circuit Court of Mingo County, WV
Our File No. 6500-2663

Dear Mr. Brown:

As you are aware, by certificate of service date March 5, 2021, Plaintiff's served "Plaintiff Moore Chrysler, Inc. First Set of Request for Production of Documents to Defendant Thornhill Motor Car Inc., d/b/a Thornhill Chrysler Dodge Jeep Ram." Under the West Virginia Rules of Civil Procedure responses to the same were due Tuesday, April 6, 2021. By correspondence of Friday, April 9, 2021, sent via U.S. Mail and electronic mail, I requested that Defendant please provide a response to the written discovery requests. By correspondence of April 12, 2021, Defendant took the position that they believe there were exceptions with regard to answering pending discovery when a motion to dismiss was pending particularly with regard to qualified immunity and/or venue questions. In light of the hearing on the motion to dismiss set for May 11, 2021, it was agreed that nothing would be done at that time.

However, it is now June 11, 2021, approximately one month since the hearing on the motion to dismiss took place and we are awaiting the Court's decision as to whether the matter will proceed in Mingo County or be transferred to Logan, County, WV. As it is my understanding of the Rules of Civil Procedure, particularly those with regard to discovery, are the same in Logan County, WV as they are in Mingo, County, WV, I do not believe that there is any reason that we cannot proceed with these discovery requests at this time. I will stipulate, and by this correspondence do stipulate, that the Defendant is not waiving any venue argument or submitting to the venue of the Circuit Court of Mingo County, WV by responding to these discovery requests. To that end, I would request that Defendant, having had these discovery requests in their possession for approximately three (3) months at this point, please provide written responses by Friday, June 25, 2021. To the extent that Defendant is not amendable to this arrangement, I would request that you please respond with your position in writing.

Please consider this a good faith attempt to resolve a discover dispute pursuant to the West Virginia Rule of Civil Procedure,

My kindest regards,


John P. Fuller

JPF/lf



IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.

Plaintiff,

v.

**Civil Action No. 21-C-21
Honorable Miki Jane Thompson**

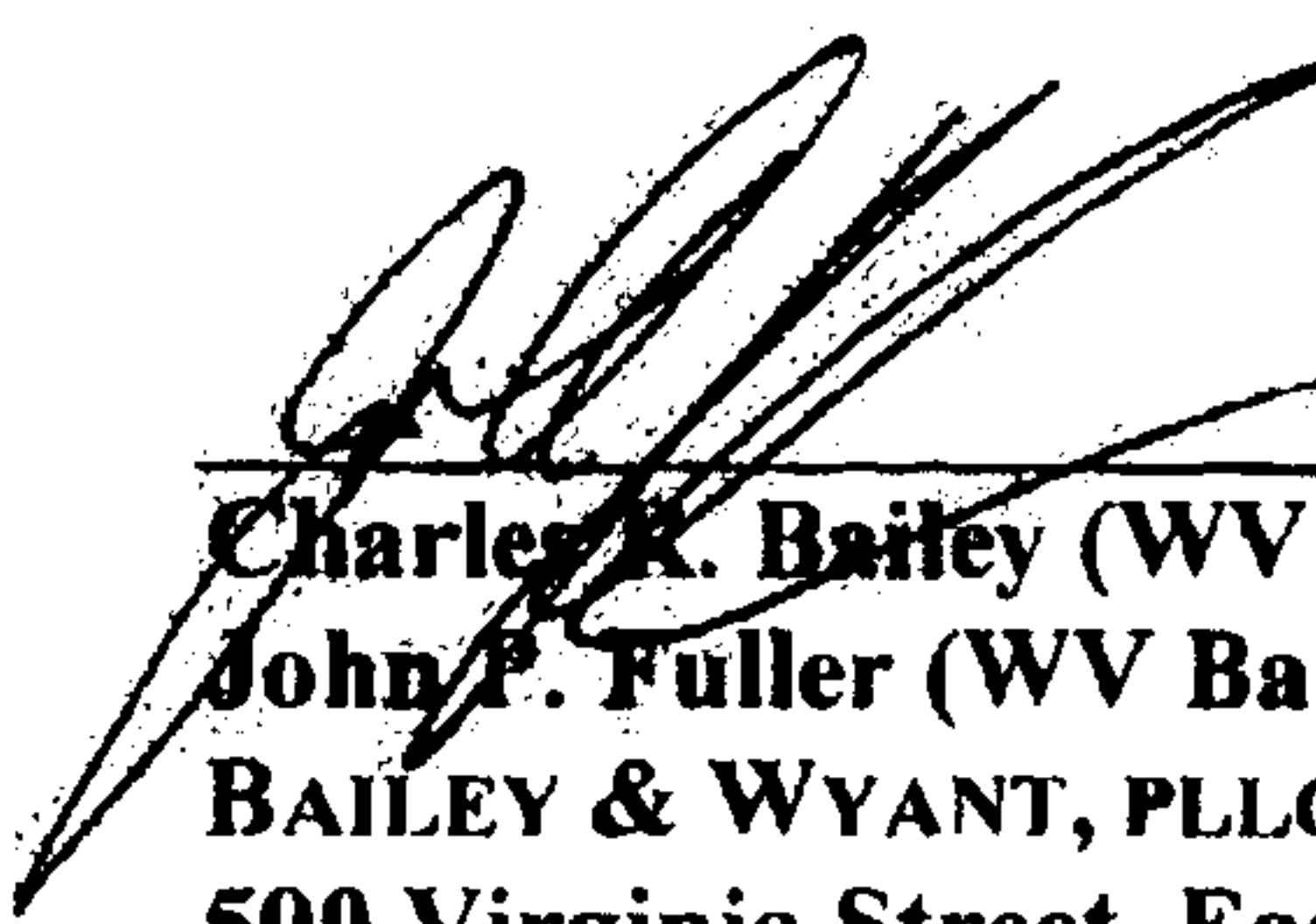
**THORNHILL MOTOR CAR, INC. d/b/a
THORNHILL CHRYSLER DODGE
JEEP RAM,**

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing “**Moore Chrysler, Inc’s Motion to Compel Discovery Responses**” was served upon the following parties by U.S. Mail on this day, Friday, July 2, 2021:

Johnnie E. Brown
Pullin Fowler Flanagan Brown & Poe PLLC
901 Quarrier Street
Charleston, WV 25301
*Counsel for Thornhill Motor Car, Inc. d/b/a
Thornhill Chrysler Dodge Jeep Ram*



**Charles R. Bailey (WV Bar #0202)
John P. Fuller (WV Bar #9116)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222**

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.,

Plaintiff,

v.

**CIVIL ACTION NO.: 21-C-21
HONORABLE MIKI THOMPSON**

**THORNHILL MOTOR CAR, INC. d/b/a/
THORNHILL CHRYSLER DODGE JEEP
RAM,**

Defendant.

**DEFENDANT THORNHILL MOTOR CAR, INC.'S ANSWER TO PLAINTIFF'S
COMPLAINT, PETITION FOR DECLARATORY JUDGMENT AND MOTION FOR
INJUNCTIVE RELIEF**

NOW COMES the Defendant, Thornhill Motor Car, Inc. ("Thornhill") and through its counsel, Johnnie E. Brown and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and without waiving any defenses, responds to the Plaintiff's Complaint in this case as follows:

GENERAL RESPONSE AND PREAMBLE

This responsive pleading has been prepared, served, and filed by counsel for the Defendant under the West Virginia Rules of Civil Procedure.

As permitted by Rule 8(e)(2), defenses to the claims made in the Complaint are being asserted alternatively and, in some cases, hypothetically. Defenses are being asserted regardless of apparent consistency and are based both on legal and equitable grounds.

As the facts of this civil action are fully developed through the discovery process, certain defenses may be abandoned, modified, or amended as permitted by and consistent with the West Virginia Rules of Civil Procedure.

No discovery has been conducted to date in the above-captioned civil action. In order to preserve important legal rights and protection, the Defendant sets forth below certain affirmative defenses which, based upon the information set forth in the Complaint, they believe do or may apply to some or all of the claims raised therein. The Defendant reserves the right to withdraw, modify or amend some or all of the affirmative defenses set forth below, in whole or in part, depending on the outcome of discovery in this civil action.

ANSWER

PARTIES AND FACTS

1. Answering paragraph numbered one (1) of the Plaintiff's Complaint, this Defendant is informed and upon information admits Plaintiff is a West Virginia Corporation with its Principal Office Address as 11234 W. 3rd Avenue, Williamson, WV, 25661 and is engaged in the business of selling and servicing new Fiat Chrysler Automobiles. This Defendant admits that Plaintiff's citations of W. Va. Code 17A-6A-3(11) and (4) are correct, but to the extent they infer any wrongdoing by this Defendant, it is specifically denied. As to the remaining statements and allegations, Defendant lacks sufficient information or knowledge as to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

2. Answering paragraph numbered two (2) of the Plaintiff's Complaint, this Defendant admits its Principal and Local addresses registered with the State of West Virginia are both 509 Dingess Street, Logan, West Virginia. As to the remaining allegations contained therein, Defendant admits that it is in the process of lawfully moving its location, all in accordance with West Virginia statutory and regulatory law. This Defendant denies all other allegations contained herein.

3. Answering paragraph numbered three (3) of the Plaintiff's Complaint, this Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations

contained therein, and therefore, denies the same.

4. Answering paragraph numbered four (4) of the Plaintiff's Complaint, this Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations contained therein, and therefore, denies the same.

5. Answering paragraph numbered five (5) of the Plaintiff's Complaint, this Defendant admits to the definition of West Virginia Code § 17A-6A-3(4) as it appears therein. As to the remaining allegations therein, this Defendant denies the allegations contained therein as this Defendant obtained the necessary and lawful license to conduct business as a new car motor vehicle dealer as required by the State of West Virginia, and that its location and building complied with the laws of the State of West Virginia.

6. Answering paragraph numbered six (6) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

7. Answering paragraph numbered seven (7) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

8. Answering paragraph numbered eight (8) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

9. Answering paragraph numbered nine (9) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

10. Answering paragraph numbered ten (10) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

11. Answering paragraph numbered eleven (11) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

12. Answering paragraph numbered twelve (12) of the Plaintiff's Complaint, this

Defendant denies the allegations contained therein.

13. Answering paragraph numbered thirteen (13) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

VIOLATION OF STATUTE

14. Answering paragraph numbered fourteen (14) of the Plaintiff's Complaint, this Defendant incorporates by reference its responses to each and every allegation contained in paragraphs one (1) through thirteen (13) as set forth herein.

15. Answering paragraph numbered fifteen (15) of the Plaintiff's Complaint, this Defendant admits to the West Virginia Code § 17A-6A-1 as stated therein. As to the remaining allegations regarding public policy, this Defendant denies the allegations contained therein or any allegation of wrongdoing.

16. Answering paragraph numbered sixteen (16) of the Plaintiff's Complaint, this Defendant admits the allegations contained therein.

17. Answering paragraph numbered seventeen (17) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

18. Answering paragraph numbered eighteen (18) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

19. Answering paragraph numbered nineteen (19) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

20. Answering paragraph numbered twenty (20) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

21. Answering paragraph numbered twenty-one (21) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

22. Answering paragraph numbered twenty-two (22) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION

23. Answering paragraph numbered twenty-three (23) of the Plaintiff's Complaint, this Defendant incorporates by reference its responses to each and every allegation contained in paragraphs one (1) through twenty-two (22) as set forth herein.

24. Answering paragraph numbered twenty-four (24) of the Plaintiff's Complaint, this Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations contained therein, and therefore, denies the same.

25. Answering paragraph numbered twenty-five (25) of the Plaintiff's Complaint, this Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

26. Answering paragraph numbered twenty-six (26) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

27. Answering paragraph numbered twenty-seven (27) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

28. Answering paragraph numbered twenty-eight (28) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

29. Answering paragraph numbered twenty-nine (29) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

PETITION FOR DECLARATORY JUDGMENT

30. Answering paragraph numbered thirty (30) of the Plaintiff's Complaint, this Defendant incorporates by reference its responses to each and every allegation contained in

paragraphs one (1) through twenty-nine (29) as set forth herein.

31. Answering paragraph numbered thirty-one (31) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

32. Answering paragraph numbered thirty-two (32) of the Plaintiff's Complaint, this Defendant admits Moore Chrysler moves this Court for entry of an Order declaring that Thornhill violated West Virginia Code § 17A-6A-1. As to the remaining allegations contained therein, including the assertion that Thornhill violated § 17A-6A-1, this Defendant denies the same.

33. Answering paragraph numbered thirty-three (33) of the Plaintiff's Complaint, this Defendant admits that Moore Chrysler moves this Court for a declaration based on the allegations contained therein. As to the remaining allegations having any merit as asserted, this Defendant denies the same.

34. Answering paragraph numbered thirty-four (34) of the Plaintiff's Complaint, this Defendant admits Moore Chrysler moves this Court for a declaration based on the allegations contained therein. As to the same allegations having any merit remaining allegations having any merit as asserted, this Defendant denies the same.

COUNT I CONSTRUCTIVE FRAUD

35. Answering paragraph numbered thirty-five (35) of the Plaintiff's Complaint, this Defendant incorporates by reference its responses to each and every allegation contained in paragraphs one (1) through thirty-four (34) as set forth herein.

36. Answering paragraph numbered thirty-six (36) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

37. Answering paragraph numbered thirty-seven (37) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

38. Answering paragraph numbered thirty-eight (38) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

COUNT II PUNITIVE DAMAGES

39. Answering paragraph numbered thirty-nine (39) of the Plaintiff's Complaint, this Defendant incorporates by reference its responses to each and every allegation contained in paragraphs one (1) through thirty-eight (38) as set forth herein.

40. Answering paragraph numbered forty (40) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

41. Answering paragraph numbered forty-one (41) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

COUNT III TORTIOUS INTERFERENCE

42. Answering paragraph numbered forty-two (42) of the Plaintiff's Complaint, this Defendant incorporates by reference its responses to each and every allegation contained in paragraphs one (1) through forty-one (41) as set forth herein.

43. Answering paragraph numbered forty-three (43) of the Plaintiff's Complaint, this Defendant asserts that the allegations therein represent legal conclusions, rather than allegations of fact, and therefore do not require a response; however, to the extent any statements and factual allegations are contained therein, they are denied.

44. Answering paragraph numbered forty-four (44) of the Plaintiff's Complaint, this Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations contained therein, and therefore, denies the same.

45. Answering paragraph numbered forty-five (45) of the Plaintiff's Complaint, this Defendant is without sufficient information or knowledge as to form a belief as to the truth of the

allegations contained therein, and therefore, denies the same.

46. Answering paragraph numbered forty-six (46) of the Plaintiff's Complaint, this Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations contained therein, and therefore, denies the same.

47. Answering paragraph numbered forty-seven (47) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

48. Answering paragraph numbered forty-eight (48) of the Plaintiff's Complaint, this Defendant is without sufficient information or knowledge as to form a belief as to the truth of the allegations contained therein, and therefore, denies the same.

49. Answering paragraph numbered forty-nine (49) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

50. Answering paragraph numbered fifty (50) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

51. Answering paragraph numbered fifty-one (51) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

52. Answering paragraph numbered fifty-two (52) of the Plaintiff's Complaint, this Defendant denies the allegations contained therein.

This Defendant denies all allegations of the Complaint which are not specifically admitted herein.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's Complaint fails to state claims or causes of action against Thornhill upon which this Court can grant relief, and that Plaintiff has standing to sue this Defendant.

Second Affirmative Defense

Thornhill states that it did not perform any wrongful acts or omissions as alleged by Plaintiff, and if any wrongful acts or omissions occurred, there were committed by third parties.

Third Affirmative Defense

Thornhill breached no duty of law owed to Plaintiff, and at all times complied by its statutory and regulatory duties

Fourth Affirmative Defense

Thornhill hereby raises and preserves each and every defense set forth in Rules 8, 9, and 12 of the West Virginia Rules of Civil Procedure and further reserves the right to raise such additional defenses as may appear appropriate following further discovery and factual development in this case, and that Plaintiff has failed to add an indispensable party to the litigation.

Fifth Affirmative Defense

Thornhill preserves and incorporates each and every defense made available under the West Virginia Franchise Law.

Sixth Affirmative Defense

Plaintiff may have failed to join a necessary party pursuant to Rule 19 of the West Virginia Rules of Civil Procedure and, therefore, Thornhill reserves the right to file additional affirmative defenses, counterclaims, cross-claims, motions to dismiss and/or third-party claim if the sufficient or factual basis therefore is developed through ongoing investigation and discovery.

Seventh Affirmative Defense

Thornhill states that Plaintiff's claim for punitive damages violates Thornhill's rights as guaranteed under the Eighth and Fourteenth Amendments to the United States Constitution, prohibiting excessive fines.

Eighth Affirmative Defense

Thornhill states that Plaintiff's claim for punitive damages against Thornhill is barred, in whole or in part, because an award of punitive damages would violate Thornhill's due process and equal protection rights guaranteed by the Constitution of the United States and the common law and public policies of West Virginia.

Ninth Affirmative Defense

Plaintiff's declaratory judgment claim fails to present a justiciable controversy between the parties.

Tenth Affirmative Defense

Assuming there is a justiciable controversy, which there is not, this Court should decline to exercise its discretionary jurisdiction over Plaintiff's declaratory judgment claim, which requests the creation of a novel exception to a West Virginia Statute.

Eleventh Affirmative Defense

This Defendant was not aware of Plaintiff's contractual obligations to any third party.

Twelfth Affirmative Defense

This Defendant never undertook any unlawful action to cause interference between Moore Chrysler and Fiat Chrysler Automobiles.

Thirteenth Affirmative Defense

This Defendant reserves the right to assert, should investigation and discovery reveal, that Defendant's alleged actions did not proximately cause any damages to Plaintiff and/or that Plaintiff has failed to mitigate its alleged damages.

JURY DEMAND

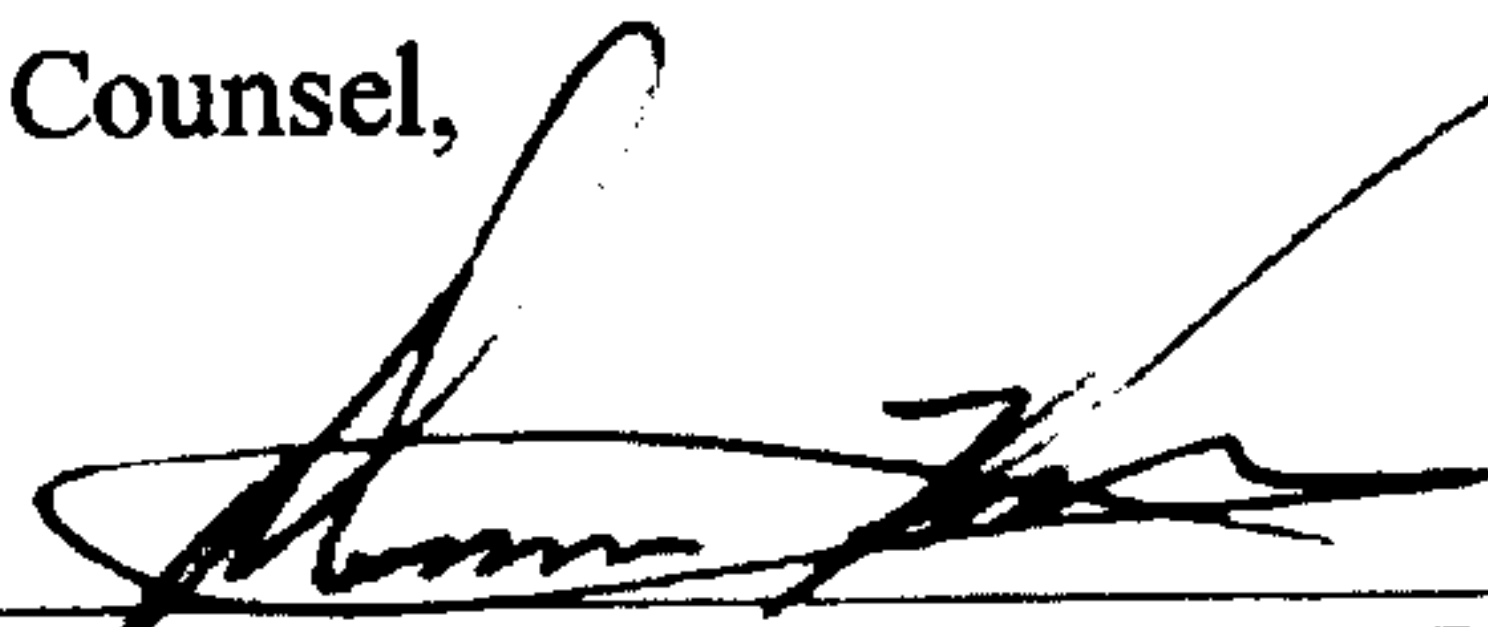
This Defendant respectfully requests a trial by jury on all issues so triable.

PRAYER

WHEREFORE, having fully answered Plaintiff's Complaint, this Defendant, Thornhill, prays that the Plaintiff's Verified Complaint, Petition for Declaratory Judgment and Motion for Injunctive Relief be dismissed, with prejudice, and held for naught; that Plaintiff recovers nothing of this Defendant; that this Defendant recover its costs, expenses of suit, and any reasonable attorney's fees made necessary in defending said Complaint; and for such other and further relief, whether legal or equitable in character, as to which this Defendant may appear entitled.

**THORNHILL MOTOR CAR, INC. d/b/a/
THORNHILL CHRYSLER DODGE JEEP
RAM**

By Counsel,



Johnnie E. Brown, WV State Bar No. 4620

Donovan M. Powell, WV State Bar No. 13914

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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

MOORE CHRYSLER, INC.,

Plaintiff,

v.

**CIVIL ACTION NO.: 21-C-21
HONORABLE MIKI THOMPSON**

**THORNHILL MOTOR CAR, INC. d/b/a/
THORNHILL CHRYSLER DODGE JEEP
RAM,**

Defendant.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendants, does hereby certify on this 9th day of July 2021, that a true copy of the foregoing "**DEFENDANT THORNHILL MOTOR CAR INC.'S ANSWER TO PLAINTIFF'S COMPLAINT**" was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

Charles R. Bailey, Esquire
John P. Fuller, Esquire
Bailey & Wyant, PLLC
P.O. Box 3710
Charleston, WV 25337-3710
Counsel for the Plaintiff


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