

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

FORD MOTOR CREDIT COMPANY LLC, §

Plaintiff,

VS.

REAGOR AUTO MALL I, L.L.C., §
REAGOR-DYKES II, L.L.C., §
REAGOR-DYKES III, L.L.C., §
BART REAGOR AND RICK DYKES §

Defendants.

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CIVIL ACTION NO. 5:18-cv-00186

(Jury Trial Demanded)

ORIGINAL ANSWER OF RICK DYKES

**TO THE HONORABLE SAM R. CUMMINGS,
UNITED STATES DISTRICT JUDGE:**

Rick Dykes, defendant in the above-captioned proceeding, files this Answer to the Amended Complaint in this civil action.

BACKGROUND

1. Ford Motor Credit Company’s (“Ford Credit”) Amended Complaint characterizes this civil action as simply a lawsuit to enforce guaranty agreements after defaults by the primary obligors. However, this case is not that simple. Almost overnight, Ford Credit’s actions have resulted in the bankruptcy of six West Texas auto dealerships, the loss of hundreds of jobs in several West Texas communities, and the destruction of substantial wealth. Legitimate and reasonable questions exist as to why Ford Credit changed its course of conduct with regard to the Reagor-Dykes dealerships and impaired the value of collateral for its claims asserted in this civil action.

2. Mr. Dykes and co-defendant Bart Reagor own the Reagor-Dykes Auto Group, a Lubbock-based group of automobile dealerships and related businesses. The non-individual Defendants in this civil action are entities that are a part of the Reagor-Dykes Auto Group.

3. Over the past 13 years, the Reagor-Dykes Auto Group steadily grew into one of the largest auto dealership operations in West Texas, generating over \$780 million in revenue in 2017. As of July 28, 2018 – less than a month and a half ago – the Reagor-Dykes Auto Group employed over 700 persons in Lubbock and other West Texas communities.

4. From 2011 through 2015, the Reagor-Dykes Auto Group entered into a series of agreements under which plaintiff Ford Motor Credit Company (“Ford Credit”) provided comprehensive automobile inventory financing for six auto dealerships. Ford Credit’s financing is secured by a blanket lien on most of the assets of those six dealerships, as well as a lien on certain other Reagor-Dykes Auto Group assets.

5. For the past 11 years, Shane Smith was the chief financial officer of Reagor-Dykes Auto Group. In that role, Mr. Smith coordinated and managed all financing arrangements for Reagor-Dykes Auto Group, including the Ford Credit financing. Both Mr. Dykes (who had no day-to-day management position with Reagor-Dykes Auto Group) and Mr. Reagor (the chief executive officer of Reagor-Dykes Auto Group) relied on and trusted Mr. Smith to manage all material financial transactions of Reagor-Dykes Auto Group and to provide accurate information regarding those transactions.

6. Prior to becoming the Reagor-Dykes CFO, Mr. Smith was an employee of Ford Credit, the plaintiff in this civil action. Over the past 11 years, Mr. Smith maintained a close professional and personal relationship with Gary Byrd, Jr., the Dallas Regional Manager of Ford Credit and the person primarily responsible for overseeing Ford Credit’s financing of the

Reagor-Dykes Auto Group. Mr. Byrd knew that Mr. Smith was responsible for managing the financial transactions between Reagor-Dykes Auto Group and Ford Credit and for reporting Reagor-Dykes Auto Group's financial information to Ford Credit.

7. In late June 2018, Ford Credit completed its most recent periodic on-site review of Reagor-Dykes Auto Group's financial records pertaining to Ford Credit's financing. As with all of Ford Credit's periodic reviews since 2011, Mr. Smith managed the June, 2018 review on behalf of Reagor-Dykes Auto Group.

8. In a letter dated June 28, 2018, Ford Credit complimented Mr. Smith and Reagor-Dykes Auto Group for the smooth nature of its June 2018 review and confirmed that Reagor-Dykes Auto Group's outstanding short-term indebtedness to Ford Credit was approximately \$25 million.

9. In late July 2018 – less than a month after the review that culminated in the above-described June 28, 2018 letter – Ford Credit notified Mr. Smith that it was undertaking an emergency on-site review of the Reagor-Dykes Auto Group's financial records.

10. Unbeknown to Mr. Dykes and Mr. Reagor, Ford Credit had decided to undertake the emergency review of financial records because of irregularities that Ford Credit had discovered in the financial information provided to Ford Credit by Mr. Smith. Despite knowing that Mr. Smith had provided the financial information that Ford Credit was now questioning, Ford Credit did not notify Mr. Dykes or Mr. Reagor of the reason for the emergency review.

11. On July 26, 2018, Ford Credit's emergency on-site review confirmed irregularities in the financial records of the Reagor-Dykes dealerships. On the same day, Mr. Smith notified Mr. Dykes and Mr. Reagor – both of whom were out of town at the time – that problems had

emerged in regard to Ford Credit's emergency review. On July 27 and 28, 2018, Messrs. Dykes and Reagor returned to Lubbock to assist in addressing Ford Credit's concerns.

12. On July 27, 2018, Ford Credit declared defaults under its agreements with the Defendants and the Reagor-Dykes dealerships, terminated providing any further financing to the Reagor-Dykes Auto Group, and – on July 31st – filed this civil action.

13. The next day (August 1, 2018), the six Reagor-Dykes dealerships to which Ford Credit provided financing commenced chapter 11 cases in the U.S. Bankruptcy Court for the Northern District of Texas, Lubbock Division (“the Bankruptcy Court”).

14. At the same time as the the Reagor-Dykes dealership chapter 11 cases were being commenced, Mr. Smith made a stunning disclosure. Mr. Smith admitted that he had provided false financial information regarding the Reagor-Dykes dealerships to Ford Credit and Messrs. Dykes and Reagor. Upon learning of Mr. Smith's disclosure, Reagor-Dykes Auto Group terminated Mr. Smith's employment and referred Mr. Smith's disclosure to the local United States Attorney's office, which has commenced an investigation.

15. On August 8, 2018, Messrs. Dykes and Reagor directed the Reagor-Dykes debtors in their chapter 11 cases to request that the Bankruptcy Court appoint an independent chief restructuring officer (“CRO”) to manage the Reagor-Dykes dealership chapter 11 cases. On August 16, 2018, the Bankruptcy Court approved BlackBriar Capital LLC of Dallas, Texas as the independent CRO.

16. The CRO is currently managing the Reagor-Dykes dealership chapter 11 cases. Part of that process is reviewing the financial records of the Reagor-Dykes dealerships to determine the amount owed to Ford Credit and other creditors of the dealerships. Another part of that process is reviewing and proposing a sale or recapitalization of the dealership assets, the

proceeds of which would be used to fund a reorganization plan to pay claims of creditors, including Ford Credit. Finally, the CRO is also responsible for investigating any claims for damages that the Reagor-Dykes dealership bankruptcy estates may have against third parties.

AFFIRMATIVE DEFENSES

17. Ford Credit actions breached agreements with Defendants that have been modified through the course of conduct between Ford Credit, Reagor Dykes Auto Group, and Defendants.

18. Ford Credit's actions improperly impaired the value of the security for the claims upon which it seeks recovery from Defendants. As a result, Defendants are entitled to setoff the amount of any such impairment against any of Ford Credit's claims against them.

19. Ford Credit has failed to mitigate the damages that it asserts against the Defendants.

RESERVATION OF RIGHT TO AMEND

20. In a matter of days, Reagor-Dykes Auto Group has gone from being one of the largest auto dealership businesses in West Texas to desperately attempting to preserve going concern value for its creditors. The events leading to this civil action and the related chapter 11 cases have occurred with dizzying speed. As a result, there simply has not been adequate time for Defendants and their respective counsel to fully evaluate legitimate and reasonable questions regarding Ford Credit's actions relating to the facts alleged in the Amended Complaint, particularly the nature of Mr. Byrd's relationship with Mr. Smith and Mr. Byrd's knowledge and actions during the period in which Mr. Smith was providing false financial information to Ford Credit and Messrs. Dykes and Reagor. Likewise, the CRO in the Reagor-Dykes dealerships chapter 11 cases has not had adequate time to confirm the amount of Ford Credit's claims as

alleged in the Amended Complaint, nor has the CRO had adequate time to arrange a sale or recapitalization of the Reagor-Dykes dealerships, the proceeds of which will substantially reduce the amount of Ford Credit's claims in this civil action. Finally, given the immediate demands of the chapter 11 cases of the six Reagor-Dykes dealerships, the CRO has not had sufficient time even to begin investigating possible claims of the estates against third parties.

21. In view of the foregoing, Mr. Dykes reserves the right to amend this answer with affirmative defenses (including those under FED R. CIV. P. 8(c)) and counterclaims that may arise from information discovered in connection with the Reagor-Dykes chapter 11 case and in the discovery phase of this civil action.

JURY DEMAND

22. Mr. Dykes demands a jury for the trial of this civil action.

ANSWER

Subject to the foregoing affirmative defenses and reservation of his right to amend, Mr. Dykes responds to the Amended Complaint by the following parallel-numbered paragraphs:

NATURE OF THE ACTION

1. Admitted.
2. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same
3. Admitted.

PARTIES

A. Plaintiff Ford Motor Credit Company LLC

4. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

5. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

6. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

7. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

B. Bart Reagor

8. Admitted.

9. Admitted.

C. Rick Dykes

10. Admitted.

11. Admitted.

D. Reagor Auto Mall I, LLC

12. Admitted.

13. Admitted.

14. Admitted.

E. Reagor-Dykes II, LLC

15. Admitted.

16. Admitted.

17. Admitted.

E. Reagor-Dykes III, LLC

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted

JURISDICTION AND VENUE

22. Admitted.

23. Admitted.

24. Admitted.

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

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

25. Admitted.

26. Admitted.

27. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

28. Admitted.

29. Admitted.

30. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such definition was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

31. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such right was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

B. The RD Plainview Security Agreement

32. Admitted.

33. Admitted.

34. Admitted.

C The RD III Security Agreement

35. Admitted.

36. Admitted.

37. Admitted.

D. Guaranties of RD Plainview's Indebtedness

38. Admitted.

39. No answer required.

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted.

E. The RD Plainview Wholesale Guaranty

45. Admitted.

46. Admitted.

47. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

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

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

48. Admitted.

49. Admitted.

50. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

51. Admitted.

52. Admitted.

53. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such definition was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

54. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such right was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

B. The Security Agreement

55. Admitted.

56. Admitted.

57. No response required.

C. Guaranty of RD Imports Indebtedness

58. Admitted.

59. Admitted.

60. No response required.

61. Admitted.

62. Admitted.

63. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

64. Admitted.

65. Admitted.

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

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

66. Admitted.

67. Admitted.

68. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

69. Admitted.

70. Admitted.

71. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such definition was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

72. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such right was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

E. The RD Motors Security Agreement

73. Admitted.

74. Admitted.

75. Admitted.

76. No response required.

F. The Master Loan and Security Agreement and Loan Supplements

77. Admitted.

78. Admitted.

79. Admitted.

80. Admitted.

81. Admitted.

82. Admitted.

83. Admitted.

84. No response required.

85. Admitted.

86. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such definition was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

87. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

88. Admitted.

G. The Cross-Default Agreement

89. Admitted.

90. Admitted.

91. Admitted.

92. Admitted.

93. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such definition was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

H. The Continuing Guaranties and Reaffirmations

94. Admitted.

95. Admitted.

96. Admitted.

97. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

98. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

99. Admitted.

100. Admitted.

101. Admitted.

102. Admitted.

103. No response required, except that it is admitted that exhibit Z is a copy of the RD Motors Guaranties.

104. No response required.

105. Admitted.

106. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

107. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

108. Admitted.

109. Admitted.

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

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

110. Admitted.

111. Admitted.

112. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

113. Admitted.

114. Admitted.

115. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such definition was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

116. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such right was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

B. The Security Agreement

117. Admitted.

118. Admitted.

119. Admitted.

120. No response required.

C. Guaranties of RD Amarillo's Indebtedness

121. Admitted.

122. Admitted.

123. No response required.

124. Admitted.

125. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

126. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

127. Admitted.

128. Admitted.

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

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

129. Admitted.

130. Admitted.

131. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

132. Admitted.

133. Admitted.

134. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such definition was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

135. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such right was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

B. The RD Floydada Security Agreement

136. Admitted.

137. Admitted.

138. No response required.

C. Guaranty of RD Floydada's Indebtedness

139. Admitted.

140. No response required.

141. Admitted.

142. Admitted, , except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

143. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

144. Admitted.

145. Admitted.

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

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

146. Admitted.

147. Admitted.

148. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

149. Admitted.

150. Admitted.

151. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such definition was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

152. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such right was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

B. The RD Auto Security Agreement

153. Admitted.

154. Admitted.

155. Admitted.

156. No response required.

C. Guaranty of RD Auto's Indebtedness

157. Admitted.

158. Admitted.

159. Admitted.

160. Admitted.

161. Admitted.

162. No response required.

163. Admitted.

164. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

165. Admitted, except that Mr. Dykes has insufficient information to admit or deny if such agreement was modified through the course of conduct between the parties and, therefore, for purposes of pleading, denies the same.

FORD CREDIT'S SECURITY INTERESTS

166. No response required.

167. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

168. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

THE REAGOR-DYKES DEALERSHIP DEFAULTS

169. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

170. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

171. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

172. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

173. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

174. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

175. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

176. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

177. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

178. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

179. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

180. Admitted, except that Mr. Dykes understands that Ford Credit routinely waived that requirement in the regular course of business.

181. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

182. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

183. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

184. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

185. Admitted, except that Mr. Dykes is attempting to verify the cure amounts alleged by Ford Credit and has not yet confirmed those amounts. Mr. Dykes denies that Ford Credit has provided such verifiable information to him or the CRO of the Reagor-Dykes chapter 11 debtors.

186. Admitted.

187. Admitted.

188. Admitted, except that Mr. Dykes is still attempting to verify the amounts currently due alleged by Ford Credit and has not yet confirmed those amounts. Mr. Dykes denies that Ford Credit has provided such verifiable information to him or the CRO of the Reagor-Dykes chapter 11 debtors.

FIRST CAUSE OF ACTION
(Breach of Reagor-Dykes Guaranties)

189. No response required.

190. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

191. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

192. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

193. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

194. Mr. Dykes has insufficient information to admit or deny the allegations and, therefore, for purposes of pleading, denies the same.

195. No response required.

196. Mr. Dykes admits that he has not paid the Reagor-Dykes Indebtedness as alleged by Ford Credit, but Mr. Dykes denies the remainder of this paragraph insofar it suggests that he is not taking steps to establish the accurate amount of the Reagor-Dykes Indebtedness.

197. Admitted, except that Mr. Dykes denies that Ford Credit has provided a verifiable basis for the Reagor-Dykes Indebtedness asserted in those letters.

198. Mr. Dykes admits that he has not paid the Reagor-Dykes Indebtedness as alleged by Ford Credit, but Mr. Dykes denies the remainder of this paragraph insofar it suggests that he is not taking steps to establish the accurate amount of the Reagor-Dykes Indebtedness.

199. This paragraph is a legal conclusion that does not require a response.

200. This paragraph is a legal conclusion that does not require a response.

Accordingly, Mr. Dykes requests the foregoing relief, as well as such other and further relief as is just.

Respectfully submitted,

/s/ Tom Kirkendall

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**ATTORNEY-IN-CHARGE FOR RICK DYKES,
DEFENDANT**

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument, was served on respective counsel for the other parties to this civil action via electronic transmission via the Court's ECF system on the 13th day of September, 2018.

/s/ Tom Kirkendall

Tom Kirkendall