

**IN THE CIRCUIT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA**

ANTONIO DE ANDRADE,
Plaintiff,

Case no: 50-2023-SC-011007-SB
Judge: Reginald R. Corlew

V.

MARCIO SALES SOUSA,
Defendant / respondent,

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED

INTRODUCTION

As an initial matter, the Respondent, Marcio Luiz Sales Jr., respectfully requests, as a pro se litigant, that this Court construe his motion liberally pursuant to Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), accepts all factual allegations contained herein as true, and evaluates all reasonable inferences derived from those facts in the light most favorable to Sales Jr.. Tannenbaum v. United States, 148 F.3d 1262 (11th Cir. 1998). Indeed, Mr. Sousa reminds the Court that

this is a pro se motion that should be deserving of the less stringent standard of consideration mandated under United States v. Jones, 125 F.3d 1418, 1428 (11th Cir. 1997), and the Court "must look beyond the labels of Respondent filed by pro se detainees to interpret them under whatever statute would provide relief." Means v. Alabama, 209 F.3d 1241, 1242 (11th Cir. 2000) (per curiam); Andrews v. United States, 373 U.S. 334, 337-38, 83 S. Ct. 1236, 10 L. Ed. 2d 383 (1963). This practice acknowledges the importance of allowing meritorious claims to be heard and decided regardless of mere pleading defects introduced by legally unsophisticated litigants, as this one filed by Sousa. Mr. Sousa seeks justice and the opportunity to exclude himself from this case since facts and the truth will substantially prove that he has never committed any illegal conduct nor caused any negligence or damage to the Plaintiff.

ARGUMENTS

Plaintiff's Failure to Provide Proper Notice

The Plaintiff failed to comply with Florida's legal requirements for providing proper notice before filing this lawsuit. Under Florida Statutes § 83.56(4), a party seeking to initiate legal action must first provide the opposing party with written notice, allowing them a reasonable opportunity to rectify the issue before the matter is taken

to court. Specifically, this statute requires that notice be delivered by certified mail, return receipt requested, or by hand delivery.

The Plaintiff, however, did not adhere to this statutory requirement, thereby violating the procedural due process rights of the Defendant. This failure to provide proper notice undermines the jurisdiction of this Court over the matter and, as a result, renders the proceedings invalid. In Sommer v. Time, Inc., 704 So. 2d 1040 (Fla. 4th DCA 1998), the court held that failure to provide notice affects the jurisdiction of the court. Similarly, S.L.T. Warehouse Co. v. Webb, 304 So. 2d 97 (Fla. 1974), established that lack of notice can lead to the nullification of subsequent legal proceedings.

Given that the Plaintiff failed to serve the required notice, this Court must dismiss the complaint for failure to state a claim upon which relief can be granted.

Misidentification of the Defendant

The Plaintiff intended to sue Marcio Luiz Sales Junior, the owner of the mechanic shop in question, as is evident from the Plaintiff's exhibits. However, the Plaintiff erroneously named and served the lawsuit on Marcio Sales Sousa, the father of Marcio Luiz Sales Junior. (Please see exhibit 1). This misidentification is a critical error that invalidates the Plaintiff's claim against the Defendant.

According to the Florida Division of Corporations, Marcio Luiz Sales Junior was the sole owner of STR Sunrise Truck Repair LLC at the time of the incident. The Plaintiff's own exhibits outline this fact. The erroneous service upon Marcio Sales Sousa has caused financial losses and damage, including the denial of credit lines due to the pending lawsuit.

In Zeigler v. King, 397 So. 2d 341 (Fla. 1st DCA 1981), the court found that misidentification of the defendant and service upon the wrong individual warrants dismissal. Similarly, in Doe v. Roman Catholic Church, 830 So. 2d 1013 (Fla. 2d DCA 2002), the court held that a lawsuit filed against the wrong party due to misidentification must be dismissed. The Plaintiff's lawsuit against Mr. Sousa is, therefore, fatally flawed and must be dismissed with prejudice. The Defendant further requests that the Court hold the Plaintiff accountable for the expenses caused by this wrongful suit, as supported by Boca Burger, Inc. v. Forum, 912 So. 2d 561 (Fla. 2005), which held that a defendant wrongfully sued is entitled to compensation for expenses incurred due to the erroneous legal action. (See Exhibit 2).

No Negligence Count

On December 12, 2022, the Plaintiff dropped off his white cargo van, a Mercedes-Benz Sprinter (VIN# WD2YD641635426875), at the mechanic shop owned by

Marcio Luiz Sales Junior, not the Defendant. The Plaintiff was informed by a certified mechanic that the problem was with the transmission and that further review was necessary to determine whether the transmission needed repair or replacement. Despite this professional advice, the Plaintiff insisted on replacing the engine, even though the diagnostic showed no issues with the engine and highlighted the transmission as the problem. (See exhibit 3).

Before the Plaintiff took his car, a test drive was conducted, during which a video was made by Mr. Sales Junior. The video, available upon court request, clearly shows that the vehicle's problem was indeed with the transmission, as it failed to change gears, and the vehicle could not exceed 40 miles per hour. (see exhibit 4). The Plaintiff was seriously advised that driving the car with the unresolved transmission issue could cause significant damage to the new engine. Despite this warning, the Plaintiff drove the car out of the shop, and as a result of his negligence and disregard for the certified mechanic's advice, additional damage occurred, including to the alternator and water pump. (See exhibit 5).

Moreover, due to the Plaintiff's negligence, the shop owner incurred further expenses, including towing the Plaintiff's car back to the shop and replacing the damaged parts at his own expense. Despite these additional costs being covered by the shop owner, the Plaintiff is attempting to claim losses due to alleged negligence.

However, it was the Plaintiff who caused losses to the shop owner, and now, further losses to the shop owner's father by bringing a lawsuit against him.

In Goodman v. Yamaha Motor Corp., 316 So. 3d 689 (Fla. 1st DCA 2021), the court held that a party who disregards professional advice and causes additional damage through their negligence is responsible for the subsequent damages. Furthermore, in Allstate Ins. Co. v. Ginsberg, 351 So. 2d 1042 (Fla. 3d DCA 1977), the court found that a defendant is not liable for damages caused by the plaintiff's own negligent actions. Lastly, in Silvers v. State, 533 So. 2d 1133 (Fla. 4th DCA 1988), the court reinforced that plaintiffs who act against the advice of professionals bear the responsibility for any resulting harm.

Therefore, the claim of negligence must be dismissed, as the damage was entirely due to the Plaintiff's own actions, not any fault of the Defendant or his son's shop.

4. Plaintiff's Attempt to Abuse the Legal System and Enrich Himself

The Plaintiff's actions in this case amount to an egregious attempt to abuse the legal system by bringing a frivolous lawsuit against the wrong party, with the clear intention of enriching himself for issues that he caused through his own negligence. By filing this lawsuit against the Defendant's father, who was not involved in the

transaction, the Plaintiff is seeking to shift blame and responsibility for his own decisions, which led to significant damage to his vehicle.

This Court has a duty to prevent the misuse of the judicial process, as underscored in *Martin v. Auto Owners Ins. Co.*, 606 So. 2d 455 (Fla. 4th DCA 1992), where the court held that plaintiffs who initiate frivolous lawsuits should be subject to punitive measures to deter such conduct. Furthermore, under Florida Statutes §57.105, the court is authorized to award attorney's fees and sanctions against a party that brings a baseless claim without substantial justification.

The Plaintiff's behavior is a clear violation of these principles. He was fully aware of the transmission issue diagnosed by a certified mechanic but chose to ignore it, insisting on replacing the engine instead. Despite being advised that driving the vehicle with an unresolved transmission issue could lead to further damage, the Plaintiff disregarded this advice, leading to additional harm to the alternator, water pump, and engine.

Moreover, after the shop owner, Mr. Sales Jr., informed the Plaintiff that he could no longer continue to fix the car at his own expense due to the Plaintiff's repeated

negligence, the Plaintiff became aggressive, using profane language towards the employees and the shop owner. This aggressive behavior continued during the mediation hearing, as documented in court records, further demonstrating the Plaintiff's lack of respect for the legal process.

The Plaintiff's actions not only caused unnecessary expenses for the Defendant's father but also constitute a blatant attempt to exploit the legal system for personal gain. In *Boca Burger, Inc. v. Forum*, 912 So. 2d 561 (Fla. 2005), the Florida Supreme Court emphasized that courts must take a strong stance against frivolous lawsuits and those who abuse the legal process.

Request for Punitive Fines and Restitution

The Defendant respectfully asks this Court to impose punitive fines and restitution in favor of the Defendant's father. Here, the Plaintiff is attempting to enrich himself by placing blame on the mechanic shop despite ignoring the diagnostic provided by a certified mechanic. The Plaintiff's conduct, including his aggressive and unprofessional behavior, warrants not only the dismissal of this case but also punitive measures to serve as an example and deterrent to others who might seek to abuse the judicial system in similar ways.

Florida Statutes §57.105 permits the court to award sanctions to deter frivolous litigation and prevent the waste of judicial resources. Additionally, in Kaye v. Rosefelde, 121 A.3d 862 (N.J. 2015), the court noted that punitive damages serve to punish wrongdoers and deter future misconduct. The Defendant requests that this Court exercise its discretion to impose such sanctions, ensuring that the Plaintiff does not benefit from his misconduct and to prevent others from attempting to exploit the court system for personal gain.

CONCLUSION

Based on the arguments and evidence presented, it is clear that the Plaintiff's claims are without merit and stem from his own negligence and disregard for the advice provided by a certified mechanic. The Plaintiff's decision to replace the engine despite being informed that the problem was with the transmission resulted in further damage to his vehicle, including the alternator and water pump. These additional damages were caused solely by the Plaintiff's actions, and the shop owner incurred further expenses by towing the Plaintiff's car and replacing the damaged parts at his own expense.

Moreover, the Plaintiff's conduct in bringing a lawsuit against the wrong party—a baseless claim against the Defendant's father—demonstrates an attempt to abuse the legal system for personal enrichment. The Plaintiff has not only wrongfully implicated the Defendant's father but has also caused unnecessary legal expenses and emotional distress. Such actions should not be tolerated by this Court.

The Defendant respectfully requests that this Court:

Dismiss the Plaintiff's claims with prejudice, as they lack any legal or factual basis.

Award punitive fines and restitution to the Defendant's father, as the Plaintiff's actions constitute an abuse of the judicial process.

Impose any additional punitive measures permitted under Florida law to serve as a deterrent to the Plaintiff and others who might attempt to exploit the legal system for personal gain.

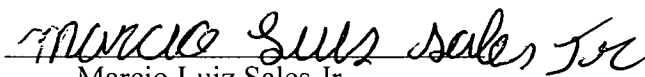
In support of these requests, the Defendant cites Martin v. Auto Owners Ins. Co., Boca Burger, Inc. v. Forum, and the relevant Florida Statutes §57.105, which empower the Court to take decisive action against frivolous litigation. The Plaintiff's actions should serve as a cautionary example of the consequences of attempting to manipulate the legal process, and the Defendant urges the Court to act accordingly.

Respectfully Submitted,

Marcio Luiz Sales Jr.
22187 AQUILA STREET
BOCA RATON, FL 33528
(561) 909-8184

PROOF OF SERVICE

I Marcio Luiz Sales Jr., do certify that on August 15, 2024, I have served the MOTION FOR ORDER OF PROTECTION AGAINST FORM 1.977(a) (which is under the respondent's constitutional rights) on the IN THE 15th CIRCUIT COURT and in for Palm Beach County, as well as to the Plaintiff at **545 S. Lake drive, Lantana, Florida 33462** (tjlmable@yaoo.com) Florida in the above proceeding. I have served this motion **Certified mail**.



Marcio Luiz Sales Jr.
22187 AQUILA STREET
BOCA RATON, FL 33528
(561) 909-8184

Exhibit 1

Marcio Sale Sousa Sr, Driver License

Marcio Luiz Sales Jr. Driver License

NOT A CERTIFIED COPY

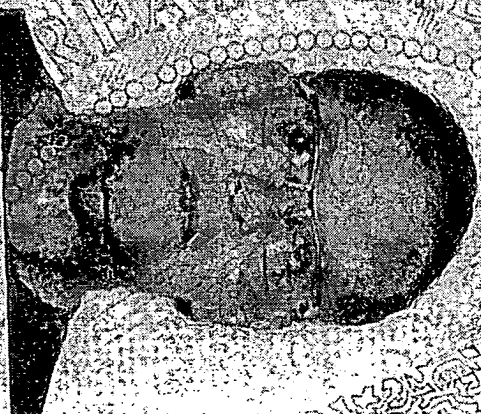
Florida

CDL

S422-540-67-445-0

9 CLASS A

USA



1 ADDN SALES SOUSA

2 MARCIO

3 22187 AQUILA ST

4 BOCA RATON FL 33428

5 DOB 12/05/1961 SEX M

6 EXP 12/05/2027 16 HGT 5'-06"

7 12 REST A 9a END NONE

SAFE DRIVER

4a ISS 11/12/2019

5DD K711941320338

Operation of a motor vehicle constitutes
consent to any sobriety test required by law

Florida

DRIVER LICENSE

S420-552-98-341-0

1 SALES

2 MARCIO LUIZ JR

3 22187 AQUILA ST

4 BOCA RATON, FL 33428

5 DOB 09/21/1998 SEX M

6 EXP 09/21/2026 HGT 5'02"

7 REST NONE EYES NONE

8 SAFE DRIVER

9 ISS 10/13/2017

10 DOB X612217140244

11 REPLACED 12/14/2022

Operation of a motor vehicle is contingent upon consent to any security test required by law

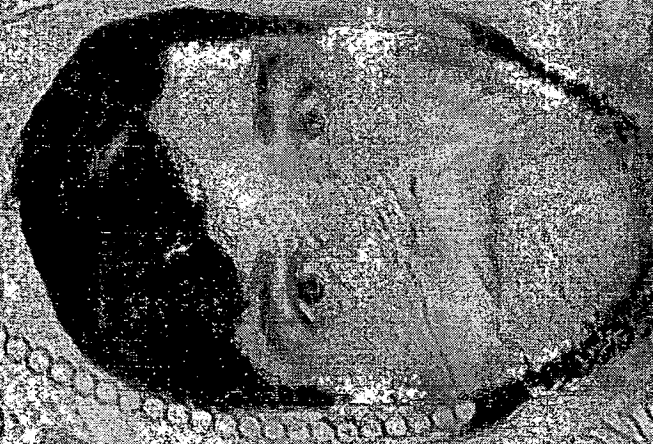


Exhibit 2

Legal Help Invoice

NOT A CERTIFIED COPY



INVOICE

DATE: 08/20/2024
INVOICE # MS81642
Customer ID 12055

LEGAL HELP 4 YOU

160 WEST CAMINO REAL
STE 102 BOCA RATON FL 33432
PHONE: (561) 770-8909

BILL TO: MARCIO Jr.
Attn: Marcio Luiz Jr.
Phone: (561) 909-8184
Address: 22187 AQUILA STREET, BOCA RATON FL 33528
Email: unionmoving@hotmail.com

LEGAL SERVICE DESCRIPTION	AMOUNT
1) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM	\$680.00 1h
2) LEGAL REASERCH CASE 50-2023-SC-011007-XXXX-SB	\$951.00 2h
3) MOTION PROECTION CASE 50-2023-SC-011007-XXXX-SB	\$680.00 1h
4) MOTION TO SET ASIDE CASE 50-2023-SC-011007-XXXX-SB	\$1,360.00 2h

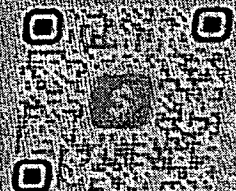
OTHER COMMENTS

Please submit payment via website
<https://legalhelp4y.com/online-payment>
Or Cash-App

SUBTOTAL \$ 3,671.00
COURT FEES \$
TAX OTHER \$
TOTAL \$ 3,671.00

If you have any questions about this invoice, please contact
LEGAL HELP 4 YOU
Email: INFO@LEGALHELP4Y.com

Thank You For Your Business!



Legal Help

Exhibit 3

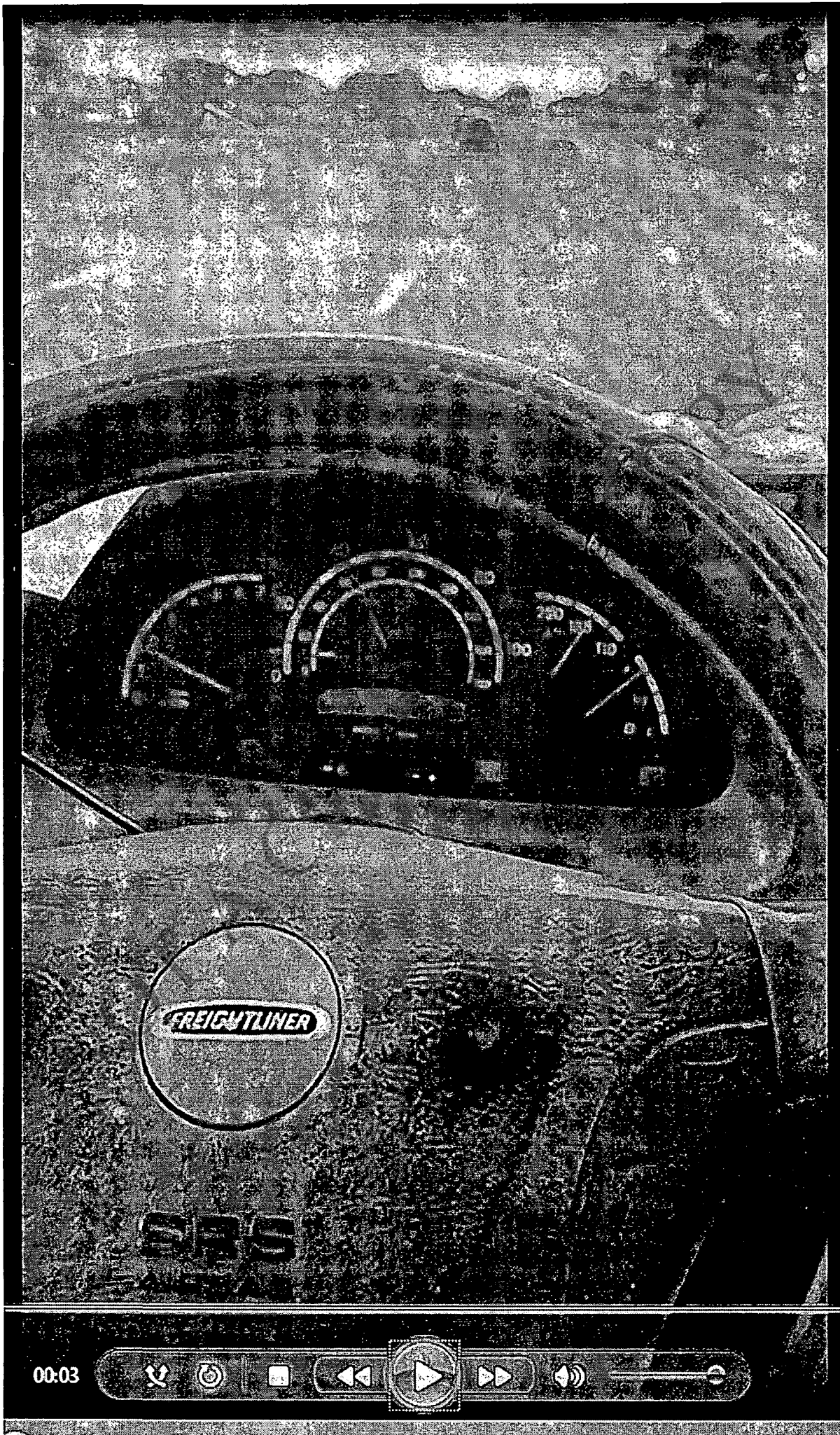
Shopping related diagnostic of vehicle problem.

NOT A CERTIFIED COPY

EXHIBIT 4

PRINT SCREEN FROM VIDEO CONDUCTED TEST DRIVER BY
OWNER SHOP.

NOT A CERTIFIED COPY



00:03



EXHIBIT 5

EXTRA PARTS INVOICE AND TOWNING ON THE SHOP OWNER
EXPENSES.

NOT A CERTIFIED COPY

(954) 204 4993

8401 WEST SAMPLE RD. #39
CORAL SPRINGS,
FL 33065

CHARGE TO
NAME →

MAIL STREET
ADDRESS →

CITY, STATE
ZIP CODE →

STR SUNRISE TRUCK 21e

AUTHORIZED BY	DRIVER#	UNIT#	KEYS	TIME
			Y <input type="checkbox"/> N <input type="checkbox"/>	
OWNER'S NAME- ADDRESS OR OWNER OPERATOR IF DIFFERENT FROM ABOVE				

ENDING MILEAGE	Ray Bell	WORK ORDER #
STARTING MILEAGE		PURCHASE ORDER #
TOTAL MILEAGE		IBM #

HOOK-UP	
	280 00
SUB-TOTAL	
TAX	
TOTAL	280 00

The customer and the undersigned jointly and severally agree to pay the total cost, including cost of collection and attorney's fees, if required



DEDICATED TO THE PROFESSIONAL

Store 0650, 4101 N. DIXIE HWY
DEERFIELD BEACH, FL 33064 (954) 861-6005

Bill To:

STR SUNRISE TRUCK REPAIR
22187 AUILA ST

BOCA RATON, FL 33428
(561) 289-7793

Ship To:

str sunrise truck repair
3341 n dixie hwy
Pompano Beach, FL 33064

Invoice	5464-389644
Sale Type	CHG CARD SALE
Date	01/11/2023 3:34 PM
Ship Via	DELIVER
PO Number	

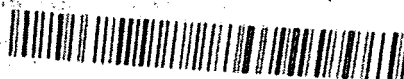
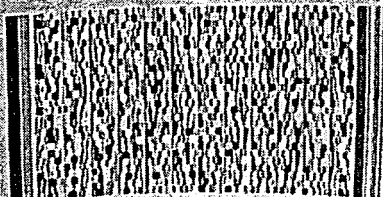
Counter #	Customer Account	Ordered By	Special Instructions
479381	3238237		

Qty	Line	Item Number	Description	Warr	Unit	Tax	List	Net	Extended
1	ULT	R110545B	ALTERNATOR	LT	EA	Y	489.81	254.81	254.81
			DC or Hub Pickup						
		R110545B	Core Charge		EA	Y		40.00	40.00
4	ORO	GLOBAL-1	IGL-TransFId	MD	EA	Y	54.22	31.99	127.96

*** Historical Reprint ***

5 Items

Select Super Start Batteries come with Roadside Assistance. Ask for details.



WWW.FIRSTCALLONLINE.COM

Warranty/Guarantee: www.firstcallonline.com/warranty

Child Use: H REF # 115607015924 AUTH CO: 173242

Sub-Total	422.77
Sales Tax	29.59
Total	452.36
MC #2648	452.36

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