

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GKI, INC. D/B/A	)	CIVIL ACTION NO.
GENGRAS KIA OF EAST HARTFORD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
KIA MOTORS AMERICA INC.,	)	
	)	JUNE 3, 2013
Defendant.	)	
	)	

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, GKI, Inc. d/b/a Gengras Kia of East Hartford (“Gengras Kia”) as and for its
Complaint against Defendant, Kia Motors America Inc. (“KMA”), asserts and alleges as follows:

The Parties

1. Plaintiff, Gengras Kia is a Connecticut corporation with its principal place of business located at 546 Connecticut Blvd., East Hartford, CT 06108.
2. Gengras Kia, a “Dealer” as defined in C.G.S. §42-133r(6), C.G.S., operates a Kia automobile dealership pursuant to a “Franchise,” as defined in C.G.S. §42-133r(10) granted by Kia Motors America Inc. (“KMA”). Gengras Kia’s annual sales are tens of millions of dollars and the market value of the business is in the millions of dollars.
3. Defendant, KMA, a California corporation, located at 111 Peters Canyon Road in Irvine, California, 92606, serves as the marketing and distribution subsidiary of Kia Motors Corporation of Seoul, South Korea. KMA markets, wholesales and services Kia automobiles, parts and accessories and franchises Kia automobile dealerships in the United States.

4. KMA is a “Distributor” as defined in C.G.S. §42-133r(2).

JURISDICTION

5. This court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) in that there is complete diversity of citizenship and, because it concerns a valuable automobile franchise, the amount in controversy exceeds the sum of \$75,000 exclusive of attorney’s fees and costs.
6. Venue is proper in this district pursuant to 28 U.S.C. §1391(a) in that jurisdiction is founded solely on the basis of diversity, and KMA, by virtue of its systematic and continuous business contacts in this district, resides in this district.

GENERAL ALLEGATIONS

7. Gengras Kia operates under an agreement with KMA for the Kia line-make. Gengras Kia’s Sales & Service Agreement (“Dealer Agreement”), along with the corresponding Standard Provisions, is attached hereto as “Exhibit A”. The Dealer Agreement authorizes Gengras Kia to sell new Kia products and perform authorized warranty and service work on Kia vehicles.
8. The Dealer Agreement became effective May 20, 2010, and is perpetual in nature.
9. KMA drafted the Dealer Agreement in its entirety. KMA does not entertain any negotiation with dealers over the terms and conditions set forth in the Dealer Agreement. Gengras Kia has no meaningful bargaining power with KMA. The Dealer Agreement is a contract of adhesion, offered on a “take-it-or-leave-it” basis. From time to time KMA unilaterally issues provisions that purport to amend the Dealer Agreement, including, but not limited to, changes to the Areas of Primary Responsibility (“APR”).
10. Related entities owned and operated by the Gengras family include Volvo, Harley Davidson, Dodge, Chrysler, Jeep, Fiat, Chevrolet, and BMW dealerships in East

Hartford, CT, Meriden, CT, and West Springfield, MA. The Gengras family has operated new motor vehicle dealerships since 1937.

11. The Gengras family opened the Kia franchise in 2010. Prior to Gengras Kia, no Kia franchise operated in the Hartford market. The closest Kia dealers to the Hartford market were located 17 miles north in Enfield, 16 miles west in Bristol, or 15 miles east in Columbia.
12. Gengras Kia has endeavored to vigorously and aggressively promote and sell Kia products. In 2012, Gengras Kia was the number two volume store in the state of Connecticut. Gengras Kia grew sales volume 155% from 2010 to 2011 which was #1 in the district. Gengras Kia's sales volume grew 27% from 2011 to 2012 which was #3 in the district.
13. At all times relevant hereto, the related Gengras dealerships have been in compliance with the franchise agreements for all of its vehicle brands. At all times relevant hereto, no vehicle manufacturer or distributor other than Kia has accused a Gengras- owned dealership of failing to comply with the sales performance requirements of the franchise.
14. Gengras Kia has invested a substantial amount of capital into its Kia franchise through, *inter alia*, advertising, training, staffing, facility enhancements and general operating expenses. Gengras Kia's advertising expenditures per new unit retail exceed the State average Kia dealer's expenditures.
15. On March 7, 2013, KMA notified Gengras Kia by letter (attached hereto as "Exhibit B") ("Notice of Termination" or "NOT") that Gengras Kia had failed to vigorously and aggressively promote, solicit and make sales of Kia Products within its APR and failed to perform adequately its sales responsibility, so Gengras Kia's franchise would be

terminated in ninety (90) days pursuant to section Article XII(C)(3) of Part II of the Dealer Agreement.

16. Gengras Kia files this action as authorized by C.G.S. §42-133 because the proposed termination lacks the requisite good cause, and because KMA has not acted in good faith. As a result, the proposed termination is prohibited under C.G.S. §42-133v and Connecticut law.

Sales Performance Measurements

17. KMA's Dealer Agreement is a form contract written by KMA with no opportunity for a dealer to negotiate the terms. Upon information and belief, all KMA dealers in the State of Connecticut and the United States operate under the same Dealer Agreement general provisions as Gengras Kia.
18. The provisions of the Dealer Agreement describe the following obligations with regard to selling new Kia vehicles:

DEALER accepts its appointment as an authorized Kia Dealer and agrees to (i) vigorously and aggressively sell and promote Kia Products; (ii) satisfactorily service Kia Products, regardless of where sold and by whom and whether or not under warranty; and (iii) establish and maintain satisfactory Kia dealership facilities at, and only at, the location(s) specified in Part 1, all in strict accordance with the terms and conditions of this Agreement.

Article II(i)

DEALER shall vigorously and aggressively promote, solicit and make sales of Kia Products within its APR

Article IXB.1.

KMA's Dealer Sales Index - Sales Effectiveness

19. In evaluating Gengras Kia's sales performance, KMA chooses to utilize a comparison of what it calls the Dealer Sales Share ("DSS") versus the "Dealer Sales Index" ("DSI").

20. According to KMA, DSS is calculated by dividing (i) the total new Kia retail sales (wherever made) reported by a dealer that match registrations reported by R.L. Polk & Co., by (ii) the total number of all retail registrations of Kia's competitive group within the dealer's "Area of Primary Responsibility" ("APR"). KMA then compares a dealer's DSS to the aggregate DSS of Kia dealers within a given geographic area, such as the Region, District, or State in which a dealer is located, to generate a DSI. KMA reviews a dealer's DSI to determine whether the dealership is performing at, above, or below the average of all dealers in the applicable geographic area.
21. The DSI - Sales Effectiveness formula is inherently unreasonable and unfair in that, among other things: (i) it is based on an average which by definition prevents all dealers from meeting or exceeding the required sales performance, (ii) it is measured within a variable geographic area unfairly defined by the manufacturer and measured after-the-fact making the required performance level unknown to the dealer, (iii) it is strongly influenced by the supply of vehicles made available to the subject dealer as well as other dealers in the geography identified for comparison; and (iv) does not take into account the unique nature of the subject dealer's market.
22. The DSI measurement is unreasonable because, among other things, by definition, it is mathematically impossible for every dealer to be at or above average sales penetration. Under the formula there will always be dealers above and below the average. If all dealers below the average were eliminated, then a certain percentage of the dealers previously performing at or above average would suddenly be performing below average and considered to be poor performers, and so on until only one dealer remained.

23. The DSI measurement is unreasonable because, by the very nature of the Sales Effectiveness formula, the DSI calculation is performed after-the-fact. The calculation is a function of the performance of other dealers in the Region within the unique circumstances of their individual markets. The dealer does not know how many new vehicle sales the dealership needs to make to be at 100% DSI until the measurement period is closed and the calculation is made. The DSI “standard” is not known, or knowable, in advance. As a result, the dealer is held to an unknown and unknowable standard, and so unable to alter the dealership’s performance to meet the standard.
24. The DSI measurement for sales effectiveness is unreasonable because it does not take into account a dealer’s unique market circumstances in determining satisfactory performance, including, but not limited to, the demographics of the market, the shopping patterns of the market, the presence or absence of competition in a dealer’s market, the differences between rural and metropolitan markets and the amount and type of vehicle models delivered to dealers in the geography selected for comparison.
25. The DSI measurement amounts to KMA’s suggested sales quota and so is deemed not to be good cause for the threatened termination.

KMA’s Discriminatory Sales Objectives and Incentive Program

26. The KMA Business Operating Plan (“BOP”) program establishes objectives based upon a dealership's area of primary responsibility's ("APR") fair share of the Regional business plan by employing competitive vehicle registration data, and making adjustments.
27. KMA’s BOP objectives are used by KMA as incentive targets. A dealer’s achievement of sales at or above the incentive target results in KMA payment of funds to a dealer including but not limited to funds on a per car sold basis.

28. C.G.S. §42-133cc(19), prohibits a distributor like KMA from selling or offering to sell any new motor vehicle to a dealer at a lower actual price than the actual price offered to any other franchised motor vehicle dealer for the same model vehicle similarly equipped, or to utilize any device, including, but not limited to, sales promotion plans, funds or financing to upgrade facilities, discounts or programs that result in such lesser actual price, when such incentives or discounts are not reasonably and practically available to all dealers in the state on a proportionally equal basis.
29. KMA's BOP and related incentive programs are not reasonably and practically available to Gengras Kia on the same or proportionately equal basis as other dealers.
30. The "objectives" KMA sets for Gengras Kia under the BOP program are based upon what KMA identifies as Gengras Kia's share of KMA's Regional Business Plan which, in large part, is based upon what KMA identifies as the competitive vehicle registration data for the Gengras Kia APR.
31. KMA's inappropriate identification of the Gengras Kia APR adversely affects the BOP objective KMA sets for Gengras Kia.
32. KMA's assignment of a share of the competitive vehicle registration data fails to consider the unique nature of Gengras Kia's urban market and the inadequate supply of vehicles KMA makes available to Gengras Kia.
33. KMA's BOP incentive program is a device which results in the sales of new motor vehicles to other dealers at a lower actual price than the actual price offered to Gengras Kia for the same model vehicle similarly equipped.
34. KMA's BOP incentive program is not reasonably and practically available to Gengras Kia on a proportionately equal basis to other dealers in the Connecticut.

Assignment of Dealer's Territory

35. The assignment of territory for which a dealership is responsible plays a large part in the sales performance calculation. The assignment of territory, known as “Area of Primary Responsibility” (“APR”), is intended to match a dealership with the customers in the market who will find the dealership most convenient in which to shop for a new vehicle and to obtain service for their vehicle. KMA purportedly assigns territory using United States census tracts based first upon the closest dealer by driving distance to the geographic center of a census tract and then considering natural barriers and other factors which may make another dealership a more convenient location in which to shop for a new vehicle and obtain service on a vehicle.
36. The APR is a non-exclusive area that KMA uses to evaluate each dealer's performance and the sales potential in its market, among other things.
37. KMA failed to fairly assign Gengras Kia's APR, resulting in a territory that includes census tracts where individuals reside who would find one or more of Gengras Kia's neighboring Kia dealers more convenient to shop for a new vehicle and obtain service on their vehicle.
38. The larger the assigned APR, the greater the total number of vehicle registrations against which a dealer's actual sales are measured and vice versa. Thus, KMA's failure to properly assign Gengras Kia's APR has caused Gengras Kia's sales performance requirements to be substantially inflated and not reasonably attainable.
39. Within a year of opening, Gengras Kia asked KMA to revise its APR, consistent with KMA and industry guidelines. Gengras pointed out that the APR assigned Gengras Kia

when KMA re-entered the Hartford market was too large and unfairly impacted the sales performance calculations and periodic sales objectives.

40. Although KMA subsequently made minor revisions, KMA's revisions did not appropriately render the revised APR, which continued to contain improperly assigned census tracts and so improperly inflated Gengras Kia's sales performance and sales objective requirements.
41. KMA's failure to apply an appropriate APR renders KMA's sales performance measurement unreasonable and demonstrates a lack of good cause and good faith.

Allocation

42. KMA's vehicle allocation system includes various discretionary components by which KMA can and does choose to provide a better selection and quantity of new Kia vehicles to some dealers over others. During all relevant times, Gengras Kia was not provided with a mix and supply of new Kia vehicles which would allow it to meet the periodic sales objectives set by KMA, to meet its customer demand or to reach 100% DSI while other Kia dealers in the State and Region received a better mix and supply of Kia vehicles.
43. KMA's inability to provide its dealers with adequate inventory is well known in the industry. KMA has acknowledged a lack of sufficient supply to meet dealer demand for Kia vehicles. This inability to supply adequate inventory to dealers has persisted over time and impacted Gengras Kia's ability to meet the sales performance measurement KMA imposed.
44. KMA has not fulfilled its obligation to provide adequate product allocation and inventory for Gengras Kia.

45. Had KMA allocated more vehicles to Gengras Kia, Gengras Kia would have sold more vehicles.
46. KMA's assertion that Gengras Kia breached its sales performance obligation is barred by the doctrines of prevention and/or frustration of purpose.
47. As a result of KMA's failure to provide a sufficient supply and mix of vehicles to Gengras Kia, Gengras Kia has been unable to satisfy all of its customer demand for Kia vehicles in 2010, 2011 and 2012.
48. In December 2011, in response to KMA expressions of concern regarding Gengras Kia's sales performance, Gengras Kia advised KMA that since opening there had been very few months when Gengras Kia had sufficient inventory to reach the sales volume levels KMA had recently indicated were expected of Gengras Kia. Gengras Kia reiterated previous requests to KMA to provide allocation at sufficient levels to enable Gengras Kia to attain higher sales performance.
49. Although KMA agreed that Gengras Kia should be building its Kia inventory in order to support increases in its sales, KMA declined to provide the requested additional allocation. KMA stated because of the extraordinary growth of sales in the Region (and the Nation), supplemental inventory was less available than it was in the past. Instead, despite an awareness of existing supply constraints, KMA increased the sales performance level expected of Gengras Kia.
50. KMA's failure to provide sufficient allocation and continued demand for increased sales renders the KMA sales performance criteria unreasonable and evidences lack of good cause and lack of good faith.

Notice of Default

51. In the midst of being deprived necessary vehicle allocation, saddled with an APR that was larger than KMA or industry guidelines reflected as appropriate which, in turn, inflated its sales objectives and sales performance requirements, and only eighteen months after Gengras Kia invested in the Kia franchise and its dealership facility, KMA informed Gengras Kia, by correspondence dated November 22, 2011, that KMA believed Gengras Kia to be in violation of its sales performance and other obligations.
52. By correspondence dated July 23, 2012, KMA again informed Gengras Kia it believed Gengras Kia to be in violation of its sales performance and other obligations. Although KMA conceded that changes to the Gengras APR were appropriate given distance to other Kia dealers, it declined to make those changes. Although KMA also conceded supply constraints impacted Gengras Kia's available vehicle inventory, KMA declined to adjust sales performance expectations for Gengras Kia and, instead, threatened to add another Kia dealer to the Hartford market.
53. By correspondence dated January 25, 2013, KMA conceded that the APR assigned Gengras Kia was inappropriately large, and made adjustments to that APR although not sufficient to result in a properly drawn APR.
54. By correspondence dated March 7, 2013, KMA notified Gengras Kia that KMA would terminate the Gengras Kia franchise ninety (90) days after receipt of the notice.
55. Pursuant to C.G.S. §42-133v, upon the filing of this Complaint Gengras Kia's franchise agreement shall remain in full force and effect and Gengras Kia shall retain all rights and remedies pursuant to the terms and conditions of its Kia franchise agreement, including, but not limited to, the right to sell or transfer ownership interest, until a final

determination by the court of competent jurisdiction and any appeal from such determination, unless extended by a court of competent jurisdiction for good cause.

56. Gengras Kia has met all conditions precedent to bringing this action.

COUNT I - UNLAWFUL TERMINATION

57. Plaintiff realleges paragraphs 1 through 56 as if fully set forth herein.

58. Gengras Kia files this protest as authorized by C.G.S. §§42-133v and 42-133ee Connecticut General Statutes, and seeks a determination that the proposed termination is unfair and prohibited under Connecticut law.

59. KMA has failed to comply with the notice provisions of C.G.S. §42-133v, Connecticut General Statutes, in that the Notice of Termination fails to specify the effective date of termination or otherwise comply with C.G.S. §42-133v.

60. KMA is not acting in good faith and does not have good cause in proposing to terminate Gengras Kia's franchise in that KMA has set Gengras Kia's sales performance requirement at an unreasonable level and/or the performance criteria KMA utilizes is unreasonable and/or Gengras Kia demonstrated substantial progress towards compliance with the performance criteria during the six month/extended cure period.

61. KMA has not acted in good faith and does not have good cause in proposing a termination of Gengras Kia's franchise in that the metrics used for measuring sales performance are unfair, unscientific and inappropriate as applied to Gengras Kia.

62. KMA has not acted in good faith and does not have good cause in proposing a termination of Gengras Kia's franchise in that KMA has withheld a sufficient supply and mix of vehicles from Gengras Kia.

63. KMA has not acted in good faith and does not have good cause in proposing a termination of Gengras Kia's franchise in that the geographic area used by KMA to calculate the sales performance of Gengras Kia is inappropriately large, and contains areas more distant from, and less convenient to, Gengras Kia and closer, and more convenient, to longer established competing Kia dealerships.
64. The Dealer Agreement does not permit the proposed termination in that Gengras Kia has complied with the sales obligations as provided for in the Dealer Agreement.
65. KMA's proposed termination of Gengras Kia's franchise is unfair and prohibited in that the proposed termination relies upon an alleged breach of the sales performance requirements of the franchise agreement which is not in fact a material and substantial breach considering the faulty application of the sales performance requirement.
66. KMA's proposed termination of Gengras Kia's franchise lacks good faith because KMA is utilizing a sales performance standard that is not uniformly and consistently applied by KMA.
67. KMA's proposed termination lacks good cause because KMA's sales performance requirements, expressed as DSS and/or DSI, amount to suggested sales quotas which cannot support good cause.

COUNT II - PRICE DISCRIMINATION

68. Plaintiff realleges paragraphs 1 through 56 as if fully set forth herein.
69. The KMA Business Operating Plan ("BOP") program establishes objectives based upon a dealership's area of primary responsibility's ("APR") fair share of the Regional business plan by employing competitive vehicle registration data, and making adjustments.

70. KMA's BOP objectives are used by KMA as incentive targets. A dealer's achievement of sales at or above the incentive target results in KMA payment of funds to a dealer including but not limited to funds on a per car sold basis.
71. C.G.S. §42-133cc(19), prohibits a distributor like KMA from selling or offering to sell any new motor vehicle to a dealer at a lower actual price than the actual price offered to any other franchised motor vehicle dealer for the same model vehicle similarly equipped, or to utilize any device, including, but not limited to, sales promotion plans, funds or financing to upgrade facilities, discounts or programs that result in such lesser actual price, when such incentives or discounts are not reasonably and practically available to all dealers in the state on a proportionally equal basis.
72. KMA's BOP and related incentive programs are not reasonably and practically available to Gengras Kia on the same or proportionately the same basis as other dealers.
73. The "objectives" KMA sets for Gengras Kia under the BOP program are based upon what KMA identifies as Gengras Kia's share of KMA's Regional Business Plan which, in large part, is based upon what KMA identifies as the competitive vehicle registration data for the Gengras Kia APR.
74. KMA's inappropriate identification of the Gengras Kia APR adversely affects the BOP objective KMA sets for Gengras Kia.
75. KMA's assignment of a share of the competitive vehicle registration data fails to consider the unique nature of Gengras Kia's urban market and the inadequate supply of vehicles KMA makes available to Gengras Kia.

- 76. KMA's BOP incentive program is a device which results in the sales of new motor vehicles to other dealers at a lower actual price than the actual price offered to Gengras Kia for the same model vehicle similarly equipped.
- 77. KMA's BOP incentive program is not reasonably and practically available to Gengras Kia on a proportionately equal basis to other dealers in the Connecticut.

COUNT III - BREACH OF CONTRACT

- 78. Plaintiff realleges paragraphs 1 through 67 as if fully set forth herein.
- 79. The sale of Kia vehicles is a material condition of the Dealer Agreement.
- 80. KMA asserts that Gengras Kia breached the Dealer agreement for failure to achieve satisfactory sales.
- 81. KMA is the exclusive distributor of Kia vehicles in the United States. Allocation of Kia vehicles to Gengras Kia is the solely the responsibility of, and under the exclusive control of, KMA.
- 82. KMA is obligated under the Dealer Agreement to make available to Gengras Kia sufficient allocations of vehicles in such quantities and types as may be required by Gengras Kia to fulfill its sales obligations.
- 83. Gengras Kia has, since its inception, regularly and repeatedly sought additional vehicles from KMA and elsewhere in order to sell more vehicles.
- 84. KMA has failed or refused to supply such additional requested vehicles to Gengras Kia in the quantities requested and necessary.
- 85. Had KMA provided additional Kia vehicles, Gengras Kia would have retailed additional vehicles.

- 86. KMA caused any breach for failure to achieve sales by failing to provide an adequate supply of vehicles to Gengras Kia to meet the asserted sales performance requirement.
- 87. KMA prevented and/or frustrated Gengras Kia's accomplishment of additional Kia sales by failing to render an adequate supply of Kia vehicles.
- 88. KMA's actions and inactions caused Gengras Kia to experience lost profits from the sales of new Kia vehicles and related products and services.

COUNT IV - BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

- 89. Plaintiff realleges paragraphs 1 through 88 as if fully set forth herein.
- 90. The Dealer Agreement is a contract between Gengras Kia and KMA.
- 91. The Dealer Agreement, and each provision therein, including, but not limited to, sales performance standards, allocation and incentive programs, carries with it a duty of good faith and fair dealing.
- 92. KMA imposed its sales performance standard, and administered its allocation and incentive program, with full knowledge that Gengras Kia could not achieve the designated sales performance standard given the allocation and the incentive levels KMA set. KMA failed or refused to modify such sales performance standards and/or allocation and incentive program levels despite knowledge of the impacts on Gengras Kia.
- 93. KMA's imposition upon Gengras Kia of unreasonable standards of sales performance- the DSI and DSS- while failing to provide sufficient allocation to achieve those standards, and/or discriminatory pricing, constitutes bad faith and unfair dealing.

COUNT V - BREACH OF FIDUCIARY DUTY

- 94. Plaintiff realleges paragraphs 1 through 93 as if fully set forth herein.
- 95. KMA owes significant and material fiduciary duties to Gengras Kia.

96. The material factors that form the basis of this fiduciary relationship include, but are not limited to:
- a. KMA is the sole supplier of new Kia car inventory and Kia parts to Gengras Kia without which Gengras Kia could not exist;
 - b. KMA identifies the Dealer Agreement as a personal service agreement;
 - c. KMA is the source of the license Gengras Kia uses to market the Kia name and trademark;
 - d. KMA uses a non-negotiable Dealer Agreement and related policies and procedures to govern and regulate virtually every aspect of Gengras Kia's dealership;
 - e. KMA's exercise of direct scrutiny and supervision over Gengras Kia operations requires, *inter alia*, Gengras Kia's submission of detailed monthly reports on all aspects of its financial operations, and requires Gengras Kia to make available all aspects of its books and finances to KMA audit;
 - f. KMA defines and controls the assignment of Gengras Kia's geographic market (APR);
 - g. KMA requires Gengras Kia to perform warranty work, campaign work, and other services on KMA's behalf for the benefit of any and all Kia owners and lessees;
 - h. KMA sets requirements for the size, design, construction and layout of Gengras Kia's facility and the property used for dealership operations;
 - i. KMA exercises approval authority over Gengras Kia's location and any proposed changes;

- j. KMA requires specific training and technical capabilities of Gengras Kia personnel;
 - k. KMA's Dealer Agreement requires Gengras Kia to seek KMA approval for any transfer or sale of any ownership interest in Gengras Kia or its assets;
 - l. KMA sets numerous conditions and causes upon which KMA may terminate the franchise;
 - m. KMA does not compromise the terms of the requirements KMA imposed upon Gengras Kia, except where required by law;
 - n. Gengras Kia lacks negotiating power to compromise KMA requirements;
 - o. The Dealer Agreement effectively grants KMA near life and death economic power over Gengras Kia.
97. KMA's exceptional power over, and scrutiny of, Gengras Kia and its facilities, operations, market area, finances and accounting and its very existence establish a fiduciary relationship which requires KMA to act reasonably with particular care and diligence to avoid foreseeable harm to Gengras Kia.
98. As the distributor of Kia vehicles, the entity controlling allocation to dealers, and the entity imposing performance requirements, KMA had the duty to fully, faithfully and reasonably allocate sufficient vehicles to Gengras Kia to sustain the minimum level of inventory necessary for Gengras Kia to meet KMA performance requirements.
99. In its fiduciary capacity, KMA owed Gengras Kia the duty to refrain from establishing sales performance requirements and coercing vehicle sales that were impossible for Gengras Kia to attain.

100. KMA's proposal to terminate Gengras Kia for alleged failures of sales performance requirements KMA set, but which Gengras Kia could not meet due to KMA distribution and/or allocation actions, breached the fiduciary duties KMA owed Gengras Kia.

JURY DEMAND

Gengras Kia demands a trial by jury on all issues and claims triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Gengras Kia prays for the following relief:

1. A determination that KMA's threatened termination violates C.G.S. §42-133v(b) and is invalid ;
2. A determination that KMA's BOP incentive program violates C.G.S. §42-133cc(19);
3. A determination that KMA breached the Dealer Agreement;
4. A determination that KMA breached the covenant of Good Faith and Fair Dealing;
5. A determination that KMA breached the Fiduciary Duty(s) owed Gengras Kia;
6. Damages in an amount to be determined for the aforementioned breaches;
7. An order that KMA pay the attorneys' fees and costs incurred by Gengras Kia in bringing this action, pursuant to C.G.S. §42-133ee or other law, and

8. Such further relief as this Court deems just and equitable.

Respectfully Submitted,

GKI, INC. D/B/A GENGRAS KIA OF EAST
HARTFORD

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