

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

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HOPKINS PONTIAC GMC, INC.,

Civil Action No.

Plaintiff,

COMPLAINT

-against

ALLY FINANCIAL INC., F/K/A/
GMAC LLC, F/K/A GENERAL MOTORS
ACCEPTANCE CORPORATION AND
GENERAL MOTORS LLC,

Defendants.

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Plaintiff, Hopkins Pontiac GMC, Inc. ("Hopkins GMC" or "Plaintiff"), by its attorneys, Robert D. Sale, Sale Law Firm, P.A., complaining of the defendants Ally Financial Inc., f/k/a GMAC LLC, f/k/a/ General Motors Acceptance Corporation ("GMAC" or "Defendant") and General Motors LLC ("General Motors") alleges as follows:

JURISDICTION AND VENUE

1. This Court possesses jurisdiction over this action pursuant to (a) 28 USC 1332(a), by virtue of the diversity of citizenship between Plaintiff and Defendants and (b) pursuant to 28 U.S.C. Section 1331 because this Court has original jurisdiction of all civil actions arising under the laws of the United States (*i.e.*, 15 U.S.C.A. 1221, et seq.).

2. The matter in controversy exceeds the sum of \$75,000, exclusive of interests and costs.
3. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(a) because the Plaintiff resides in this District and a substantial part of the events giving rise to Plaintiff's claims occurred in this district.
4. This Court has supplemental jurisdiction over the pendent state law claims herein pursuant to 28 U.S.C. § 1367.

PARTIES

5. At all times hereinafter mentioned, Hopkins GMC was and still is a domestic corporation duly organized under and existing by virtue of the laws of the State of Florida with its principal place of business located at 4909 Hwy 90 Marianna, FL 32447.
6. At all relevant times, Hopkins GMC was engaged in the business of operating an automobile dealership selling, among other things, certain General Motors automobiles.
7. Upon information and belief, at all times hereinafter mentioned, defendant General Motors was and still is a limited liability company duly organized and existing under the laws of the State of Delaware that is duly authorized to conduct business in the State of Florida.
8. Upon information and belief, General Motors, is a manufacturer and distributor for retail sale, through its authorized franchised dealers, of General Motors and Chevrolet motor vehicles, parts and accessories.

9. Upon information and belief, at all times hereinafter mentioned, defendant GMAC, was and still is a corporation duly organized and existing under the laws of the State of Delaware and duly authorized to conduct business in the State of Florida.
10. Upon information and belief, GMAC was and is a financial services company that, among other things, provides commercial financing and factoring to General Motors' franchised retail motor vehicle dealerships.
11. GMAC, which is engaged in, among other things, the automobile financing business, provides inventory financing to automobile dealers for the purpose of purchasing motor vehicles to hold in inventory, a commercial financing arrangement commonly referred to as "dealer floor plan financing."
12. GMAC was the automotive finance arm of General Motors and, upon information and belief, in or around 2009, approximately 80% of General Motors' automobile dealers utilized GMAC for "dealer floor plan financing."
13. Upon information and belief, during all relevant times, GMAC, formerly a wholly owned subsidiary of General Motors, was then owned 49% by General Motors.
14. Upon information and belief, during all relevant times, GMAC and General Motors had a long term agreement under which GMAC would support General Motor's automobile operations and provide General Motors and its dealers with a broad range of financial products.
15. At all times mentioned herein, GMAC was under the control, or was the actual or apparent agent of General Motors.

16. At all times mentioned herein, GMAC was the subsidiary or a common entity of General Motors as defined under Chapter 320 of the Florida Statutes (Motor Vehicle Licenses).

RELEVANT FACTS

DEFENDANTS' WRONGFUL AND BAD FAITH CONDUCT

17. Hopkins GMC, pursuant to a dealer agreement with General Motors (the "Dealer Agreement"), was a duly franchised General Motors GMC dealer in Marianna Florida.
18. Hopkins GMC and GMAC were parties to one or more commercial finance agreements, pursuant to which GMAC would provide loans, wholesale financing or other credit accommodations to Hopkins GMC.
19. In connection with the commercial finance arrangement between Hopkins GMC and GMAC, and in connection with its dealership business operations, Hopkins GMC executed and delivered to GMAC certain loan agreements (the "Loan Agreements"), pursuant to which GMAC provided Hopkins GMC with a wholesale line of credit to finance its acquisition of new and used motor vehicles for sale to the consumer public (the "GMAC Floor Plan").
20. In or around August 2009, and continuing through March 2010, defendant General Motors (through its then Regional Manager Scott Malatesta, Zone Manager Dan Weishaar, Zone Manager Greg Ross, and others) began to represent to Hopkins GMC that, as part of General Motors' dealer development network

planning, Plaintiff would obtain a Buick franchise to accompany its existing GMC franchise.

21. In reliance upon General Motors' representations, (a) Hopkins GMC obtained an approximate \$1,500,000 mortgage against its real property for the purpose of, among other things, obtaining a line of credit to utilize for certain of its inventory floor plan financing and pledged its entire used vehicle inventory and (b) the principals of the dealership pledged certain of their own personally owned real property and signed personal guaranties for the purpose of obtaining a line of credit to utilize for certain of its inventory floor plan financing.
22. In reliance upon General Motors' representations that Hopkins GMC would obtain a Buick franchise, the principals of Hopkins GMC invested an additional \$200,000 to \$300,000 into the Plaintiff's business.
23. Despite General Motors' representations to Plaintiff that it would obtain a Buick Franchise, GMAC, under the control of, or as the actual or apparent agent of, General Motors, and with the participation, assistance, aid, and agreement of General Motors, initiated and undertook a strategy of eliminating or streamlining the General Motors dealer network (*i.e.*, reducing the number of automobile dealerships that sell General Motors automobiles).
24. Despite General Motors' representations to Plaintiff that it would obtain a Buick Franchise, GMAC, under the control of, or as the actual or apparent agent of, General Motors, and with the participation, assistance, aid, and agreement of

General Motors, in bad faith, initiated and undertook a strategy of eliminating Hopkins GMC as a General Motors dealer.

25. Specifically, commencing in approximately early 2010, GMAC, without due cause or justification, in bad faith, and in furtherance of the strategy and agreement to eliminate Hopkins GMC as a General Motors' dealer:
 - a. Substantially reduced Plaintiff's new floor plan inventory availability from forty units to, first fifteen units (in or around January 2010) and then twenty units (in or around March 2010)) ;
 - b. Conducted daily audits at the dealership, the cost of which were billed to the dealership;
 - c. Required that floor planned vehicles be immediately paid off upon their sale instead of by the third day after sale which was standard custom and practice in the industry;
 - d. Began to repeatedly raise the interest rate of Plaintiff's floor plan financing (in or around April 2010);
 - e. Suspended Hopkins GMC's credit (in or around May 2010)
 - f. Began (in or around June 2010) to repeatedly demand that Hopkins GMAC either sell its franchise or immediately satisfy its entire floor plan inventory.
26. Plaintiff, in seeking to replace GMAC, or supplement the floor plan financing that it was receiving from GMAC, obtained approval from another third-party lender for floor plan financing, however, General Motors did approve or consent to such

lender and did not permit Plaintiff to borrow funds from this additional third-party lender.

27. In furtherance of defendants' strategy and scheme to constructively terminate the Plaintiff's franchise and dealer agreement with General Motors and thereby reduce the General Motors dealer network, (a) General Motors advised Plaintiff that it would not sell new vehicles or parts to Plaintiff unless General Motors received "cash" or "certified check and (b) defendants colluded to withhold warranty and rebate payments due to Plaintiff and thereby further damage Plaintiff's cash flow and working capital.
28. The above wrongful actions of GMAC were devastating to the then working capital of Plaintiff and forced the dealership and its' then principal(s) to substantially infuse funds into the Plaintiff's business and increase their equity.
29. Plaintiff, faced with the prospect of the termination of the GMAC Floor Plan, was coerced by GMAC to capitulate to many, if not all, of the onerous and wrongful unilateral changes and demands made by GMAC to the GMAC Floor Plan.
30. Given the then economic climate, the GMAC Floor Plan, as it existed prior to the Defendants' wrongful actions described herein, was critical to Hopkins GMC's ability to remain in business as it provided Hopkins GMC with financing necessary to obtain inventory of motor vehicles for sale and lease to the consumer public.
31. The wrongful, unnecessary, bad faith and onerous actions of GMAC, purportedly in response to Hopkins GMC's financial condition, effectively restricted Hopkins

GMC from acquiring sufficient new or used automobile inventory for resale to the consumer public.

32. The actions of defendants effectively prohibited Hopkins GMC from acquiring sufficient new or used automobile inventory for resale to the consumer public.
33. Given the then current economic climate, Hopkins GMC could not maintain its operations with the wrongful, unnecessary, bad faith and onerous unilateral changes made by GMAC to the GMAC Floor Plan.
34. Defendants were well aware of the fact that Hopkins GMC would be forced or coerced to capitulate to the onerous and wrongful unilateral changes and demands made by GMAC to the GMAC Floor Plan as it would have been extremely difficult, if not impossible, for Hopkins GMC to timely obtain additional alternative dealer floor plan financing service.
35. The actions of defendants were violative of industry custom and practice.
36. The actions of defendants were not commercially reasonable given the then economic factors facing the national economy and particularly the automobile industry.
37. Upon information and belief, the basis upon which defendants imposed most, if not all, of its unilateral changes to the GMAC Floor Plan, were intentionally fabricated.
38. The purported concerns relied upon by defendants to impose its wrongful and onerous changes to the GMAC Floor Plan were not based upon any wrongful conduct on the part of Hopkins GMC and were feigned.

39. GMAC did not act in good faith and fair dealing in connection with the Loan Agreements.
40. Upon information and belief, during the relevant time period, GMAC did not undertake similar actions with respect to other General Motors dealers who were in similar or even worse financial circumstances as Hopkins GMC.
41. Upon information and belief, defendants undertook no actions to terminate or restrict floor plan financing to numerous General Motors dealers that were in worse financial condition than Hopkins GMC or even “out of trust” (i.e. selling a motor vehicle from inventory but failing to pay the corresponding amount owed to the floor plan lender – GMAC).
42. Upon information and belief, during the relevant time period, defendants provided, and still continued to provide, floor plan financing to numerous General Motors dealers that were in worse financial condition than Hopkins GMC or even “out of trust” dealers.
43. Upon information and belief, during the relevant time period, defendants undertook no actions to restrict or terminate floor plan financing to numerous General Motors dealers that, during the relevant time period, suffered and continue to suffer losses.
44. Upon information and belief, during the relevant time period, defendants undertook no actions to restrict or terminate floor plan financing to numerous dealers that, during the relevant time period, maintained insufficient cash to operate its business.

45. In or around June 2010, and in direct contrast to General Motors' prior representations that Plaintiff would obtain a Buick franchise to accompany its existing GMC franchise, Melinda Oakley of General Motors advised Plaintiff that it would not be receiving a Buick franchise because Rahal Buick (another Marianna Florida General Motors dealership) would never sell its Buick franchise, nor any of its other General Motors vehicles line franchises to Plaintiff.
46. In or around June 2010, and for approximately the next four months, in furtherance of Defendants' strategy of eliminating Hopkins GMC as a General Motors dealer, Melinda Oakley of General Motors represented to Plaintiff that she would negotiate a sale of Plaintiff's GMC franchise to Rahal Buick.
47. In or around March 2010, and for approximately the next six months, in furtherance of defendants' strategy of eliminating Hopkins GMC as a General Motors dealer, Melinda Oakley of General Motors represented to Plaintiff that, in order to facilitate the sale of Plaintiff's GMC franchise to Rahal Buick, General Motors would pay a substantial portion of Plaintiff's requested selling price so that Plaintiff would clear enough funds in order to satisfy its existing mortgage and retain ownership of its real property.
48. On or about June 8, 2010, however, in furtherance of defendants' strategy of eliminating Hopkins GMC as a General Motors dealer, GMAC advised Plaintiff that it would seize Plaintiff's vehicle inventory unless by (first September 8, 2010 and then) October 8, 2010, Plaintiff either satisfied the entirety of the GMAC

floor plan or provided GMAC with proof that it would be selling its dealership franchise.

49. Despite General Motors' representations to the contrary, in or around late September 2010, Greg Ross of General Motors advised Plaintiff that General Motors would not pay any portion of Plaintiff's requested selling price of its GMC franchise.
50. The above wrongful actions of defendants were devastating to the business of Hopkins GMC and forced the dealership to sell its franchise to Rahal (on October 7, 2010, one day before GMAC's wrongful deadline) at a substantially reduced and distressed selling price.
51. The above bad faith actions on the part of the defendants were tantamount to a constructive termination of Hopkins GMC's franchise and dealer agreement with General Motors.
52. The above actions of defendants were in furtherance of the strategy and scheme to constructively terminate the Plaintiff's franchise and dealer agreement with General Motors and thereby reduce the General Motors dealer network.
53. The above actions of the Defendant were in furtherance of a strategy and scheme to terminate Hopkins GMC as a General Motors' dealer.
54. The actions of defendants caused the constructive termination of the Plaintiff's franchise and dealer agreement with General Motors and were prejudicial to the monetary interests and property rights of Hopkins GMC.

55. The unilateral, bad faith and wrongful changes to the GMAC Floor Plan imposed by GMAC and the misrepresentations made by General Motors caused Hopkins GMC Motor to suffer substantial losses, and thereafter forced and/or coerced Plaintiff to sell its dealership in a distress sale at a price materially below the market value of such dealership given its sales history.
56. Defendants' bad faith conduct and wrongful acts as set forth above were clearly prejudicial and contrary to Hopkins GMC's economic interests.
57. Defendants' bad faith conduct and wrongful acts as set forth above were meant to only, or primarily, benefit defendants and work to the detriment of Hopkins GMC.
58. The bad faith actions of the defendants resulted in significant and substantial damages sustained by Hopkins GMC, including the destruction of its business.

FIRST CLAIM AS AGAINST DEFENDANT GMAC

(Breach of Contract)

59. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
60. GMAC's course of conduct constituted material and substantial breaches of the Loan Agreements.
61. As a result of GMAC's conduct, Hopkins GMC has sustained and will sustain substantial damages in an amount to be determined at the time of trial but in no event less than \$4,000,000.00.

**SECOND CLAIM AS AGAINST DEFENDANT AGAINST GENERAL
MOTORS**

(Breach of Contract)

- 62. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
- 63. General Motors course of conduct constituted material and substantial breaches of the Dealer Agreement.
- 64. As a result of General Motors' conduct, Hopkins GMC has sustained and will sustain substantial damages in an amount to be determined at the time of trial but in no event less than \$4,000,000.00.

THIRD CLAIM AS AGAINST DEFENDANT GMAC

(Breach of Good Faith and Fair Dealing)

- 65. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
- 66. By reason of GMAC's contractual undertaking, in the Loan Agreements, to provide Hopkins GMC with the floor plan financing, GMAC owed Hopkins GMC the duties of good faith and fair dealing in connection with the parties' contractual relationship.
- 67. In accordance with the aforesaid duties of good faith and fair dealing, GMAC was and is prohibited from undertaking any act which would have the effect of injuring or destroying Hopkins GMC's rights deriving from its contractual relationship with GMAC under the Loan Agreements.

68. GMAC, by acting dishonestly, in bad faith, and outside of commercial practices in its industry, breached the duties of good faith and fair dealing owed to Hopkins GMC.
69. GMAC, by the bad faith actions mentioned herein above, breached both the common law and statutory duties of good faith and fair dealing implied covenants contained in the Loan Agreements.
70. As a result of the conduct of GMAC, Hopkins GMC has sustained substantial damages in an amount to be determined at trial but not less than \$4,000,000.00.

FOURTH CLAIM AS AGAINST GENERAL MOTORS

(Breach of Good Faith and Fair Dealing)

71. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
72. By reason of the contractual undertaking in the Dealer Agreement, General Motors owed Hopkins GMC the duties of good faith and fair dealing in connection with the parties' contractual relationship.
73. In accordance with the aforesaid duties of good faith and fair dealing, General Motors was and is prohibited from undertaking any act which would have the effect of injuring or destroying Hopkins GMC's rights deriving from its contractual relationship with General Motors under the Dealer Agreement.
74. General Motors, by acting dishonestly, in bad faith, and outside of commercial practices in its industry, breached the duties of good faith and fair dealing owed to Hopkins GMC.

75. General Motors by the bad faith actions mentioned herein above, breached both the common law and statutory duties of good faith and fair dealing implied covenants contained in the Dealer Agreement.
76. As a result of the conduct of General Motors, Hopkins GMC has sustained substantial damages in an amount to be determined at trial but not less than \$4,000,000.00.

FIFTH CLAIM AS AGAINST DEFENDANTS

(Violation of §320.64(6) of the Florida Motor Vehicle Dealer Act)

77. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
78. The Florida Statutes, Chapter 320, Sections 320.60 through 320.70 (the “Florida Motor Vehicle Dealer Act”) provides statutory protections for motor vehicle franchisees/dealers in their dealings with motor vehicle franchisors/manufacturers.
79. Hopkins GMC was a “motor vehicle dealer” within the meaning of the Florida Motor Vehicle Dealer Act.
80. General Motors was and is a “manufacturer” and a “licensee” within the meaning of the Florida Motor Vehicle Dealer Act.
81. During all relevant time periods alleged herein, GMAC was under the control of, a subsidiary of, acting as the actual or apparent agent of, and a common entity of General Motors and acting at all times herein with the participation, assistance,

aid, and agreement of General Motors within the meaning of the Florida Motor Vehicle Dealer Act.

82. During all relevant time periods alleged herein, GMAC was owned by General Motors, and acting at all times herein with the participation, assistance, aid, and agreement of General Motors within the meaning of the Florida Motor Vehicle Dealer Act.
83. The Dealer Agreement between Hopkins GMC and General Motors was a “franchise agreement” within the meaning of the Florida Motor Vehicle Dealer Act.
84. Section 320.64(6) of the Florida Motor Vehicle Dealer Act provides that a licensee is prohibited from coercing or attempting to coerce any motor vehicle dealer to enter into any agreement with the licensee.
85. Defendants’ bad faith conduct and wrongful acts as set forth above are in violation of Section 320.64(6) of the Florida Motor Vehicle Dealer Act.
86. Section 320.697 of the Florida Motor Vehicle Dealer Act provides that any person that has suffered pecuniary loss or who has been adversely affected because of a violation by a licensee of Sections 320.60 through 320.70, has a cause of action against the licensee for damages and may recover damages therefor in any court of competent jurisdiction in an amount equal to three (3) times the pecuniary loss, together with costs and a reasonable attorney’s fee to be assessed by the Court.
87. As a result of Defendants’ violation of Section 320.64(6) of the Florida Motor Vehicle Dealer Act, Hopkins GMC has sustained and will sustain substantial

damages in an amount to be determined at trial but in no event less than \$4,000,000.00 and is entitled to three (3) times such pecuniary loss, together with costs and reasonable attorney's fees.

SIXTH CLAIM AS AGAINST DEFENDANTS

(Violation of § Section 320.64(7) the Florida Motor Vehicle Dealer Act)

88. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
89. The Florida Motor Vehicle Dealer Act Section 320.64(7) provides, in relevant part, that a licensee is prohibited from threatening to discontinue, cancel, or not renew a franchise agreement of a licensed motor vehicle dealer where the threatened discontinuation, cancellation, or nonrenewal, if implemented, would be in violation of any of the provisions of Section 320.641.
90. Defendants, in violation of Section 320.641, never provided Plaintiff with written notice of any intention to discontinue, cancel or modify the Plaintiff's franchise which modification adversely altered the rights or obligations of Plaintiff under its existing franchise agreement and substantially impaired the investment of the Plaintiff.
91. Defendants' bad faith conduct and wrongful acts as set forth above are in violation of Section 320.64(7) of the Florida Motor Vehicle Dealer Act.
92. Section 320.697 of the Florida Motor vehicle Dealer Act provides that any person that has suffered pecuniary loss or who has been adversely affected because of a violation by a licensee of Sections 320.60 through 320.70, has a cause of action

against the licensee for damages and may recover damages therefor in any court of competent jurisdiction in an amount equal to three (3) times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the Court.

93. As a result of Defendants' violation of Section 320.64(7) of the Florida Motor Vehicle Dealer Act, Hopkins GMC has sustained and will sustain substantial damages in an amount to be determined at trial but in no event less than \$4,000,000.00 and is entitled to three (3) times such pecuniary loss, together with costs and reasonable attorney's fees.

SEVENTH CLAIM AS AGAINST DEFENDANTS

(Violation of § Section 320.64(8) the Florida Motor Vehicle Dealer Act)

94. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
95. The Florida Motor Vehicle Dealer Act Section 320.64(8) provides, in relevant part that: a licensee is prohibited from discontinuing, cancelling, or not renewing a franchise agreement of a licensed motor vehicle dealer in violation of any of the provisions of Section 320.641.
96. Defendants, in violation of Section 320.641, never provided Plaintiff with written notice of any intention to discontinue, cancel or modify the Plaintiff's franchise which modification adversely altered the rights or obligations of Plaintiff under its existing franchise agreement and substantially impaired the investment of the Plaintiff.

97. Defendants' bad faith conduct and wrongful acts as set forth above are in violation of Section 320.64(8) of the Florida Motor Vehicle Dealer Act.
98. Section 320.697 of the Florida Motor vehicle Dealer Act provides that any person that has suffered pecuniary loss or who has been adversely affected because of a violation by a licensee of Sections 320.60 through 320.70, has a cause of action against the licensee for damages and may recover damages therefor in any court of competent jurisdiction in an amount equal to three (3) times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the Court.
99. As a result of Defendants' violation of Section 320.64(8) of the Florida Motor Vehicle Dealer Act, Hopkins GMC has sustained and will sustain substantial damages in an amount to be determined at trial but in no event less than \$4,000,000.00 and is entitled to three (3) times such pecuniary loss, together with costs and reasonable attorney's fees.

EIGHTH CLAIM AS AGAINST DEFENDANTS

(Violation of § Section 320.64(9) the Florida Motor Vehicle Dealer Act)

100. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
101. The Florida Motor Vehicle Dealer Act Section 320.64(9) provides, in relevant part that a licensee is prohibited from threatening to modify or replace, or has modified or replaced, a franchise agreement which would adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise

agreement or which substantially impairs the sales, service obligations or investment of the motor vehicle dealer.

102. Defendants' bad faith conduct and wrongful acts as set forth above are in violation of Section 320.64(9) of the Florida Motor Vehicle Dealer Act.
103. Section 320.697 of the Florida Motor vehicle Dealer Act provides that any person that has suffered pecuniary loss or who has been adversely affected because of a violation by a licensee of Sections 320.60 through 320.70, has a cause of action against the licensee for damages and may recover damages therefor in any court of competent jurisdiction in an amount equal to three (3) times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the Court.
104. As a result of Defendants' violation of Section 320.64(9) of the Florida Motor Vehicle Dealer Act, Hopkins GMC has sustained and will sustain substantial damages in an amount to be determined at trial but in no event less than \$4,000,000.00 and is entitled to three (3) times such pecuniary loss, together with costs and reasonable attorney's fees.

NINTH CLAIM AS AGAINST DEFENDANTS

(Violation of § Section 320.64(15) the Florida Motor Vehicle Dealer Act)

105. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
106. The Florida Motor Vehicle Dealer Act Section 320.64(15) provides, in relevant part that a licensee is prohibited from, directly or indirectly, through the actions of any parent of the licensee, subsidiary of the licensee, or common entity cause a

termination, cancellation or nonrenewal of a franchise agreement unless the licensee offers the motor vehicle dealer a franchise agreement containing substantially the same provisions contained in the previous franchise agreement.

107. Defendants' bad faith conduct and wrongful acts as set forth above are in violation of Section 320.64(15) of the Florida Motor Vehicle Dealer Act.
108. Section 320.697 of the Florida Motor vehicle Dealer Act provides that any person that has suffered pecuniary loss or who has been adversely affected because of a violation by a licensee of Sections 320.60 through 320.70, has a cause of action against the licensee for damages and may recover damages therefor in any court of competent jurisdiction in an amount equal to three (3) times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the Court.
109. As a result of Defendants' violation of Section 320.64(15) of the Florida Motor Vehicle Dealer Act, Hopkins GMC has sustained and will sustain substantial damages in an amount to be determined at trial but in no event less than \$4,000,000.00 and is entitled to three (3) times such pecuniary loss, together with costs and reasonable attorney's fees.

TENTH CLAIM AS AGAINST DEFENDANTS

Violation of the Federal Automobile Dealer's Day in Court Act - 15 U.S.C.A. § 1221)

110. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.

- 111. The federal Automobile Dealer's Day in Court Act (the "ADDCA", 15 U.S.C.A. §1221, et seq.) provides a dealer with a federal Claim against an automobile manufacturer who has failed to act in good faith regarding a franchise.
- 112. Hopkins GMC is an "automobile dealer" within the meaning of Section 1221(c) of the ADDCA.
- 113. General Motors is an "automobile manufacturer" within the meaning of Section 1221(a) of the ADDCA.
- 114. GMAC, acting under the control, or as the actual or apparent agent, of General Motors, was an "automobile manufacturer" within the meaning of Section 1221(a) of the ADDCA.
- 115. The Dealer Agreement between Hopkins GMC and General Motors was a "franchise" within the meaning of Section 1221(b) of the ADDCA.
- 116. Defendants bad faith conduct and wrongful acts as set forth above, violate 15 U.S.C. § 1221, et seq.
- 117. As a result of defendants violation of 15 U.S.C. § 1221, et seq., Hopkins GMC has sustained and will sustain substantial damages in an amount to be determined at trial but in no event less than \$4,000,000.00.

ELEVENTH CLAIM AS AGAINST DEFENDANTS

(Violation of 15 U.S.C. Section § 1)

- 118. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
- 119. 15 U.S.C. § 1 provides as follows:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

120. Upon information and belief, the defendants had conspired and/or agreed to streamline and/or reduce the General Motors dealer network (*i.e.*, reducing the number of automobile dealerships that sell General Motors automobiles).
121. Upon information and belief, the defendants have conspired and/or agreed to eliminate Plaintiff's dealership and franchise with General Motors.
122. Upon information and belief, defendants have consciously committed to a common scheme designed to achieve an unlawful objective.
123. Through the concerted actions of the defendants, and in furtherance of their conspiracy and/or agreement, defendants have pretextually terminating and/or restricting the GMAC Floor Plan and disparately treated Plaintiff.
124. The wrongful actions and conduct of the defendants as set forth above unreasonably restrain and/or restrict interstate or foreign trade or commerce in the relevant product and geographic market.
125. The wrongful actions and conduct of defendants as set forth above suppressed competition.
126. General Motors, as the manufacturer and distributor for retail sale of General Motors and Chevrolet motor vehicles, parts and accessories, and GMAC, as the automotive finance arm of General Motors and, upon information and belief, the provider of "dealer floor financing" to approximately 80% of General Motors'

automobile dealers, possess the market power so that their arrangement had the potential for genuine adverse effects on competition.

127. As a result of defendants violation of 15 U.S.C. § 1, Plaintiff has sustained and will sustain substantial damages in an amount to be determined at trial but in no event less than \$4,000,000.00 including, pursuant to 15 U.S.C. § 15, treble damages, costs of suit and reasonable attorneys' fees.

TWELFTH CLAIM AS AGAINST DEFENDANTS

(Award of Attorney's Fees, Costs and Disbursements Against Defendants)

128. Plaintiff repeats, reiterates and realleges each of the allegations contained above with the same force and effect as if more fully set forth herein at length.
129. Section 320.697 of the Florida Motor vehicle Dealer Act provides that any person that has suffered pecuniary loss or who has been adversely affected because of a violation by a licensee of Sections 320.60 through 320.70, has a cause of action against the licensee for damages and may recover damages therefor in any court of competent jurisdiction in an amount equal to three (3) times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the Court.
130. Hopkins GMC has been aggrieved by defendants' violations of the Florida Motor Vehicle Dealer Act.
131. Hopkins GMC is entitled to an award, as against defendants, of necessary costs and disbursements plus a reasonable attorney's fee.
132. Hopkins GMC has and will incur attorneys' fees, costs and expenses in connection with its enforcement of its rights under the Florida Motor Vehicle

Dealer Act, all of which sums, as determined and allowed by the Court, Hopkins GMC is entitled to judgment as against defendants.

**AS AND FOR A THIRTEENTH CLAIM AS
AGAINST DEFENDANT GENERAL MOTORS**

(Promissory Estoppel)

133. Plaintiff repeats, reiterates and realleges each of the allegations contained in paragraphs 1 through 133 as if set forth more fully and at length herein.

134. In or around August 2009, and continuing through March 2010, defendant General Motors (through its then Regional Manager Scott Malatesta, Zone Manager Dan Weishaar, Zone Manager Greg Ross, and others) began to represent to Hopkins GMC that, as part of General Motors' dealer development network planning, Plaintiff would obtain a Buick franchise to accompany its existing GMC franchise.

135. As was foreseeable, Hopkins GMC and its principals reasonably relied on the promises made to it by General Motors.

136. In reliance upon General Motors' representations, (a) Hopkins GMC obtained an approximate \$1,500,000 mortgage against its real property for the purpose of, among other things, obtaining a line of credit to utilize for certain of its inventory floor plan financing and pledged its entire used vehicle inventory and (b) the principals of the dealership pledged certain of their own personally owned real property and signed personal guaranties for the purpose of obtaining a line of credit to utilize for certain of its inventory floor plan financing.

137. In reliance upon General Motors' representations that Hopkins GMC would obtain a Buick franchise, the principals of Hopkins GMC invested an additional \$200,000 to \$300,000 into the Plaintiff's business.

138. Despite General Motors' representations to Plaintiff that it would obtain a Buick Franchise, GMAC, under the control of, or as the actual or apparent agent of, General Motors, and with the participation, assistance, aid, and agreement of General Motors, in bad faith, initiated and undertook a strategy of eliminating Hopkins GMC as a General Motors dealer.

139. In or around June 2010, and in direct contrast to General Motors' prior representations that Plaintiff would obtain a Buick franchise to accompany its existing GMC franchise, Melinda Oakley of General Motors advised Plaintiff that it would not be receiving a Buick franchise because Rahal Buick (another Marianna Florida General Motors dealership) would never sell its Buick franchise, nor any of its other General Motors vehicles line franchises to Plaintiff.

140. In or around June 2010, and for approximately the next four months, in furtherance of Defendants' strategy of eliminating Hopkins GMC as a General Motors dealer, Melinda Oakley of General Motors represented to Plaintiff that she would negotiate a sale of Plaintiff's GMC franchise to Rahal Buick.

141. In or around March 2010, and for approximately the next six months, in furtherance of defendants' strategy of eliminating Hopkins GMC as a General Motors dealer, Melinda Oakley of General Motors represented to Plaintiff that, in order to facilitate the sale of Plaintiff's GMC franchise to Rahal Buick, General Motors would pay a substantial portion of

Plaintiff's requested selling price so that Plaintiff would clear enough funds in order to satisfy its existing mortgage and retain ownership of its real property.

142. On or about June 8, 2010, however, in furtherance of defendants' strategy of eliminating Hopkins GMC as a General Motors dealer, GMAC advised Plaintiff that it would seize Plaintiff's vehicle inventory unless by (first September 8, 2010 and then) October 8, 2010, Plaintiff either satisfied the entirety of the GMAC floor plan or provided GMAC with proof that it would be selling its dealership franchise.

143. Despite General Motors' representations to the contrary, in or around late September 2010, Greg Ross of General Motors advised Plaintiff that General Motors would not pay any portion of Plaintiff's requested selling price of its GMC franchise.

144. The above wrongful actions of defendants were devastating to the business of Hopkins GMC and forced the dealership to sell its franchise to Rahal (on October 7, 2010, one day before GMAC's wrongful deadline) at a substantially reduced and distressed selling price.

145. By reason of General Motors' promises aforesaid, Hopkins GMC substantially changed its position, acted to its ultimate detriment, and has sustained damages in an amount to be proven at trial and estimated to equal or exceed \$4,000,000.00.

**AS AND FOR A FOURTEENTH CLAIM AS
AGAINST DEFENDANT GENERAL MOTORS**

(Negligent Misrepresentation)

146. Plaintiff repeats, reiterates and realleges each of the allegations contained in paragraphs 1 through 145 as if set forth more fully and at length herein.

147. General Motors' statements aforesaid were false or incorrect and were made recklessly, under the circumstances.

148. Plaintiff and its principals reasonably relied on defendant General Motors' statements in, among other things, (a) obtaining an approximate \$1,500,000 mortgage against its real property for the purpose of, among other things, obtaining a line of credit to utilize for certain of its inventory floor plan financing and pledged its entire used vehicle inventory (b) pledging certain of their own personally owned real property and signed personal guaranties for the purpose of obtaining a line of credit to utilize for certain of its inventory floor plan financing and (c) investing an additional \$200,000 to \$300,000 into the Plaintiff's business.

149. Plaintiff has been damaged in an amount to be proven at trial and estimated to equal or exceed \$4,000,000.

(Jury Demand)

150. The plaintiff demands a trial by jury.

WHEREFORE, PLAINTIFF respectfully demands judgment as follows:

a) On the First Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

b) On the Second Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

c) On the Third Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

d) On the Fourth Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

e) On the Fifth Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

f) On the Sixth Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

g) On the Seventh Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

h) On the Eighth Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

i) On the Ninth Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

j) On the Tenth Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

k) On the Eleventh Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

l) On the Twelfth Claim for attorneys' fees, costs and expenses in connection with its enforcement of its rights under the Florida Motor Vehicle Dealer Act, all of which sums, as determined and allowed by the Court;

m) On the Thirteenth Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

n) On the Fourteenth Claim in an amount to be determined at trial but in no event less than \$4,000,000.00;

- o) For the legal fees, costs and disbursements incurred by the Plaintiff in this action in an amount to be determined after trial; and
- p) For such other and further relief as this Court may deem just and proper.

Dated: 8/6/14, 2014.



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