

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

LANE BUICK-GMC, INC.; and the STATE)
OF FLORIDA and the FLORIDA)
DEPARTMENT OF HIGHWAY SAFETY)
AND MOTOR VEHICLES)

Plaintiff,)

v.)

GENERAL MOTORS, LLC)

Defendant)

Case No.:
6:15-cv-1569-Orl-31GJK

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Lane Buick-GMC, Inc., (“Lane”) by way of Complaint against the Defendant, General Motors, LLC (“GM”), hereby alleges as follows:

Parties

1. Plaintiff Lane is a corporation organized and existing under the laws of Florida with its principal place of business located at 510 East Nasa Boulevard, Melbourne, Florida 32901-1987.

2. Lane is a franchised motor vehicle dealer as defined by Section 320.27(1)(c)(1), Florida Statutes, and operates a franchised motor vehicle dealership, where it sells and services Buick and GMC products pursuant to a franchise agreement, as defined

by Section 320.60(1), Florida Statutes. Lane's Franchise Agreements are attached as Exhibit A.

3. Defendant GM is a limited liability company organized and existing under the laws of Delaware with its principal place of business located in Detroit, Michigan. All of the underlying LLC members are domiciled outside of the state of Florida.

4. GM is a manufacturer and distributor as defined by Sections 320.60(5) and 320.60(9), Florida Statutes, as it manufactures *inter alia* Buick and GMC vehicles and sells, and offers to sell, those vehicles to new motor vehicle dealers (including Lane) in this State.

Jurisdiction

5. This court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) in that there is complete diversity of citizenship and the amount in controversy exceeds the sum of \$75,000 exclusive of interest 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 GM, by virtue of its systematic and continuous business contacts in this District, resides in this District.

Facts Applicable to All Claims

Lane's Dealership Operations

7. Lane has continually operated as a Buick and GMC dealer since 1974 and from its current location since 1976, which has at all times been approved by GM. Lane entered into its most recent dealer agreement with GM on November 1, 2010. At all times hereto, Lane's facility has been approved by GM for the respective dealership operations. Indeed, the dealer agreement expressly approves the facility and location for both brands.

8. Lane's dealership was severely damaged by hurricanes in 2004. As a result of the storm damage Lane renovated its facility in 2005. The renovation and resulting renovated facility was approved by GM and provided Lane an updated facility for its dealership operations.

9. GM filed for bankruptcy in 2009. Through the bankruptcy proceedings, GM elected to eliminate some brands (Pontiac, Hummer, Saturn, and Saab) and reshape its dealer network for the remaining brands. In doing so, GM terminated dealer agreements for all of the terminated brands and also terminated dealer agreements for some dealers of the remaining brands (Chevrolet, Cadillac, Buick and GMC). Despite losing Pontiac, Lane survived GM's consolidation plan and was chosen by GM to move forward as a Buick and GMC dealer with the new-GM entity after bankruptcy. GM Letter retaining Lane GMC attached as Exhibit B. GM's letter noted that Lane was "identified by GM as one of its key dealers for Buick, GMC Truck brands." Likewise, "[y]our selection as a dealer for the Buick, GMC Truck brands shows the confidence we have in your dealership being part of the new GM."

GM's EBE Program

10. GM operates a bonus/incentive program entitled Essential Brand Elements ("EBE"), which is purportedly based on improving the customer experience. The EBE program is an agreement between the dealer and GM whereby the dealer agrees to take on certain program requirements in return for GM's payment upon achievement of said requirements. Under the EBE program, GM makes quarterly "bonus" payments to dealers that are in full compliance with the EBE program's requirements. The quarterly EBE bonus

payment was established by a grid and paid based on how many vehicles a dealer is invoiced during the previous quarter. To be eligible for EBE funds a dealer must participate in GM's sales and service retention program, participate in GM's digital customer lead package, meet GM's training requirements for the dealer's staff, and participate in the GM facility image program.

11. The facility image program requires that a dealer's facility meet all of GM's specific interior and exterior requirements under the EBE program, which are promulgated and enforced by GM. The EBE facility image requirements operate separately from the franchise facility approval process, so that a dealer (like Lane) could operate from a fully approved GM facility, yet, be deemed non-compliant under the EBE program's facility image requirements. That is exactly what occurred with Lane.

12. In late 2009, Lane signed onto the EBE program and became compliant with its terms. Lane invested \$15,000 plus travel expenses to conduct the initial survey visit. Thereafter, Lane started the survey and local architectural and construction planning. In 2011, once all the plans were made, the only remaining step was the construction of the new facility. However, the cost of construction did not justify the benefits from the EBE program based on the number of vehicles sold, and available, to Lane. Likewise, Lane's recent facility renovation, which at that time was roughly five years old, provided a new facility that had not come close to being depreciated or out of date. Furthermore, GM controls every part of the EBE program, and the facility component requires adherence to every GM standard regardless of the cost of compliance.

13. By May, 2014, Lane's business conditions were improving, and Lane was reconsidering whether it should construct an EBE-compliant facility to receive the full benefit of EBE payments. However, by letter dated May 30, 2014, GM alleged that Lane had breached the Franchise Agreement ("Notice of Default"). Notice of Default attached as Exhibit C. The Notice of Default provided a six month window (from July 1, 2014 to December 31, 2014) "to correct its performance deficiencies." ("Cure Period"). In the Notice of Default, GM expressly referenced and quoted provisions of the Franchise Agreement and applicable law regarding termination. GM informed Lane that it was proceeding with its effort to terminate Lane's Buick and GMC franchises by letter dated June 24, 2015. Notice of Termination attached as Exhibit D.

14. Receipt of the Notice of Default and the Notice of Termination called into doubt Lane's future as a GM franchisee, and thus, the viability of further renovations to the facility.

15. GM generally contends that the EBE program is voluntary, but not participating in the EBE program can potentially result in the loss of thousands, hundreds of thousands, or even millions of dollars and make a dealer not competitive in the marketplace. Thus, participation in the EBE program is anything but voluntary. GM uses the EBE program, and its payments in particular, to force dealers to commit to facility modifications that are otherwise not needed or justified. GM is able to control dealer behavior through the use of the EBE program, because GM effectively controls the dealer's profit margin on each vehicle sold. GM is the sole supplier of new-vehicle inventory to its dealers and as such, it

sets the sale price to the dealers as well as the MSRP for every vehicle. So, GM effectively controls the vehicle profit margin of its dealers.

GM's Sales Performance Measurement and the Brevard Market

16. GM evaluates its dealers' sales performance using a metric entitled Retail Sales Index ("RSI"), which measures the dealer's sales share compared to the overall market share of the brand in the state. GM requires its dealers to meet 100% of RSI, which means that the dealer must meet state average market share, to be in compliance with its sales performance requirements under the dealer agreement. See Exhibit A, Article 9. However, RSI does not take into account local and unique market conditions, is not applied uniformly and is not a reasonable basis to measure, much less terminate, a dealer.

17. RSI measures the dealer's total new vehicle sales as a percentage of the competitive segment new vehicle registrations in the dealer's assigned territory. That measurement is then compared to the brand's competitive segment market share in the state as a whole. If a dealer's sales as a percentage of competitive new vehicle registrations in the dealer's assigned area is 10% and the state market share for the brand is 10%, then the dealer's RSI would be 100%. In contrast, if a dealer's sales share is 5% and the state market share is 10%, the dealer's RSI would be 50%, and the dealer would be considered non-compliant. GM contends that a dealer must be at 100% RSI to be in compliance with its sales requirements pursuant to the dealer agreement. See Exhibit A, Article 9.

18. GM's RSI measurement is simply an average, and GM requires that every dealer, in every market, meet or exceed the state average market share. However, GM's requirement is impossible to comply with, because it is an average. In a practical sense, an

average only exists because there are those above the average and below the average. Because GM's measurement is an average, roughly half of the dealers in the state will be below the average regardless of the brand's market share. In short, roughly half of the dealers in the state are doomed to non-compliance before a single sale is made simply by virtue of the metric. Nonetheless, GM applies this one-size fits all standard to every dealer and demands that every dealer be at or above average even though it is a virtually impossible to do so.

19. GM's RSI standard is also fatally flawed, because it treats every market in a state in the same manner notwithstanding unique market circumstances such as consumer behavior, demographic diversity, income, number of competitive brands, etc... For example, under its RSI measurement GM treats the Melbourne market the same as it does a major metropolitan market such as Miami or a rural market such as Quincy, Florida regardless of the number of competitors in the market or the consumer preferences.

20. GM does acknowledge that markets across the country are different by applying state market share average (instead of regional or national average) as the RSI standard, however it in no way recognizes that markets within a state demonstrate significant differences that have nothing to do with dealer representation. Florida is a prime example of how reliance on a state average is flawed as Florida is not homogenous by any means.

21. GM's RSI measurement is also not known until after the period of time being measured. For example, GM states that a dealer must meet 100% RSI for a particular period of time. However, the inputs into the RSI formula are not known until after (approximately 60-90 days) the conclusion of the measurement period. So, practically speaking a dealer has

no idea how many vehicles it must sell during the measurement period to be deemed compliant. In fact, half of the equation (competitive brand sales registered in the dealer's assigned territory) is entirely outside of the dealer's control and there is no way for the dealer to even monitor the status during the measurement period. The RSI measurement is an after-the-fact determination that is unknowable to the dealer (or GM for that matter) until after the close of the period being measured. Simply put, it is an unknowable moving target.

22. Like the rest of Florida and the United States, Brevard County was severely impacted by the recession from 2008 to 2011. This downward impact was only exacerbated by the termination of the Space Shuttle program, a cornerstone of the Space Coast's economy. Thousands of high paying, skilled jobs were lost when the Kennedy Space Center was closed. Brevard County continues to have a high unemployment rate as compared to Florida, and the United States, as a whole. As a result of the described market forces, the construction industry in Brevard County has withered and with it, the demand for GMC trucks.

Issues with Floor Plan Lending and Vehicle Allocation

23. Through no fault of Lane's, in 2008 as rumor spread that GM might be filing bankruptcy, lenders became more cautious and more restrictive in their lending practices to GM franchisees. Lane felt this first-hand as SunTrust bank, its then lender going on fourteen years, related to Lane that they should find a new lender to cover, *inter alia*, their floorplan lending. This is because SunTrust was concerned with the future of the domestic auto industry, especially the domestic manufacturers.

24. Lane took this in stride and began the process of switching to GMAC as their lender. GMAC had actively been seeking Lane's business for a long time. But, ten (10) days before the switch was to occur, Lane was notified that GMAC was not accepting new accounts due to the increasing uncertainty in the industry.

25. Lane remained with SunTrust as its lender, on modified terms, until June, 2011 when Lane was able to get ALLY (the successor to GMAC) to assume the role as Lane's floorplan lender. However, the terms were extremely restrictive, thus limiting Lane's potential volume of business transacted. The limited credit impacted Lane's ability to purchase enough vehicles to meet demand, and in particular, GM's RSI requirements.

26. In August, 2013, as soon as GM Financial became established in Florida, Lane applied for their services and was accepted. However, the floorplan limits established by GM Financial precluded Lane from carrying inventory at the levels necessary to meet GM's expectations (e.g., 100% RSI).

27. Lane also experienced difficulty in obtaining vehicles from GM that were in demand in Lane's market. Lane requested additional vehicles from GM, but could not stock enough vehicles to meet GM's sales demands. GM recognized this issue and provided Lane a supplemental allocation of vehicles after the first quarter of 2014. Lane sold all of the additional vehicles provided by GM, but did not receive any further supplemental allocation to bring Lane's supply up to the levels needed to meet GM's sales demands. Simply put, Lane could not sell what it did not have.

28. Lane's vehicle inventory shortage also made it difficult to compete with dealers in the Orlando metropolitan market, which is near Melbourne and who advertise in

Melbourne. Having a sufficient vehicle inventory on the lot (and on-line) is critical to capturing customer interest. It is not reasonable to expect a customer to shop from a dealer that has only a few specific model vehicles in stock when it can go to a dealer that has dozens or hundreds of the same model in stock to choose from. Lane made GM aware of this issue and requested assistance, but none was provided outside of the one-time supplemental allocation.

Lane's Sales Performance and Efforts to Improve

29. GM evaluates its dealer's sales performance, including Lane, using the RSI measurement. GM routinely evaluates Buick and GMC performance separately as they are two line-makes. Indeed, Buick and GMC each have their own brand name, trademark, unique signage and model vehicles. GM's annual performance reviews separate Lane's performance by line-make. For example, Lane's Buick performance is shown by listing all of Lane's sales of Buick models, and Lane's GMC performance is shown separately by listing sales of each GMC model vehicle. Lane's sales performance (RSI) is calculated separately for each line-make. Not every Buick dealer sells GMC vehicles and vice-versa. As of December 31, 2014, there were 69 Buick dealers in Florida, 64 GMC dealers and 63 dealers that are authorized to sell Buick and GMC together.

30. Lane's sales performance for Buick and GMC was not an issue for approximately the first 38 years of its operation. However, starting in 2013 GM began writing Lane about Lane's RSI performance for Buick and GMC. And, in mid-2013, GM began conducting quarterly meetings with Lane to discuss Lane's performance and efforts to improve Lane's performance.

31. Lane was surprised by the complaints since GM had just chosen Lane to move forward with GM after the bankruptcy, and during which time GM could have terminated Lane if it was dissatisfied with Lane's performance. Nonetheless, GM's sales performance complaints coincided with Lane's floorplan issues and inability to obtain enough vehicles from GM to meet demand.

32. GM requested that Lane develop a business plan that set forth the actions Lane would take in an effort to improve its sales performance as part of the quarterly business meetings. Lane made numerous efforts to alter dealership operations pursuant to GM's requests to improve its sales performance (RSI). Lane's efforts are documented by GM in the letters that follow up the quarterly business meetings and clearly evidence Lane's best efforts were employed in an attempt to improve its RSI. Examples of Lane's efforts to improve sales include, but are not limited to, changing its management team in the sales and internet department, significantly increasing its advertising budget, increased sponsorship of local events, offering significant additional incentives (such as a cruise) for the sale of a new vehicle, increasing internet/on-line presence, implementing new technology and programs into their dealer management system to better track customers and follow trends, and creating a business development center to capture as many leads for potential vehicle sales as possible. Lane implemented every suggestion provided by GM in an effort to improve its sales performance.

33. Lane also requested additional vehicle inventory in writing and at the quarterly business meetings with GM personnel, and in particular, requested additional GMC Terrain and Sierra models. GM recognized that Terrain and Sierra was needed as it

represented a significant area of sales loss for Lane. Lane simply did not have enough vehicles in stock (or available to it) to meet GM's RSI requirements. The lack of vehicle inventory also precluded Lane from "dealer-trading" with other Buick and/or GMC dealers for desirable inventory. In fact, Lane actually purchased vehicles outright from other dealers (since it did not have sufficient inventory to trade) so that it could increase its vehicle stock in an effort to increase sales.

34. Notwithstanding Lane's efforts, GM's complaints escalated into the Notice of Default in 2014, and ultimately the Notice of Termination in June, 2015. The sole basis of the Notice of Termination was Lane's alleged failure to meet sales performance requirements (RSI). Indeed, Lane's customer service performance exceeded GM requirements as did the rest of its operations, and there has been no complaint from GM or allegation otherwise. In fact, GM recognized Lane as an elite service dealer, which is awarded to the top 2-3% of GM dealers nationwide and reflects GM's trust in Lane's service operations. However, oddly, GM was complaining of Lane's sales performance during a time in which Lane's performance was improving. For example, Lane's RSI performance for the Buick line-make and the GMC line-make in 2014 improved over 2012 and 2013. The "2014 Dealer Retail Sales Performance Review" is attached as Exhibit E. The same is true when Lane's performance is evaluated in terms of sales volume—increases were experienced in the volume of Buick and GMC vehicles in 2014 over 2012 and 2013.

35. GM's complaints were even more curious when it was revealed (according to a report received from GM) that for the 2014 year, in terms of RSI, Lane ranked 58th of 69 Buick dealers in the state of Florida. Thus, there were 11 dealers who performed worse than

Lane (based on GM's RSI metric). Yet, there was no indication that GM was targeting the other Buick dealers in the state for termination. Likewise, several GMC dealers performed worse than Lane in the state, yet, there is no indication that GM has targeted all of the alleged underperforming dealers for termination. On a combined basis (for both Buick and GMC dealers), there were approximately six dealers that ranked below Lane, yet there is no indication GM has targeted all of the alleged underperforming dealers for termination. Indeed, it appears that GM is basing its termination on Lane on the combined performance of Buick and GMC brands, but not every Buick or GMC dealer in the state has both brands, so it is not a fair comparison.

36. On the Dealer Retail Sales Performance Review Summary for 2014, GM reserves for itself the opportunity to list "Additional Consideration which may have affected Dealer's sales performance" and notes "(None unless specified below)". The 2014 report shows no such additional considerations by GM. Thus, GM did not consider the specific market factors present in Lane's geographic territory which impacted its ability to perform and did not consider any of the other various allegations included herein even though Lane identified specific market factors to GM as well as the lack of vehicle inventory and requested assistance and accommodation in light of those factors

COUNT I
(Violation of F.S. §320.641 – Unlawful Termination and Mandatory Stay)

37. Lane realleges and incorporates paragraphs 1- 36 as set forth fully herein.

38. Section 320.641, Florida Statutes, provides that it is unlawful to terminate a motor vehicle franchise agreement if the termination is unfair, is not undertaken in good

faith, is not undertaken for good cause, or if the grounds relied upon for the termination have not been applied in a uniform and consistent manner by the manufacturer.

39. Section 320.641, Florida Statutes, requires a manufacturer to provide written notice to the dealer and the Department of its intent to terminate the franchise and set forth the specific grounds for the termination. Section 320.641 provides a right of action for a dealer that receives notice of such proposed termination. Specifically, “[a]ny motor vehicle dealer who receives a notice of intent to discontinue, cancel, not renew, modify, or replace may, within the 90-day notice period, file a petition or complaint for a determination of whether such action is an unfair or prohibited discontinuation, cancellation, nonrenewal, modification, or replacement.” *Id.* Furthermore, the termination is stayed immediately, by express statutory requirement and without need to seek an injunction, upon the filing of a Complaint contesting the proposed termination. §320.641(3) “Agreements ... shall continue in effect until final determination of the issues raised in such petition or complaint by the motor vehicle dealer.” *Id.* Likewise, section 320.641(7) reiterates that “the franchise agreement shall remain in effect until a final judgment is entered after all appeals are exhausted.”

40. Lane received notice of GM’s intent to terminate its franchise through a letter dated June 24, 2015. The grounds set forth in GM’s letter are breaches of the dealer agreement for failure to achieve the level of sales performance required by Article’s 5.1.1 and 9. Lane files this complaint, as expressly permitted by section 320.641, and seeks a determination that the termination is unfair, is not undertaken in good faith, is not undertaken

for good cause, and that GM has not applied the grounds for termination in a uniform and consistent manner.

41. Specifically, Lane states that the proposed termination is unlawful, because *inter alia* the RSI measurement fails to take into account the unique market circumstances that exist in Lane's market. Lane further states that GM does not apply RSI uniformly in that GM does not notify every dealer that is below 100% that it is in material breach of the dealer agreement. GM also does not seek to terminate every dealer that fails to meet 100% RSI. Lane further states that not every Buick dealer operates with GMC and vice-versa, thus any combined comparison of the brands does not accurately represent the "state average" of each brand. Lane also states that the RSI measurement is not known until after the fact, and during the Cure Period it was impossible to know how many vehicles Lane needed to sell in order to cure the alleged deficiency. Lane further states that the breaches identified in the notice of termination are not material and substantial. Lane further states that GM cannot establish a material and substantial breach when it has been the cause of and/or contributed to any alleged breach by its failure to provide sufficient vehicle inventory and failure to provide EBE funds.

42. GM also cannot establish a material and substantial breach of Article 9, when GM is in breach of that Article. Article 9 states that "[i]n addition to the Retail Sales Index, General Motors will consider any other relevant factors in deciding whether to proceed under the provisions of Article 13.2 to address any failure by Dealer to adequately perform its sales responsibilities." GM has failed to consider other relevant factors such as unique market circumstances and lack of vehicle inventory, and has materially breached Article 9. GM has

repeatedly refused to consider numerous relevant factors relating to RSI and Lane's market. Lane raised these factors with GM both in person and in writing, but GM has continually refused to consider significant relevant factors that weigh on Lane's sales performance, including but not limited to, limited vehicle availability, the number of competitors in the market, and differences in the Melbourne market as compared to other markets in Florida. Consequently, GM cannot establish a material and substantial breach of Article 9 when it is in breach of that same Article.

43. Pursuant to section 320.641(3), GM has the burden of proof to establish the termination is lawful.

WHEREFORE, pursuant to section 320.641(3), (7), Lane requests that this Court enter an immediate stay of the termination, a judgment against GM finding that the proposed termination is not permitted under section 320.641, a judgment prohibiting GM from terminating the franchise, and attorney's fees and costs, and such other relief as this Court deems just and equitable.

COUNT II

Violation of F.S. §320.64(7) (Unlawful Termination in the Alternative to Count I)

44. Lane realleges and incorporates paragraphs 1-43 as set forth fully herein.

45. Section 320.64(7), Florida Statutes, makes it unlawful for a manufacturer to have "threatened to discontinue, cancel, or not to 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 s. 320.641."

46. Section 320.697, Florida Statutes, provides a right of action for any person "who has suffered pecuniary loss or who has been otherwise adversely affected because of a

violation by a licensee of ss. 320.60-320.70, notwithstanding the existence of any other remedies under ss. 320.60-320.70.” Additionally, section 320.697 provides that “[u]pon a prima facie showing by the person bringing the action that such a violation by the licensee has occurred, the burden of proof shall then be upon the licensee to prove that such violation or unfair practice did not occur.”

47. Lane received written notice of GM’s intent to terminate its Buick and GMC dealerships through a letter dated June 24, 2015. GM’s notice is a threat to cancel Lane’s franchises. GM’s notice of termination has, and continues to, adversely affect Lane. GM’s threatened termination is in violation of 320.641 for the reasons set forth in detail in this Complaint, and in particular Count I above. GM possesses the burden of proof to establish that the termination is permissible. Lane files this Count in the alternative to Count I.

WHEREFORE, pursuant to section 320.697, Lane demands entry of a judgment against GM finding that GM’s threatened termination violates section 320.64(7), and an award of treble damages, attorney’s fees and costs and other relief this Court deems just and equitable.

COUNT III
Violation of F.S. §320.64(7) (Injunctive Relief)

48. Lane realleges and incorporates paragraphs 1-47 as set forth fully herein.

49. Section 320.695, Florida Statutes, provides that “[i]n addition to the remedies provided in this chapter, and notwithstanding the existence of any adequate remedy at law” a dealer may apply for “a temporary or permanent injunction, or both, restraining any person ... from violating or continuing to violate any of the provisions of ss. 320.60-320.70.” “Such injunction shall be issued without bond. A single act in violation of the provisions of ss.

320.60-320.70 shall be sufficient to authorize the issuance of an injunction.” Lane is authorized to seek an injunction, and obtain such an injunction (without bond) based upon a single act in violation of sections 320.60-320.70.

50. Pursuant to section 320.695, Lane brings this action in the name of the Florida Department of Highway Safety and Motor Vehicles and the State of Florida for the use and benefit of Lane.

51. GM has alleged that Lane is in material breach of its franchise and is actively attempting to terminate Lane’s franchise. Sections 320.641 and 320.64(7) prohibit GM from terminating, or threatening to terminate, Lane’s franchise unless it meets the statutory requirements to do so. Lane, in Counts I and II, has set forth that GM’s threatened termination violates sections 320.641 and 320.64(7), and establishes that GM does not have statutory authority to terminate Lane’s franchise. Counts I and II adequately allege a statutory violation based upon the threatened termination, which “shall be sufficient to authorize the issuance of an injunction” that halts GM from terminating Lane’s Buick and GMC agreements. §320.695, Fla. Stat.

52. Further reinforcing the need for and appropriateness of the injunction is the express requirement that a franchise remains in full force and effect after the filing of a Complaint challenging the proposed termination unless and until a final determination has been made that the proposed termination is permitted by law. §320.641(3), (7), Fla.Stat. Therefore, an injunction restraining GM from terminating Lane’s Buick and GMC franchises is appropriate.

WHEREFORE, Lane, in the name of the Florida Department of Highway Safety and Motor Vehicles and the State of Florida for the use and benefit of Lane hereby demands entry of an injunction restraining GM from terminating Lane's franchise unless and until a final determination has been made that GM is permitted to do so pursuant to Florida law.

COUNT IV
Violation of F.S. §320.64(10)(b) (Facility Requirements)

53. Lane realleges and incorporates paragraphs 1-52 as set forth fully herein.

54. Section 320.64(10)(b) provides that "[n]otwithstanding any provision of a franchise a licensee may not require a motor vehicle dealer, by agreement, program, policy, standard, or otherwise, to make substantial changes, alterations, or remodeling to, or to replace a motor vehicle dealer's sales or service facilities unless the licensee's requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and the motor vehicle dealer's market for the licensee's motor vehicles." (emphasis supplied)

55. GM's EBE program requires that Lane make substantial changes, alterations and/or remodel its facility. GM's requirements are not reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and the motor vehicle dealer's market for GM's vehicles. Specifically, GM's requirements are not reasonable and justifiable in light of Lane's recent renovation of the dealership facility, which was complete in 2005 and built to GM specifications. It is not justifiable to require Lane to make substantial and costly renovations to a facility so soon after the facility was complete, and when the volume of motor vehicle sales at the facility do not justify such facility changes. Furthermore, standard depreciation schedules (such as

those used in G.A.A.P. and by the I.R.S.) show the unreasonableness of the demand since the facility has not even been fully depreciated before GM has demanded another modification. It is also unreasonable for GM to continue to demand the facility modification while at the same time threatening to terminate Lane's franchise.

56. GM has used the EBE program facility requirements to squeeze Lane's profits from new vehicle sales and converting those profits into a bonus program. GM is effectively requiring Lane to make facility changes in violation of section 320.64(10)(b).

57. GM's facility requirements are even less justifiable in light of GM's blanket refusal to pay Lane substantial EBE funds despite Lane's efforts to comply with the remainder of the program.

58. GM's EBE program is not saved by GM's claims that the program is voluntary and/or secured by agreement. The statute clearly makes a requirement unlawful even if the activity is purportedly obtained by "agreement, program, policy, standard or otherwise." Consequently, GM's EBE facility image requirements are unlawful pursuant to section 320.64(10)(b) and have damaged Lane.

WHEREFORE, Lane, pursuant to section 320.697, requests entry of a judgment against GM for treble damages, attorney's fees and costs, and such other relief this Court deems just and equitable.

COUNT V
Violation of F.S. §320.64(38) (Incentive Payments)

59. Lane realleges and incorporates paragraphs 1-58 as set forth fully herein.

60. Section 320.64(38) requires that a manufacturer offer bonus programs on an equal basis to its dealers in the state. Section 320.64(38) further provides that "[a] licensee

may offer a bonus, rebate, incentive, or other benefit program to its dealers in this state which is calculated or paid on a per vehicle basis and is related in part to a dealer's facility or the expansion, improvement, remodeling, alteration, or renovation of a dealer's facility.” However, “[a]ny dealer who does not comply with the facility criteria or eligibility requirements of such program is entitled to receive a reasonable percentage of the bonus, incentive, rebate, or other benefit offered by the licensee under that program by complying with the criteria or eligibility requirements unrelated to the dealer's facility under that program.” And, “[f]or purposes of the previous sentence, the percentage unrelated to the facility criteria or requirements is presumed to be reasonable if it is not less than 80 percent of the total of the per vehicle bonus, incentive, rebate, or other benefits offered under the program.”

61. GM’s EBE program is a bonus program that is paid on a vehicle invoiced basis. GM has deemed Lane to not be in compliance with the program. GM’s withholding of EBE funds from Lane has damaged Lane. Nonetheless, Lane has been in compliance with the EBE criteria unrelated to the facility image program. Pursuant to section 320.64(38), GM must pay Lane a reasonable percentage of the EBE incentive, which is not less than 80 percent of the incentive.

62. GM has refused to pay Lane the 80 percent of the EBE incentive, which is required under Florida law. Instead, GM has offered to pay 20% of the EBE incentives for a period of time. Thus, rather than complying with the 80% payment requirement, GM has created its own rules and withheld 80%. Lane sought to mitigate its damages and accepted the 20%, however this does not amount to a waiver of the statutory prohibitions to which GM

is subject. GM's refusal to pay the EBE funds constitutes a violation of section 320.64(38) and has damaged, and continues to damage, Lane.

WHEREFORE, Lane, pursuant to section 320.697, requests a judgment against GM for treble damages, attorney's fees and costs, and such other relief as this Court deems just and equitable.

COUNT VI
Violation of F.S. §320.64(18) (Vehicle Allocation and Distribution)

63. Lane realleges and incorporates paragraphs 1-62 as set forth fully herein.

64. Section 320.64(18) makes it unlawful for GM to "establish a system of motor vehicle allocation or distribution ... which otherwise is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicle dealer or dealers."

65. GM distributes vehicles to its dealers, such as Lane. GM sells the vehicles to its dealers at a price set by GM. However, GM has also established a bonus program that pays an incentive to dealers that qualify under the EBE program based on the number of vehicles invoiced. The incentive effectively reduces the cost of the vehicles to the dealers that receive the bonus funds. Conversely, a dealer that does not receive the incentive funds pays more for similarly equipped vehicles. The incentive is not tied to, or based upon, the cost of compliance for the EBE program so that it could be a reimbursement for facility costs (or other costs).

66. GM has established a system of motor vehicle distribution that is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause,

through the payment of incentive funds that effectively reduce the cost of vehicles for those dealers that receive the EBE funds. In particular, GM has withheld substantial EBE funds from Lane, which increases the cost of those vehicles to Lane, notwithstanding that Lane has attempted to comply with GM's program. Indeed, Lane would have complied with the program had the program been reasonable and justifiable, but it was not.

67. Furthermore, GM's system of distribution has placed Lane at a competitive disadvantage since it has effectively paid more for similarly equipped vehicles than its competitor Buick and GMC dealers and lost sales as a result.

68. GM's system of distribution violates section 320.64(18), and has damaged Lane.

WHEREFORE, Lane, pursuant to section 320.697, requests entry of a judgment against GM for treble damages, attorney's fees and costs, and such other relief this Court deems just and equitable.

COUNT VII
Violation of F.S. §320.64(19) (Allocation of Vehicles)

69. Lane realleges and incorporates paragraphs 1-68 as set forth fully herein.

70. Section 320.64(19) makes it unlawful for a manufacturer to fail "to provide a supply of motor vehicles by series in reasonable quantities, including models publicly advertised by the applicant or licensee as being available."

71. At various points in time from 2010 to the present, GM has failed to provide a supply of certain Buick and GMC vehicles in reasonable quantities despite Lane's requests for additional vehicles. GM's failure to provide a reasonable quantity of those models has

caused Lane to lose new vehicle sales, and also negatively impacted Lane's sales performance.

72. The plain language of the statute makes clear that a manufacturer must provide a reasonable quantity of vehicles to its dealers if it is advertising those vehicles as being available. This is, in part, to prevent a manufacturer from starving a dealer out of business, or claiming that the dealer did not make enough sales, while at the same time not providing the dealer enough vehicles to sell. GM advertised all Buick and GMC models as being available yet failed to provide a reasonable quantity of those vehicles (enough to achieve its alleged reasonable sales obligation) to Lane.

WHEREFORE, Lane, pursuant to section 320.697, requests entry of a judgment against GM for treble damages, attorney's fees and costs, and such other relief as this Court deems just and equitable.

COUNT VIII
Breach of Contract (Vehicle Allocation)

73. Lane realleges and incorporates paragraphs 1-72 as set forth fully herein.

74. Lane and GM are parties to a franchise agreement (Exhibit A). The franchise agreement incorporates GM's standard provisions. Article 6.4.1 governs "Motor Vehicle Inventory". Specifically, "Dealer recognizes that customers expect Dealer to have a reasonable quantity and variety of current model Motor Vehicles in inventory. Accordingly, Dealer agrees to purchase and stock and General Motors agrees to make available, subject to Article 6.1, a mix of models and series of Motor Vehicles identified in the Motor Vehicle

Addendum in quantities adequate to enable Dealer to fulfill its obligations in its Area of Primary Responsibility.” (emphasis supplied).

75. GM is the sole supplier of new vehicle inventory to Lane. GM allocates vehicles to its dealers (including Lane) in the normal course of business. GM has not made vehicles available in a mix of models and series in quantities adequate to enable Lane to fulfill its RSI obligations. Lane repeatedly requested additional vehicle inventory from GM, and GM did not provide adequate inventory to Lane. There is no indication that additional vehicle inventory could not have been provided by GM to Lane, and instead, GM choose not to provide Lane vehicles and instead, allocated those vehicles to other GM dealers. Consequently, GM has breached its obligations under the franchise agreement.

76. GM’s actions have harmed Lane. Specifically, Lane was not able to meet customer demand in its market, which resulted in Lane losing sales it otherwise could have made had it been provided with adequate inventory, the profits that accompany the new vehicle sales, as well as the parts, service and other aftermarket sales that follow a new vehicle sale.

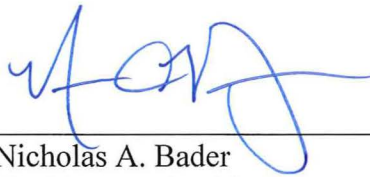
77. Lane has been in compliance with the franchise at all pertinent times. GM’s contention that Lane has not been in compliance with the franchise relates to Lane’s sales performance, but GM cannot establish a breach of contract when it has caused the breach by the failure to provide adequate inventory.

WHEREFORE, Lane requests entry of a judgment against GM for damages, attorney’s fees and costs, and such other relief as this Court deems just and equitable.

Lane demands a trial by jury as to all actions and claims so triable.

Dated: September 18, 2015.

Respectfully Submitted,



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