

1IN THE CIRCUIT COURT FOR THE
TWELFTH JUDICIAL CIRCUIT IN AND
FOR SARASOTA COUNTY, FLORIDA

JOE DAVID KEZER,

Plaintiff,

vs.

NO.: 08-CA-008121-NC

CASE

SARASOTA 500, LLC, a Florida
limited liability company, d/b/a
SARASOTA FORD; BUCHANAN
AUTOMOTIVE GROUP, LLC.,
BUCHANAN ENTERPRISES,
BUCHANAN AUTOMOTIVE HOLDINGS,
INC., AUTOMOTIVE CENTRAL SERVICES,
INC.,and VERNON G. BUCHANAN,
DARRIN CHRISMAN and JAVIER BAEZ, individually,

Defendant.

AMENDED COMPLAINT

Plaintiff, Joe David Kezer, sues Defendants Sarasota 500, LLC, a Florida limited liability company, d/b/a Sarasota Ford, Buchanan Automotive Group, LLC. (“BAG”), Buchanan Enterprises (“BE”) , Buchanan Automotive Holdings, Inc. (“BAH), Automotive Central Services, Inc. (“ACS”), and Vernon G. Buchanan, Darrin Chrisman and Javier Baez, individually, and shows:

Introduction

1. This is a whistle-blower case brought by Joe David Kezer, a former finance director for Sarasota Ford, the management of which retaliated against him because he complained about and refused to participate in fraudulent practices being employed in the sale and financing of new and used cars. He sues Sarasota 500, LLC,

under the Florida private-sector whistle-blower's act, § 448.101, et seq., FLA. STAT. (2007). He also sues Vernon G. Buchanan, whose wholly owned holding company is the managing member of the LLC, the LLC's other manager, Darrin Chrisman, and its general sales manager, Javier Baez, for tortious interference with Kezer's advantageous business relationship with Sarasota 500, LLC, and for conspiracy. He seeks compensatory damages, injunctive relief and his litigation expenses, including attorney's fees.

Jurisdiction and Venue

2. This is an action for damages in excess of \$15,000, exclusive of costs and interest, and for equitable relief.

3. Venue is proper in Sarasota County pursuant to § 47.051, FLA. STAT. (2007) because defendant Sarasota 500, LLC, maintains its principal place of business there and that is where the action accrued.

Parties

4. Joe David Kezer ("Kezer") is a finance director, whose job in an automobile dealership is to oversee the financing and leasing for retail customers, the selling of aftermarket insurance products (e.g., extended warranties), the placing of loans and leases with lenders, the preparation of the sale documents after the sales department is done, and the funding of the loans. He was employed by Sarasota 500, LLC, from October 2003 until November 2, 2007. He at all times material was an "employee" as envisioned by § 448.101(3), FLA. STAT. (2007).

5. Defendant Sarasota 500, LLC, d/b/a Sarasota Ford (“Sarasota Ford”), is a Florida limited liability company, the managing member of which is Buchanan Automotive Holdings, Inc. (“BAH”). Sarasota Ford is an “employer” as envisioned by § 448.101(3), FLA. STAT. (2007). Buchanan Automotive Group (“BAG”) and Buchanan Enterprises (“BE”), Buchanan Automotive Holdings, Inc. (“BAH”), Automotive Central Services, Inc. (“ACS”), are Florida corporations doing business in Sarasota County. The Defendants, Sarasota 500, BE, BAG, BAH and ACS (hereinafter referred to collectively as “Business Entity Defendants”) are all business organizations doing business in the State of Florida as corporations or limited liability companies. highly integrated with respect to ownership and operation and, therefore, constitute a single employer or integrated enterprise for purposes of claims herein .

6. At all times material, the Business Entity Defendants shared accountants, controllers, administrative staffs and offices, used the same policy and procedure manual and employee handbooks, Defendant Buchanan was their majority owner, managing member and President (with differing minority owners with differing percentages over time). The full nature and extent of the business entities and their relationships are not fully known but will be ascertained through discovery.

7. Defendant ACS was formed to provide common managerial services to the companies of the Buchanan Empire. ACS was a management company for the dealerships and other entities.

8. Defendant Vernon G. Buchanan (“Buchanan”) is, upon information and belief, the sole shareholder of BAH and owns a controlling interest in all Business Entity

Defendants either directly or through an entity that he either owns or owns a controlling interest. Although he personally no longer holds any official title within Sarasota Ford, Buchanan effectively at all times material was Kezer's "supervisor" as envisioned by § 448.101(6), FLA. STAT. (2007). Buchanan, at all times material, even when acting in his own interest and at odds with the legitimate interests of Sarasota 500, LLC:

- a. purported to act or to speak on behalf of Sarasota 500, LLC;
- b. there was reliance upon Buchanan's apparent authority deriving from Sarasota 500, LLC; or
- c. Buchanan was aided in accomplishing his tortious actions towards Kezer by the existence of the relationship between himself as agent and Sarasota 500, LLC as principal.

9. Defendant Darrin Chrisman ("Chrisman") is a manager of Sarasota 500, LLC, and general manager of Sarasota Ford. Chrisman at all times material was Kezer's "supervisor" as envisioned by § 448.101(6), FLA. STAT. (2007). Chrisman, at all times material, even when acting in his own interest and at odds with the legitimate interests of Sarasota 500, LLC:

- a. purported to act or to speak on behalf of Sarasota 500, LLC;
- b. there was reliance upon Chrisman's apparent authority deriving from Sarasota 500, LLC; or
- c. Chrisman was aided in accomplishing his tortious actions towards Kezer by the existence of the relationship between himself as agent and Sarasota 500, LLC as principal. At all times material, Sarasota Ford and Buchanan each was aware of

Chrisman's actions towards Kezer, acquiesced in those actions and ratified them.

10. Defendant Javier Baez ("Baez") is general sales manager of Sarasota Ford. Baez, at all times material, even when acting in his own interest and at odds with the legitimate interests of Sarasota 500, LLC:

- a. purported to act or to speak on behalf of BAH or Sarasota 500, LLC;
- b. there was reliance upon Baez's apparent authority deriving from Sarasota 500, LLC; or
- c. Baez was aided in accomplishing his tortious actions towards Kezer by the existence of the relationship between himself as agent and Sarasota 500, LLC as principal. At all times material, Sarasota Ford, Buchanan and Chrisman each was aware of Baez's actions towards Kezer, acquiesced in those actions and ratified them.

General Allegations — Stated Chronologically

11. Kezer began working at Sarasota Ford in October 2003 as finance director after being recruited the month before by Buchanan and David Long, the general manager.

12. Buchanan in December 2006 replaced Long as general manager with Chrisman, who brought in Baez as general sales manager.

13. Kezer began almost immediately noticing that, under Chrisman and Baez's leadership, illegal behavior routinely occurred, including:

- a. sales personnel and managers at Sarasota Ford sought financing for customers who were less than credit-worthy by — working under the direct supervision of Chrisman and Baez — altering credit applications to include lengthier

employments and higher earnings, as well as by telling lenders that down payments had been made when the down-payment checks were being held (with Baez signing off) for periods that sometimes exceeded 30 days;

b. sales personnel and managers signed customers' names on contracts and, in one instance, a salesman coached a teenager to sign his father's name on a finance contract —which Chrisman urged the lender, Sovereign Bank, to keep in place, even after the father complained, and guaranteed full payment by the Sarasota Ford should the son default;

c. sales personnel and managers “power booked” used cars — listing options and equipment that were not in fact on the car for the purpose of increasing the loan value based on standardized criteria published in pamphlet form by the National Automobile Dealers Association (“NADA”),

d. sales personnel and managers used a “hide” feature on the dealership's “eLead” computer terminals at the sales desks to hide the true interest rates on car loans from customers, as well as to hide the price of “free” items such as “security etching” and after-market insurance products such as extended warranties, gap insurance and road-hazard coverage;

e. Baez and other new-car managers obtained quota-based bonuses from Ford Motor Co. by reporting cars as having been sold when in fact they were still at the store — which triggered the warranty period to start running, unbeknownst to the customer who would later buy the car with less time left on the warranty than the customer believed or had been told;

f. Sarasota Ford advertised used cars as having a “free” two-month, 2,000-mile warranty — for which the customer actually was charged a hidden insurance premium that was paid to an insurance company in which Buchanan had an interest.

14. Some of the lenders were aware of the fraudulent applications, but approved them anyway because of up-front payments (ranging from \$95 to \$4,000) — hidden bank charges not shown on the paperwork given to the customers — that the lenders would take before discounting the loans to third party investors.

15. Forwarding the false information to lenders (as alleged in ¶¶ 13(a)-(c)), processing the contracts with the “hidden” interest rates and the “free” warranties (¶¶ 14(d) and (f)) and falsely reporting the sales to Ford Motor Co. (¶¶ 14 (e)) all:

- a. involved interstate commerce; and
- b. required transmission of information through the United States Mail, by commercial delivery service and through wire communications.

16. Kezer complained to Chrisman, who told Kezer that he needed to go along with Baez’s methods. Kezer nonetheless instructed his Finance-and-Insurance (F&I) Department to review the applications with the customers to confirm the accuracy of the information they contained.

17. Chrisman and Baez, however, instructed the F&I personnel to send the applications to the banks as they received them from the sales personnel, and instructed Kezer to find lenders who would fund the loans without verifying the false information on the credit applications.

18. Each time Kezer protested that what Chrisman and Baez wanted Kezer

and his personnel to do was fraudulent, Baez began to scream and Chrisman and Baez told Kezer to “get on the same page” with them.

19. Baez at one point threatened to beat one of Kezer’s F&I managers “to a pulp” if the manager complained about one more deal, prompting Kezer to fire the manager to get him out of harm’s way.

Count I

Violation of Florida Statute Chapter 448

Business Entity Defendants.

20. The Plaintiff re-alleges the allegations in Paragraphs 1-19 above as if set forth in their herein in their entirety.

21. Kezer, through his instructions to his F&I personnel and by his complaints to Chrisman, objected to and refused to participate in violations of law, rules and regulations pertaining to the business of Sarasota Ford, as envisioned by § 448.101(4), FLA. STAT. (2007), including but not limited to:

a. 18 U.S.C. § 1014 (“Loan and credit applications generally; renewals and discounts; crop insurance”), which provides in pertinent part that

Whoever knowingly makes any false statement or report, or willfully overvalues any ... property or security, for the purpose of influencing in any way the action of ... a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, ... the Federal Deposit Insurance Corporation, the Resolution Trust

Corporation, ... or the National Credit Union Administration Board, a branch or agency of a foreign bank ... upon any application, ... commitment, or loan, or any change or extension of any of the same ... shall be fined not more than \$1,000,000 or imprisoned not more than 30 years or both....

b. 18 U.S.C. § 1341 (“Frauds and swindles”), which provides in pertinent part that

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, ... for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation ... affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

c. 18 U.S.C. § 1343 (“Frauds by wire, radio or television”), which provides in pertinent part that

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, ... transmits or causes to be transmitted by means of wire ... communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation ... or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

d. § 817.03, FLA. STAT. (2007)(“Making false statements to obtain property or credit”), which provides in pertinent part that

Any person who shall make or cause to be made any false statement, in writing, relating to his or her financial condition, assets or liabilities ... with a fraudulent intent of obtaining credit, goods, money or other property, and shall by such false statement obtain credit, goods, money or other property, shall be guilty of a misdemeanor of the first degree...

e. § 817.41(1), FLA. STAT. (2007)(“Misleading advertising prohibited”), which provides in pertinent part that

It shall be unlawful for any person to make or disseminate or cause to be made or disseminated before the general public of the state, or any portion thereof, any misleading advertisement. Such making or dissemination of misleading advertising shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.

f. § 501.976(8), FLA. STAT. (2007)(“Actionable, unfair, or deceptive acts or practices”), which provides in pertinent part that

It is an unfair or deceptive act or practice, actionable under the Florida Deceptive and Unfair Trade Practices Act, for a dealer to:

(8) Misrepresent warranty coverage, application period, or any warranty transfer cost or conditions to a customer.

g. § 501.976(9), FLA. STAT. (2007)(“Actionable, unfair, or deceptive acts or practices”), which provides in pertinent part that

It is an unfair or deceptive act or practice, actionable under the Florida

Deceptive and Unfair Trade Practices Act, for a dealer to:

(9) Obtain signatures from a customer on contracts that are not fully completed at the time the customer signs or which do not reflect accurately the negotiations and agreement between the customer and the dealer.

22. Notwithstanding that Kezer's department routinely had the highest production of any of the 10 Buchanan-owned dealerships, Chrisman on November 2, 2007 fired Kezer from his approximately \$285,000 a year job because Kezer was "not working out with Javier" (Plaintiff had earned \$240,000 by the time he was terminated on 11/2/07, which is 84% of year, but missed holiday season which is best part of the year).

23. Sarasota Ford's and the Business Entities termination of Kezer constituted a "retaliatory personnel action" as envisioned by § 448.101(5), FLA. STAT. (2007).

24. Sarasota Ford's and the Business Entities firing Kezer because he objected to the practices more particularly alleged above violated Kezer's rights under § 448.102(3), FLA. STAT. (2007).

Prayer for Relief as to Count I

25. As a direct, natural, proximate and foreseeable result of Sarasota Ford's and the Business Entities retaliatory personnel actions, Kezer has suffered past and future monetary loss, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

26. Kezer is suffering irreparable harm by virtue of the violation of his statutory rights, for which there is no adequate remedy at law, entitling him as envisioned by § 448.103(2), FLA. STAT. (2007), to:

a. an injunction restraining continued violation of this the Florida Whistle-blower's Act;

b. reinstatement to the same position held before his discharge, or to an equivalent position, or, if that is not practicable, an award of front pay;

c. reinstatement of full fringe benefits and seniority rights.

27. Kezer is entitled, pursuant to § 448.104, FLA. STAT. (2007), to recover his reasonable attorney's fees, expenses and court costs.

WHEREFORE, plaintiff, Kezer, prays that this court will:

One, enter a judgment for him and against Defendant, Sarasota Ford and the Business Entities , for compensatory damages pursuant to section 448.101, et seq., FLA. STAT. (2007);

Two, grant him such other and further relief as the circumstances and law require and/or provide, including but not limited to, injunctive relief, back wages and benefits, pre-judgment and post judgment interest, seniority and prospective relief, including either reinstatement or front pay; and

Three, order Sarasota Ford and the Business Entities to pay Kezer his costs, litigation expenses and reasonable attorney's fees pursuant to § 448.104, FLA. STAT. (2007).

Count II

Tortious Interference

All Individual Defendants

28. Plaintiff, Kezer, adopts and realleges, as if fully set forth in Count II, the

allegations of paragraphs 1-25, above as it set forth herein in their entirety.

29. Kezer enjoyed an advantageous business relationship with Sarasota Ford, i.e., his job as a finance director.

30. Buchanan, Chrisman and Baez were aware of Kezer's advantageous business relationship with Sarasota Ford.

31. Proper performance of Kezer's job as Sarasota Ford's finance director required that he permit only legal sales and financing techniques to occur within the dealership — and that he not permit such illegal techniques as those that Baez insisted upon and implemented.

32. Buchanan, Chrisman and Baez interfered with Kezer's advantageous business relationship with Sarasota Ford, i.e., Chrisman and Baez militated for Kezer's removal as finance director, in which Buchanan acquiesced, culminating in Chrisman's terminating Kezer on November 2, 2007.

33. Neither Buchanan, Chrisman nor Baez did so in their roles as managers or employees of Sarasota Ford for the purposes of advancing Sarasota Ford's legitimate goals, i.e., the legal sale and financing of automobiles.

34. Buchanan, Chrisman and Baez, instead, operated from their own agenda, i.e., to get Kezer out of the way so that he would not interfere with their increasing their personal earnings by putting Sarasota Ford in legal jeopardy through the use of illegal sales and financing techniques.

35. As a direct, natural, proximate and foreseeable result of Buchanan, Chrisman and Baez's actions, Kezer has suffered past and future monetary loss,

emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

36. Kezer reserves the right to move for leave to amend, pursuant to § 768.72, FLA. STAT. (2007) to seek punitive damages.

Prayer for Relief as to Count II

WHEREFORE, plaintiff, Kezer, prays that this court will grant judgment for him, and against defendants Buchanan, Chrisman and Baez, jointly and severally, for damages, pre and post judgment interest, costs, and for such other and further relief as is just.

Count III

Conspiracy

All Individual Defendants

37. Plaintiff, Joe David Kezer, adopts and realleges, as if fully set forth in Count III, the allegations paragraphs 1-25, and 29-35 above as it set forth herein in their entirety

38. Buchanan, Chrisman and Baez conspired, *One*, amongst themselves, *Two*, with customers willing to falsify their credit applications and, *Three*, with lender personnel willing either to look the other way or to charge customers illegal loan fees, to effect the illegal sales and financing of automobiles at Sarasota Ford.

39. Accomplishing the end of this conspiracy, however, required the removal of Kezer from his position as finance director, the authority of which position he initially used to thwart Baez's and Chrisman's dishonest and illegal sales and financing

practices.

40. In furtherance of their conspiracy with the customers and the lending personnel, Buchanan, Chrisman and Baez thus agreed amongst themselves to tortiously interfere with Kezer's advantageous business relationship with Sarasota Ford by removing him as finance director.

Prayer for Relief as to Count III

WHEREFORE, plaintiff, Kezer, prays that this court will grant judgment for him, and against defendants Buchanan, Chrisman and Baez, jointly and severally, for damages, pre and post judgment interest, costs, and for such other and further relief as is just.

Count IV

Declaratory and Injunctive Relief Pursuant to §501.211(1) F.S.

All Defendants

41. Plaintiff restates and realleges paragraphs 1 through 19, 29-35 as if set forth herein in their entirety.

42. The Plaintiff alleges that Defendants have violated, are violating, and are otherwise likely to continue to violate Section 501.201 et seq. of the Florida Statutes, Florida's Unfair and Deceptive Trade Practices Act and other federal and state statutes as set forth above. F.S. 501.211(1) specifically authorizes declaratory and injunctive relief.

43. The Plaintiff, based on the allegations contained herein are in doubt as to their rights, obligations and duties under their contract with Defendants in light of the

facts and Defendant's numerous statutory violations.

44. There is a bona fide, actual, present and practical need for the declaration.

45. The declaration will deal with present, ascertained or ascertainable facts as set forth above.

46. Plaintiff has an actual present, adverse and antagonistic interest with Defendants in the subject matter in fact and in law.

47. The antagonistic interests of Plaintiff and Defendants are before the Court.

48. The Plaintiff, based on the allegations contained herein (1) can demonstrate a substantial likelihood of success on the merits; (2) that irreparable injury will continue to be suffered by the unsuspecting consuming public that purchases new and used vehicles, either cars or trucks, from Defendant; (3) that the actual damages suffered by Plaintiff, as well as future damages suffered by the consuming public, outweighs whatever damage the proposed injunction may cause the Defendants; (4) that if issued, the injunction will NOT be adverse to the public interest, because the violations alleged are violations of consumer protection statutes.

49. By way of example and not as a limitation, listed below are the acts, conduct, statements, representations, assurances and/or omissions made or omitted to be made to Plaintiff which constitutes deceptive and unfair trade practices or acts:

- a. Misrepresenting the sale price of new vehicle to consumers by including inflated prices for certain F&I products, dealer fees, dealer service and agency fees among others in the price of the vehicle when offered to consumers;

- b. Having the customers sign a work sheet, a handwritten buyer's order, a menu and a RISC none of which disclose inflated F&I product prices and excessive finance reserves and bank fees to unsuspecting consumers;
- c. Failing to provide signed contract documents to consumers.
- d. Preparing contract documents and obtaining consumers' signatures thereon by using deceptive closing techniques, which fail to accurately memorialize and reduce to writing the parties' negotiations, representations, and agreement.
- e. Failing to provide documents to customers as required by §501.976 F.S., (infra.) or 69V-50.001, Florida Administrative Code.
- f. Charging undisclosed bank fees.
- g. Other conduct as more particularly set forth in the paragraphs above.

50. Defendants' statements, representations, affirmations, assurances, omissions and conduct relating to the execution of the contract documents constitutes deceptive and unfair trade practices in violation of Section 501.201 et seq. of the Florida Statutes.

51. Plaintiff has been required to obtain the services of the undersigned attorneys and have agreed to pay them a reasonable fee, and Plaintiff is entitled to attorney's fees pursuant to Section 501.2105, Florida Statutes.

Prayer for Relief as to Count IV

WHEREFORE, the Plaintiff asks the Court to enter a declaratory judgment on behalf of Plaintiff determining the Defendants' conduct to be in violation of federal and state law and to further enjoin the Defendant from engaging in said illegal conduct in the future, to grant Plaintiff such further and supplemental relief as the Court deems appropriate and to award Plaintiff him pre and post judgment interest, costs and attorney's fees. Plaintiff requests this Honorable Court to enjoin the Defendants in accordance with Section 501.211(1) of the Florida Statutes from continuing to engage in deceptive practices which are in violation of Section 501.201 *et seq.*

Count V
Breach of Pay Plan

Business Entity Defendants

52. Plaintiff re-alleges the allegations of paragraphs 1-19, above as if forth herein in their entirety.

53. Defendants. Sarasota Ford, BAG, BE, BAH and ACS through its principals, agents and employees, made an offer to employ Plaintiff as Director of Finance for Defendant Sarasota Ford and utilized his services in that position in consideration for their payment to him of net profits as set forth under pay plans drawn up by Defendants.

54. Plaintiff accepted such offer in consideration for and under the terms of the pay plans under which he was to be compensated based on a percentage of net profit.

55. The Plaintiff does not have copies of his pay plans but has requested them from the Defendants and will file copies as exhibits upon receipt.

56. During the time Plaintiff worked at the dealership there were numerous charge backs to the Defendant by lenders for transactions involving violations of lender agreements.

57. Charge backs were occasioned by “power booking”, (ie. Listing equipment on vehicles that was not on the vehicle), defaults on loans and falsification on credit applications, as well as falsification of time on job, residency and income documentation.

58. Contrary to the pay plans, when the lender charged back a transaction to the dealership, the Defendant 1099 charged back those charges against the F&I department and not the sales department, although the sales department submitted the false information to the lenders.

59. These charge backs reduced net profit and resulted in a reduction of the amount of compensation paid to the Plaintiff.

60. The charge backs were also in violation of the pay plans of the Plaintiff and other F&I department employees.

61. Although the Plaintiff’s pay plans provided that after three payments have been made by the customer in connection with a loan transaction that there were to be no charge backs, that provision was violated and Plaintiff’s commissions were charged back regardless of when the contract went into default status.

62. Depending on the agreement, the lenders hold back 25 - 30% of the finance reserve, to cover a portion of any charge backs. If there are no charge backs, that amount is released by the lender to Sarasota Ford and constitutes additional profit.

63. Contrary to the terms of his pay plans Plaintiff was never paid a

commission on the 25 - 30% retained by the bank when ultimately paid to the Defendants.

64. The Defendant Sarasota Ford had hundreds of transactions each month.

65. Further, although Plaintiff asked the Defendant for documentation concerning the charge backs, Defendant failed and refused to provide such documentation.

66. Defendant's undocumented and unverified charge backs and other hidden deductions against Plaintiff's compensation, as well as diversion of undisclosed profits to off shore accounts, among others, constitute breaches of the pay plan between Defendants and Plaintiff and are violations of Defendants' implied covenant of good faith and fair dealing inherent in their agreement with Plaintiff.

67. Plaintiff sustained damages as a result of the Defendants conduct in an amount to be determined through examination of all of the corporate Defendants' records

Prayer for Relief as to Count V

Wherefore the Plaintiff demands judgment against the Business Entity Defendants for damages together with pre and post judgment interest and costs and demands trial by jury of all issues triable at law by jury.

Count VI

Suit for Accounting

Business Entity Defendants

68. The Plaintiff re-alleges the allegations of paragraphs 1-19, and 53-67 as if set forth herein in their entirety.

69. The Plaintiff's claims for unpaid compensation are based on allegations that the Business Entity Defendants failed to pay commissions on paid finance reserves and improperly attributed charge backs from lenders to reduce profit, and thus his compensation, and diverted profits to offshore accounts among others to be discovered.

70. In order to determine the amounts of compensation due to Plaintiff, it will be necessary to examine information as to each of the hundreds of transactions each month, which occurred at the Sarasota Ford dealership during the course of Plaintiff's employment

71. Such an examination involves extensive and complicated accounts and it is not clear that the remedy at law is full, adequate and expeditious.

72. Plaintiff requires an accounting to determine the extent to which the corporate defendants have withheld and or diverted monies which should have been paid to Plaintiff.

Prayer for Relief as to Count VI

Wherefore the Plaintiff demands an accounting from the Business Entity Defendants for a determination of his damages together with pre and post judgment interest and costs.

Count VII

Unjust Enrichment

Business Entity Defendants

73. The Plaintiff re-alleges the allegations of paragraphs 1-24, 53-67, and 69 as if set forth herein in their entirety.

74. In the alternative to Count V, if the Defendants take the position that they had no employment agreement with Plaintiff then Plaintiff would seek restitution based on the Defendants' continued retention of funds which properly should have been paid to Plaintiff.

75. The Plaintiff conferred a specific benefit on the Business Entity Defendants by performing services as the Director of Finance and Insurance for approximately four years, in exchange for their agreement to compensate him in accordance with the terms of pay plans entered into between Plaintiff and Defendants.

76. Defendants voluntarily accepted and retained the benefits of his services, but withheld monies from Plaintiff that they were not authorized to take and it would be inequitable for the Defendants to retain the benefits of those services without paying for the value of those services.

77. The continued retention of these funds based on the totality of facts and circumstances shown is unfair and unjust.

78. Defendants who received the benefit of these funds should be disgorged of these funds.

Prayer for Relief as to Count VII

Wherefore the Plaintiff demands judgment against the Business Entity Defendants for damages together with pre and post judgment interest and costs and demands said Defendants be disgorged of these funds.

Count VIII

Negligent Supervision

All Defendants

79. The Plaintiff re-alleges the allegations of paragraphs 1-19, 21-24, 29-34, 38-40, 49 and 69 as if set forth herein in their entirety.

80. The individual and dealership entities Defendants were jointly and severally responsible for assuring compliance with Federal and Florida law and had a duty to operate the Defendant corporations in compliance with applicable law and agreements with the manufacturers and lenders.

81. All of the Defendants jointly and severally breached said duty.

82. As a direct and proximate result of Defendants breaches of their duties, by their continued custom and pattern of refusing to comply with the law and agreements with manufacturers and lenders and their continued attempts to force Plaintiff to violate the law, forge documents, defraud consumers and lenders as a condition to his continued employment, Plaintiff was terminated because of his objections to Defendants' illegal acts and sustained economic damages and loss of income and earning capacity as a direct and proximate result of Defendants' conduct.

Prayer for Relief as to Count VIII

Wherefore the Plaintiff demands judgment against all of the Defendants for damages together with pre and post judgment interest, costs and demands trial by jury of all issues triable at law by jury.

DOUGLAS S. LYONS, ESQ.
Counsel for Plaintiff

LYONS & FARRAR, P.A.
325 N. Calhoun Street
Tallahassee, Florida 32301
Telephone: (850) 222-8811
Florida Bar No. 128277

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to **WILLIAM J. DENIUS, Esq.** and **MARK ORNSTEIN, Esq.**, Killgore, Pearlman, Stamp, Ornstein & Squires, PO Box 1913, Orlando, Florida 32802 this _____ day of September, 2009.

Douglas S. Lyons

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