THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

HYUNDAI SUBARU OF NASHVILLE, INC. d/b/a DOWNTOWN HYUNDAI and GENESIS OF DOWNTOWN NASHVILLE Plaintiff, -against- HYUNDAI MOTOR AMERICA, INC. and GENESIS MOTOR AMERICA LLC Defendant.	Index No. _______ **COMPLAINT**

Plaintiff Hyundai Subaru of Nashville Inc. d/b/a Downtown Hyundai ("Downtown") by and through its counsel, ArentFox Schiff LLP and Cameron Worley, P.C., file this Complaint against Defendants Hyundai Motor America, Inc. ("HMA") and Genesis Motor America LLC ("GMA"), and allege as follows:

INTRODUCTION

1. Downtown is a Hyundai and Genesis dealer located in Nashville, Tennessee. This case arises out of Defendants' violations of the Automobile Dealer's Day in Court Act (15 U.S.C. § 1221, *et seq.* "ADDCA") and Tennessee's Uniform Commercial Code ("UCC"). Downtown's owner has sought to relocate his dealership to an area with a dense minority population. Defendants have refused to let Downtown relocate the dealership to this otherwise favorable location, despite the fact that Downtown's current lease expires at the end of 2023 without the possibility of renewal. For the reasons below, Defendants' refusal violates the ADDCA and the Tennessee UCC, as demonstrated by their policies and procedures.

2. Defendants have implemented several policies that effectively keep dealerships out of dense minority areas. Defendants' relocation policy, in particular, has drastically reduced dealer presence in dense minority areas, and in this case, Defendants have unreasonably refused to approve Downtown's relocation to a dense minority area, thereby constructively terminating the dealership.

3. Downtown owns and operates a Hyundai and Genesis dealership, currently located in West Nashville at 1412 Broadway, Nashville, TN 37203 ("Current Location"). The lease for this property expires in December 2023, and as a result Downtown needs to relocate. The Martin Group and Downtown informed Defendants over two years ago that Downtown needed to relocate; however, Defendants have continued to act in bad faith, failed to explain their relocation approval process, unreasonably refused to approve two proposed new locations, and has done so for improper reasons.

4. Defendants' refusal to approve Downtown's reasonable relocation proposals stems from Defendants' dealer network policies and practices that effectively redline dealerships out of minority areas, as well as Defendants' long-standing desire to replace Downtown's ownership with a new operator. By refusing to approve Downtown's relocation plans, Defendants are constructively terminating the dealership.

5. Downtown seeks: (a) preliminary and permanent injunctive relief; (b) money damages; and (c) attorney's fees and costs incurred in bringing this action, all of which are provided for by the ADDCA.

PARTIES

6. Plaintiff Downtown, is a corporation with its principal office at 1512 Broadway, Nashville, Tennessee 37203. Downtown's dealership is located at the Current Location.

Downtown is an "automobile dealer" as defined in 15 U.S.C. § 1221 and a "motor vehicle dealer" as defined in T.C.A. § 55-17-102.

7. Defendant HMA, is a California corporation with its principal place of business at 10550 Talbert Avenue, Fountain Valley, California 92708. HMA is registered to do business in Tennessee and actively conducts business in Davidson County, Tennessee. HMA is an "automobile manufacturer" as defined in 15 U.S.C. § 1221 and a "Manufacturer" as defined in T.C.A. § 55-17-102.

8. Defendant GMA, is a California limited liability company with its principal place of business at 10550 Talbert Avenue, Fountain Valley, California 92708. GMA is registered to do business in Tennessee and actively conducts business in Davidson County, Tennessee. GMA is an "automobile manufacturer" as defined in 15 U.S.C. § 1221 and a "Manufacturer" as defined in T.C.A. § 55-17-102.

9. Downtown and HMA are parties to a Hyundai Dealer Sales and Service Agreement (the "HMA Dealer Agreement") pursuant to which Downtown operates a dealership for the sale and service of Hyundai brand motor vehicles at the Current Location.

10. Following the spin-off of Genesis as a separate brand from Hyundai, Downtown and GMA are parties to a Genesis Dealer Sales and Service Agreement (the "GMA Dealer Agreement") pursuant to which Downtown operates a dealership for the sale and service of Genesis brand motor vehicles at the Current Location.

11. Non-party Martin Management Group, Inc. ("Martin Group") is a corporation with its principal place of business at 1048 Ashley St., Ste. 401, Bowling Green, Kentucky 42103.

JURISDICTION AND VENUE

12. In this action, Downtown seeks relief under the ADDCA (15 U.S.C. § 1221 *et seq.*).

13. Downtown's claims under the ADDCA pose a federal question, and therefore original jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331.

14. Venue is proper in this forum as a substantial part of the events giving rise to the alleged violations in this matter occurred in this judicial district. 28 U.S.C. § 1391(b)(2).

15. This Court has supplemental jurisdiction over the other causes of action asserted herein pursuant to 28 U.S.C. § 1367(a).

FACTS

A. *Defendants Have Unreasonably Refused to Approve Downtown's Proposed Relocation Sites*

16. Under Tennessee Law, a franchisor cannot "unfairly or without due regard to the equities or without just provocation cancel[] or fail[] to renew the franchise or selling agreement of a motor vehicle dealer." T.C.A. § 55-17-114(c)(3).

17. Downtown has owned and operated its Hyundai and Genesis dealerships at the Current Location since 2011.

18. The lease for the property at the Current Location expires in December 2023. The landlord is unwilling to renew the lease to Downtown. As a result, Downtown needs to relocate.

19. The Martin Group and Downtown informed HMA and GMA over two years ago of Downtown's need to relocate its Hyundai and Genesis dealership and has apprised Defendants of Downtown's diligent efforts to identify a site in downtown Nashville to relocate its dealership operations.

20. Genesis brand vehicles were previously sold within the Hyundai dealer network. In or about 2016, HMA spun off the Genesis brand into an affiliated company, GMA. HMA and GMA share common ownership and common senior management. As the "senior partner" in their corporate structure, HMA has taken the lead over GMA in all matters related to the relocation of

Downtown and, as a result, correspondence relating to Downtown's relocation efforts have been through HMA. All of HMA actions as alleged herein have been taken on behalf of itself and GMA.

21. Instead of engaging in good faith efforts with Downtown to find a suitable site for relocation, HMA demanded Downtown sell their dealership.

22. On or around October 13, 2020, HMA pressured Downtown to sell the dealership to HMA, or its designee, rather than continue its relocation efforts. In its request that Downtown sell, HMA included a pre-written letter from Downtown to HMA outlining the sale.

23. On or around October 16, 2020, Allan Grogan, on behalf of HMA, sent HMA's New Hyundai Facility Guidelines (the "Guidelines") to Downtown. Thus, months into searching for a new location, HMA complicated Downtown's relocation efforts by adding additional land and building requirements. The Guidelines increased land, building size, and stall count requirements, but failed to provide specific details regarding HMA's revised facility standards.

24. In or around October 2020, Downtown presented HMA with an outstanding relocation site at 1406 Brick Church Pike (the "First Proposed Location").

25. The First Proposed Location is within Downtown's Primary Market Area ("PMA") and is only a few minutes from its Current Location.

26. In January 2021, just seven days before the Martin Group was set to close on the First Proposed Location, HMA rejected the First Proposed Location.

27. HMA stated two reasons for this rejection. First, HMA claimed that the First Proposed Location was not within the Metro Center/North Rhodes Park area, which HMA deemed to be an "acceptable alternative" to the Current Location for maintaining and maximizing customer convenience for the Nashville Market. Second, HMA claimed that the First Proposed Location

would remove Hyundai from an area in proximity to other competitive automotive brands to an area with no proximate competitive automotive brands.

28. Prior to January 2021, HMA had never indicated that the relocation site needed to be located in the Metro Center/North Rhodes Park area.

29. HMA's rejection of the First Proposed Location is unreasonable as there are no feasible alternative properties within HMA's preferred area.

30. The only property available in the area determined by HMA to be an "acceptable" alternative to the Current Location is located at 100 Athens Way, which lacks major road visibility and is priced at $9,000,000 for a three-acre parcel (the "Athens Way Location").

31. Contrary to HMA's excuse, the First Proposed Location would not eliminate proximity to other competitive brands because the Martin Group is building a Subaru dealership next door.

32. Additionally, the First Proposed Location is almost two acres larger than the Athens Way Location, costs would be shared with the Martin Group's Subaru dealership, and visibility to road traffic is significantly better.

33. Although HMA claimed to rely on a current market study in rejecting the First Proposed Location, HMA refused to provide Martin Group or Downtown with a copy of this alleged market study, despite several requests over several months.

34. In November 2021, Bob Kim, on behalf of HMA, met with Downtown's team to discuss relocation and stated three criteria for Hyundai Site Approval: 1) local commercial/retail activity; 2) a dealership site within Downtown's PMA; and 3) appropriate space.

35. The First Proposed Location meets all of HMA's relocation criteria. Downtown has asked for a better explanation or more detailed requirements to understand why the First Proposed Location is unacceptable to HMA.

36. Despite numerous requests for more specific relocation approval requirements, HMA has refused to provide this information, has continuously changed its requirements in order to impede Downtown's relocation efforts, and is constructively forcing Downtown out of business. Downtown will suffer immediate and irreparable injury if their relocation is not approved.

37. HMA's shifting and pretextual reasons notwithstanding, on information or belief HMA's real reason for rejecting the First Proposed Location is because it would move Downtown to a dense minority area disfavored under HMA's dealer network policies and because HMA desires to replace Downtown's ownership with different operators.

38. Throughout an extensive and protracted letter writing campaign, during which the Martin Group worked diligently to ensure the First Proposed Location met all of Defendants' requirements, HMA continually changed its position on why the First Proposed Location was an inappropriate relocation site. As a result, the Martin Group proposed a second relocation site at 1973 Southerland Drive (the "Second Proposed Location").

39. The Second Proposed Location has unrestricted interstate views from I-65, is close to a competing Subaru dealership, consists of 14 acres, and fulfills all of Defendants' land, square footage, visibility, and retail requirements.

40. The Martin Group and Downtown have provided Defendants with detailed information about the Second Proposed Location, including a market study.

41. Yet HMA spuriously claimed that it was not provided with enough detail to assess whether the Second Proposed Location meets Hyundai's and Genesis's brand standards.

Simultaneously, HMA denied the Martin Group the ability to enter into the design process until receiving relocation site approval. HMA created a barrier to entry and then stated that the Martin Group provided insufficient information.

42. In February 2022, HMA complained that the Second Proposed Location was less than one mile away from the First Proposed Location; however, this issue was never raised by HMA in any previous communications. Moreover, the fact that HMA is upset that the Second Proposed Location is also <u>near</u> the previously rejected dense minority area further illustrates the problem.

43. Indeed, the Second Proposed Location satisfies the three stated criteria that HMA delineated in the November 2021 meeting: 1) it is within Downtown's PMA; 2) there is commercial activity nearby; and 3) there is appropriate space for the dealership.

44. Furthermore, the Second Proposed Location places Downtown adjacent to the Martin Group's Subaru dealership, which would be located at 1406 Brick Church Pike. Therefore, Downtown would satisfy HMA's requirement for proximity to a competitive auto brand.

45. But it does not satisfy HMA's unstated demand—that the dealership be located in an area with "better" demographics.

46. On information and belief, HMA (on behalf of itself and GMA) has refused to approve Downtown's Second Proposed Location because it would move Downtown to a dense minority area.

47. On information and belief, Defendants' dealer network policies, which govern where it will approve relocations and new dealerships, effectively result in redlining Hyundai and Genesis dealerships out of minority neighborhoods.

48. On information and belief, Defendants' dealer network policies require that Hyundai and Genesis dealerships be located in areas with certain demographics and nearby other dealerships for competitive line makes. However, on information and belief, dense minority areas will rarely meet Defendants' demographic and competitive line-make criteria.

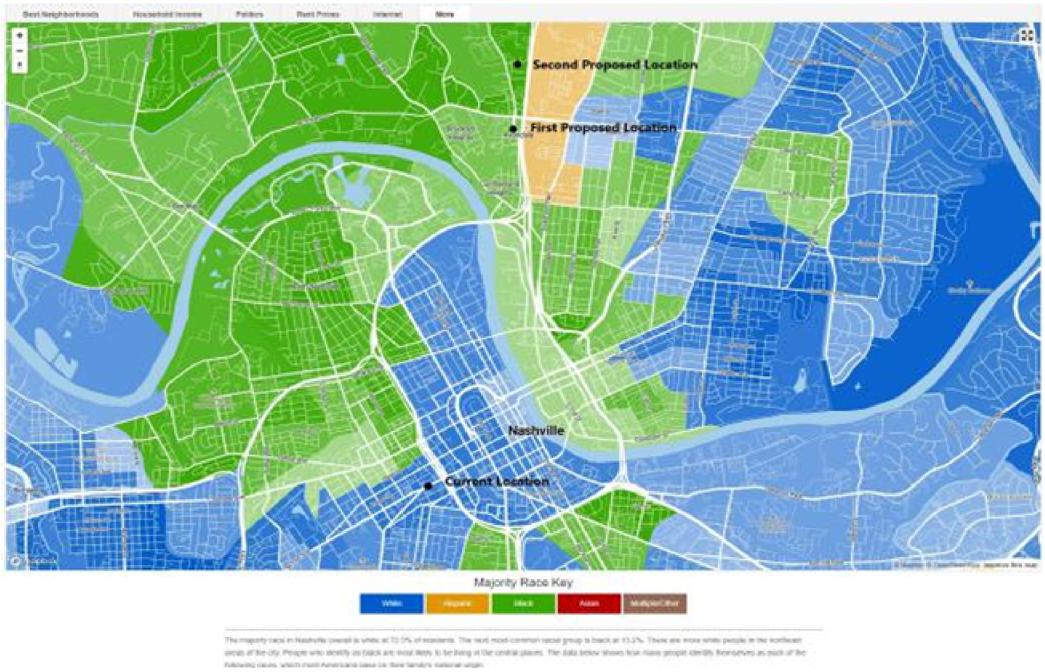
49. On information and belief, the result of these policies, which appear facially neutral, is to exclude Hyundai and Genesis dealerships from dense minority areas. Basing network decisions on competitive locations simply reinforces the redlining of dealerships from minority areas.

50. HMA's refusal to approve Downtown's relocation will constructively terminate Downtown because Downtown's lease ends in December 2023. Without a dealership location to operate out of, Downtown will be forced out of business. This will cause immediate and irreparable injury to Downtown.

51. Upon information and belief, HMA would rather force Downtown out of business, or force it to sell, than let it relocate.

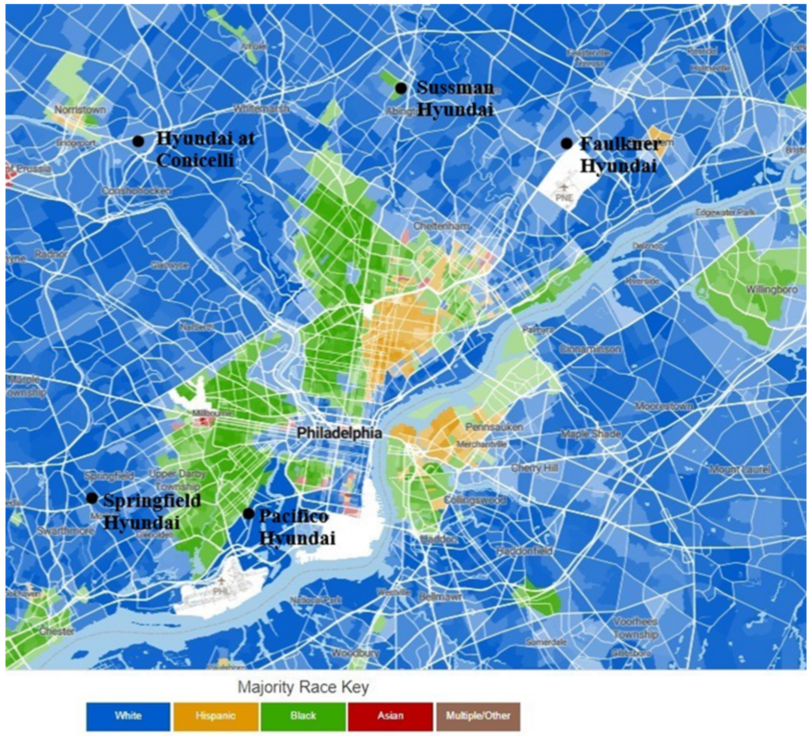
52. Upon information and belief, HMA's refusals to approve Downtown's reasonable relocation proposals are also part of an effort to force Downtown's sale to a preferred operator who will put the dealership in a location that HMA deems more desirable demographically.

53. HMA (on behalf of itself and GMA) has failed to act in good faith by refusing to approve the First and Second Proposed Locations. Downtown's Current Location is in an area with a predominantly White population. The First and Second Proposed Locations are in predominantly African American and Latino populated areas as shown below.

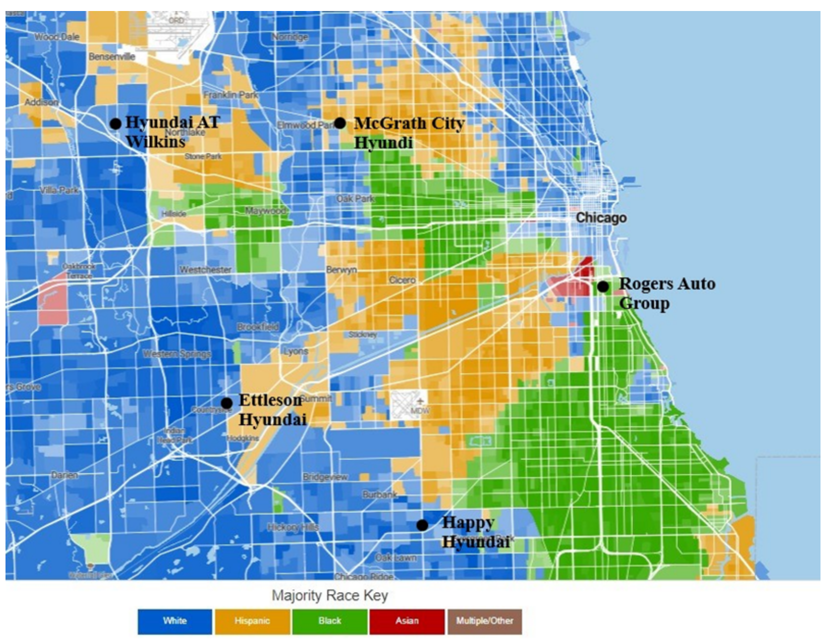


54. HMA's refusal to approve Downtown's relocation to a dense minority area is not an isolated incident, but consistent with overarching policies that work to keep dealerships out of dense minority areas. In a search for "Hyundai dealer near me," the maps below show some major metropolitan areas where Hyundai dealerships are generally absent from minority areas:

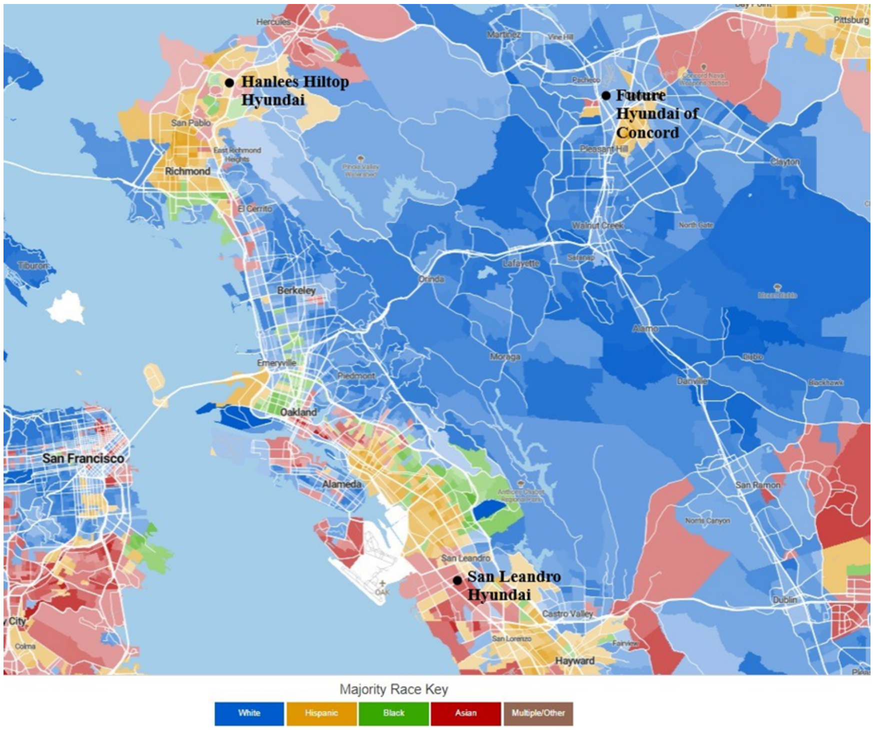
Philadelphia



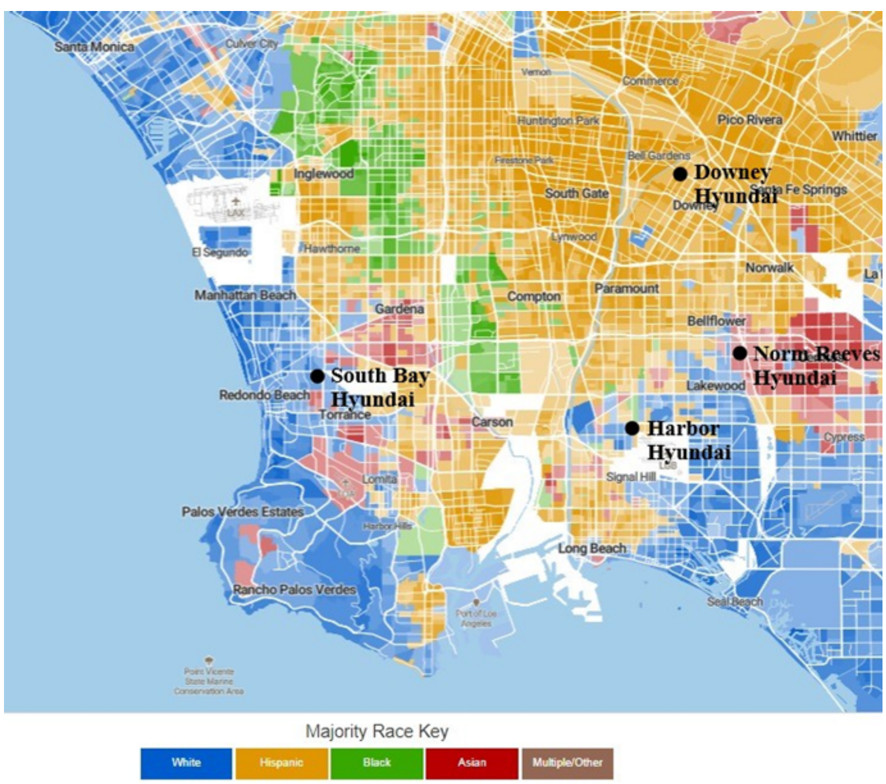
Chicago



Oakland



Compton



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As the maps indicate, Defendants' dealer network policies result in locating Hyundai dealerships in white areas or on the periphery of minority-dense markets.

COUNT I – VIOLATION OF THE ADDCA – CONSTRUCTIVE TERMINATION (15 U.S.C. § 1221, *et seq.*)

55. Downtown restates and incorporates by reference the allegations contained in the forgoing paragraphs as if fully set forth herein.

56. The ADDCA was enacted to redress the economic imbalance and unequal bargaining power between large automobile manufacturers and local dealerships.

57. Section 1222 of the ADDCA provides, in relevant part, "[a]n automobile dealer may bring suit against any automobile manufacturer… and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer… to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer."

58. Section 1221(e) of the ADDCA provides, in relevant part, that "[t]he term 'good faith' shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party…"

59. Constructive termination may serve as the basis for violating the Act if it stems from actions taken by a manufacturer with the intent to intimidate, threaten or coerce. *See Imperial Motors, Inc. v. Chrysler Corp.*, 559 F. Supp. 1312, 1315 (D. Mass. 1983) (citing *Am. Motors Sales Corp. v. Semke,* 384 F.2d 192 (10th Cir. 1967)). *See also Smoky Mtn. Freightliner, LLC v. DaimlerChrysler Vans, LLC,* 2006 WL 8442968, *7 (E.D. Tenn. Mar. 7, 2006) (finding that there may be a constructive termination of the franchise agreement that falls within the purview of the statute).

60. Defendants' rejection of Downtown's relocation sites constitutes a failure to act in good faith as required under the Act.

61. Defendants' tactics have been used to intimidate, threaten, or coerce Downtown into selling the Downtown franchise, relocating to a location in a predominantly white area, or simply accepting the eventual termination of Downtown's Dealer Agreements with HMA and GMA.

62. Defendants' wrongful conduct constitutes coercion, intimidation, or threats of coercion or intimidation within the meaning of 15 U.S.C. § 1221 *et seq.* and is in violation of the same. This conduct includes:

a. Telling Downtown to sell the Downtown franchise instead of discussing relocation in good faith;

b. Claiming to rely on a market study in rejecting Downtown's relocation and then refusing to produce such market study;

c. Rejecting Downtown's relocation to the First Proposed Location only seven days before Downtown's affiliate was set to close on the purchase of the First Proposed Location;

d. Denying Downtown's relocation to the Second Proposed Location, claiming that Downtown did not provide enough detail to assess whether that location met brand standards, while simultaneously preventing Downtown and the Martin Group from entering into the design process until the site is approved;

e. Refusing to provide Downtown with clear requirements for relocation approval; and

f. Continuously changing relocation requirements to run out the clock on Downtown's lease and force them out of business.

63. Defendants also failed to act in good faith in performing and complying with the terms of the parties' Dealer Agreement.

64. As a direct and proximate result of Defendants' breaches of the ADDCA, Downtown suffered, and continues to suffer, irreparable harm.

65. Downtown requests an injunction against Defendants' constructive termination of Downtown, a judgment in its favor and against Defendants, for compensatory and punitive damages, fees, and costs, in an amount to be determined at trial, and any other relief that this Court considers fit and necessary.

COUNT II – BREACH OF CONTRACT AND BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

66. Downtown restates and incorporates by reference the allegations contained in the forgoing paragraphs as if fully set forth herein.

67. Downtown and HMA formed an express contract by entering into the HMA Dealer Agreement.

68. Downtown and GMA formed an express contract by entering into the GMA Dealer Agreement.

69. Defendants breached their respective Dealer Agreements by unreasonably rejecting Downtown's proposal to relocate the business, thus constructively terminating the dealership.

70. This constructive termination is in violation of the Dealer Agreements, which do not allow Defendants to effectuate a constructive termination by unreasonably refusing to approve a relocation.

71. Every contract encompasses the implied covenant of good faith and fair dealing, which honors the contracting parties' reasonable expectations and protects the rights of the parties to receive the benefits of the agreement that they entered into.

72. Defendants breached the implied covenant of good faith and fair dealing by unreasonably rejecting the Proposed Locations, thus constructively terminating the Dealer Agreements.

73. As a direct and proximate result of Defendants' breach of contract and breach of the implied covenant of good faith and fair dealing, Downtown suffered, and continues to suffer, harm.

74. Downtown requests an injunction against Defendants' constructive termination of Downtown, a judgment in its favor and against Defendants for compensatory and punitive damages, fees, and costs, in an amount to be determined at trial, and any other relief which this Court considers fit and necessary.

COUNT III – VIOLATION OF TENNESSEE'S UNIFORM COMMERCIAL CODE – BAD FAITH (T.C.A. §§ 47-1-303 and 304)

75. Downtown restates and incorporates by reference the allegations contained in the forgoing paragraphs as if fully set forth herein.

76. The Dealer Agreements are contracts for the sale of goods.

77. Tennessee's Uniform Commercial Code mandates, "[e]very contract or duty within chapters 1-9 of this title imposes an obligation of good faith in its performance and enforcement." T.C.A. § 47-1-304.

78. Defendants have failed to act in good faith in the course of their performance and dealings with Downtown by constantly changing its relocation approval standards, refusing to

provide clear relocation requirements, and refusing to approve the First or Second Proposed Locations.

79. As a direct and proximate result of Defendants' breaches of Tennessee's UCC, Downtown suffered, and continues to suffer, harm.

80. Defendants'' refusal to act in good faith is unreasonable and will cause Downtown immediate and irreparable injury as it will result in the closure of Downtown, and the termination of its franchise.

81. Downtown requests an injunction against Defendants' constructive termination of Downtown, a judgment in its favor and against Defendants for compensatory and punitive damages, fees, and costs, in an amount to be determined at trial, and any other relief which this Court considers fit and necessary.

PRAYER FOR RELIEF

WHEREFORE, Downtown respectfully requests the following:

(a) On all Counts, damages in an amount to be determined at trial;

(b) On all Counts, preliminary and permanent injunctive relief against Defendants, approving Downtown's relocation to the Second Proposed Location;

(c) An award of reasonable attorney's fees and costs as authorized under the ADDCA; and

(d) Such other and further relief as the Court deems just and proper.

Dated:
October 12, 2022

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