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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

RAZVAN HOTARANU and LUIS FELIX, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

STAR NISSAN INC., JOHN KOUFAKIS SR., JOHN KOUFAKIS JR., STEVEN KOUFAKIS and MICHAEL KOUFAKIS,

Defendants.

Plaintiffs Razvan Hotaranu and Luis Felix (collectively "Plaintiffs"), individually and on behalf of all others similarly situated, as class representatives, upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover minimum wages, overtime pay, unpaid commissions and unlawful deductions for Plaintiffs and any similarly situated co-workers - sales representatives - who worked for Star Nissan Inc., John Koufakis Sr., John Koufakis Jr., Steven Koufakis and Michael Koufakis (collectively "Star Auto Group" or "Defendants").

2. Star Auto Group is one of the largest privately owned car dealerships in the New York metropolitan area.

3. According to their website, "John Koufakis Sr. started Star Auto Group as a standalone used car dealership in the 70's, [w]ith just himself as a sales specialist...he created

one of the largest auto groups in the North East.[1]" Currently, "Star Auto Group is [] a franchise dealer for Chrysler, Jeep, Dodge, Fiat, Toyota, Scion, Hyundai, Nissan and Subaru. Family owned & operated just like in the 70's.[2]"

4. In addition, Michael Koufakis has stated that the "[Koufakis] family [] ha[s] proudly owned and operated Star Nissan for over sixteen (16) years" and "owned and operated numerous [] dealerships in Queens and Nassau Counties for over twenty-five (25) years." **Exhibit ("Ex.") A**, Affidavit of Michael Koufakis ¶ 2.

5. Star Auto Group's success, however, has come at the expense of its commissioned sales representatives.

6. At Star Auto Group, sales representatives[3] are paid pursuant to a commission agreement plus a shift pay. However, in many instances a sales representative did not earn any commissions in a given pay period or did not earn enough commissions to reach the minimum wage and overtime requirements of the Fair Labor Standards Act ("FLSA") and New York Labor Law ("NYLL"). Regardless of how many hours sales representatives worked or the amount of commissions they earned, sales representatives were not paid additional compensation.

7. Pursuant to the commission agreement between Star Auto Group and its sales representatives, it was agreed that on the sale of new and used vehicles, sales representatives would receive a twenty (20) percent commission on the gross profit from the "front end" of a used vehicle sale and fifteen (15) percent commission on the gross profit from the "front end" of a new vehicle sale. Additionally, new car sales representatives were further promised eight (8)

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[1] *Available at*, http://www.starsubaru.com/dealership/staff.htm#, last visited January 21, 2016.
[2] *Id*.
[3] At Star Auto Group, a sales representative's principal activity involved the selling of new and used vehicles to customers.

percent commission of the profit on the "back end[4]" of new and used vehicle sales.

8. Notwithstanding its agreement with the sales representatives, Star Auto Group designed and implemented an ongoing scheme whereby it manipulated the gross profits of cars sold thereby reducing its sales representatives' commissions and increasing its own profits.

9. In violation of the NYLL, commissions owed were also reduced by "packs" added to the "front end" of new and used vehicles. Specifically, Star Auto Group would decrease the commissionable gross by adding "packs" of approximately $750 to the "front end" of used vehicles and approximately $250 to the "front end" of new vehicles.

10. Moreover, Star Auto Group would also reduce the commissionable gross when a customer traded-in one vehicle for the purchase of another vehicle of a different make and model. For example, if a customer purchased a Nissan and traded-in a Subaru as part of that sale, approximately $500 would be deducted from the "front end" of the deal as a payment to Subaru for storing the vehicle despite being operated by the same auto group. As a result of this practice, sales representatives' commissions are impermissibly reduced.

11. Additionally, Star Auto Group often gave sales representatives flat commissions on certain deals regardless of the profit margin on the "front" or "back end." Such deals included, but were not limited to, deals where the vehicle was previously listed on Craig's List, leased vehicles, and deals where the buyers require specially financed deals as the result of bad credit.

12. Star Auto Group also has a policy and/or practice whereby sales representatives are impermissibly charged back paid commissions for reasons including, but not limited to: repairs. These often unexplained charge backs, are often made weeks or months after the sales

[4] Generally referring to the sale of extended warranties, service contracts, and accessories.

representative closed a deal, received the commission, and were given a commission breakdown. The reduction of commissions by the imposition of these charge backs was not agreed upon in writing with the sales representatives, in violation of the NYLL.

13. Plaintiffs sustained direct and proximate financial harm to their income as a result of Defendants' unscrupulous business practices, perpetrated in order to avoid payment to its employees.

14. Upon information and belief, Star Auto Group employs at least 500 people, over 150 of which are car salespersons, known as sales representatives.

15. Plaintiffs bring this action on behalf of themselves and all other similarly situated current and former employees in the position of sales representatives at Star Auto Group who elect to opt into this action pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq*., and specifically the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the minimum wage provisions of the FLSA.

16. Plaintiffs also bring claims on behalf of themselves and a class of similarly situated current and former employees who work or worked for Defendants as sales representatives in New York, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for failure to pay minimum wage, overtime pay, failure to pay agreed upon wages, unlawful retention of wages, and unlawful deduction of commissions in violation of the NYLL Article 19, §§ 650 *et seq*., the NYLL Article 6, §§ 190, 191 *et seq.*, and 193, the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142, and the common law.

THE PARTIES

Plaintiffs

Razvan Hotaranu

17. Plaintiff Razvan Hotaranu ("Hotaranu") is an adult individual who is a resident of Richmond Hill, New York.

18. Hotaranu was employed by Star Auto Group as a sales representative from in or around January 2013 through January 2015.

19. As a sales representative, Hotaranu's principal activity involved the sale of new and used cars to customers.

20. Hotaranu is a covered employee within the meaning of the FLSA and the NYLL.

21. A written consent form for Hotaranu is being filed with this Class Action Complaint.

Louis Felix

22. Plaintiff Louis Felix ("Felix") is an adult individual who is a resident of Wellington, Florida.

23. Felix was employed by Star Auto Group as a sales representative from on or around August 30, 2013 through December 28, 2015.

24. As a sales representative, Felix's principal activity involved the sale of new and used cars to customers.

25. Felix is a covered employee within the meaning of the FLSA and the NYLL.

26. A written consent form for Felix is being filed with this Class Action Complaint.

Defendants

27. Defendants Star Nissan Inc., John Koufakis Sr., John Koufakis Jr., Steven Koufakis and Michael Koufakis jointly employed Plaintiffs and similarly situated employees at all times relevant.

28. Each Defendant had substantial control over Plaintiffs' working conditions, and over the unlawful policies and practices alleged herein.

29. During all relevant times, Defendants have been Plaintiffs' and similarly situated sales representatives' employers within the meaning of the FLSA and NYLL.

30. Upon information and belief, during all relevant times, all of the Star Auto Group dealerships shared a common management and were centrally controlled and/or owned by Defendants.

31. Upon information and belief, during all relevant times, Defendants have had control over, and the power to change compensation practices at Star Auto Group.

32. Upon information and belief, Defendants have had the power to determine employee policies at Star Auto Group, including, but not limited to, minimum wages, overtime pay, the payment of commissions, deductions from commissions, and commission charge backs.

Star Nissan Inc.

33. Together with the other Defendants, Star Nissan Inc. ("Star Nissan") owned and/or operated Star Auto Group during the relevant period.

34. Star Nissan's principal executive office is located at 206-02 Northern Boulevard, Bayside, NY 11361.

35. Star Nissan is a domestic corporation doing business in New York State.

36. At all relevant times, Star Nissan maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including, but not limited to, hiring, firing,

disciplining, timekeeping, payroll, and other employment practices.

37. Star Nissan applied the same employment policies, practices, and procedures to all sales representatives at Star Auto Group, including policies, practices, and procedures with respect to payment of minimum wages, overtime pay, commissions and other wages.

38. Star Nissan is a covered employer within the meaning of the FLSA and NYLL, and, at all times relevant employed Plaintiffs and/or jointly employed Plaintiffs and similarly situated employees.

39. Upon information and belief, at all relevant times Star Nissan had an annual gross volume of sales in excess of $500,000.

Individual Defendants

40. John Koufakis Sr., John Koufakis Jr., Steven Koufakis and Michael Koufakis ("Individual Defendants"), maintained control over, oversaw, and directed the operation of Star Auto Group, including its employment practices, during the relevant period.

41. Upon information and belief, the Individual Defendants manage and/or operate Star Auto Group.

42. During all times relevant, the Individual Defendants were "employers" under the FLSA and NYLL, and employed or jointly employed Plaintiffs and similarly situated employees.

43. Upon information and belief, throughout the relevant period, the Individual Defendants have had the power to control the operations and compensation practices at Star Auto Group.

John Kaufakis Sr.

44. Upon information and belief, John Koufakis Sr. is a resident of the State of New York.

45. At all relevant times, John Koufakis Sr. has been the founder and co-owner of Star Auto Group.

46. John Koufakis Sr. has an office at Star Nissan 206-02 Northern Boulevard, Bayside, NY 11361.

47. The NYS Dept. of State filings for Star Nissan identifies John Koufakis Sr. as the CEO.

48. In an affidavit submitted in the matter titled *Collins v. Star Nissan et al.*, John Koufakis Sr. identified himself as the President of Star Nissan. **Ex. B**, Affidavit in Opposition, John Koufakis.

49. At all relevant times, John Koufakis Sr. has had power over personnel decisions at Star Auto Group, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

50. At all relevant time, John Koufakis Sr. has had power over payroll decisions at Star Auto Group, including the power to retain time and/or wage records.

51. At all relevant times, John Koufakis Sr. is actively involved in managing the day to day operations of Star Auto Group.

52. At all times relevant, John Koufakis Sr. has also had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

53. At all relevant times, John Koufakis Sr. has had the power to transfer the assets and/or liabilities of Star Auto Group.

54. At all relevant times, John Koufakis Sr. has had the power to enter into contracts on behalf of Star Auto Group.

55. At all relevant time, John Koufakis Sr. has had the power to close, shut down,

and/or sell Star Auto Group dealerships.

56. John Koufakis Sr. is a covered employer within the meaning of the FLSA and NYLL, and at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

John Koufakis Jr.

57. Upon information and belief, Defendant John Koufakis Jr. is a resident of the State of New York.

58. At all relevant times, John Koufakis Jr. has been a co-owner and manager of Star Auto Group.

59. John Koufakis Jr. has an office at Star Nissan 206-02 Northern Boulevard, Bayside, NY 11361.

60. At all relevant times, John Koufakis Jr. has had power over personnel decisions at Star Auto Group, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

61. At all relevant time, John Koufakis Jr. has had power over payroll decisions at Star Auto Group, including the power to retain time and/or wage records.

62. At all relevant times, John Koufakis Jr. is actively involved in managing the day to day operations of Star Auto Group.

63. At all times relevant, John Koufakis Jr. has also had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

64. At all relevant times, John Koufakis Jr. has had the power to transfer the assets and/or liabilities of Star Auto Group.

65. At all relevant times, John Koufakis Jr. has had the power to enter into contracts

on behalf of Star Auto Group.

66. At all relevant time, John Koufakis Jr. has had the power to close, shut down, and/or sell Star Auto Group dealerships.

67. John Koufakis Jr. is a covered employer within the meaning of the FLSA and NYLL, and at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

Steven Koufakis

68. Upon information and belief, Defendant Steven Koufakis is a resident of the State of New York.

69. At all relevant times, Steven Koufakis has been a co-owner and manager of Star Auto Group.

70. Steven Koufakis holds himself out to be the "Dealer Principle" of the Star Auto Group.[5]

71. At all relevant times, Steven Koufakis has had power over personnel decisions at Star Auto Group, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

72. At all relevant time, Steven Koufakis has had power over payroll decisions at Star Auto Group, including the power to retain time and/or wage records.

73. At all relevant times, Steven Koufakis is actively involved in managing the day to day operations of Star Auto Group.

74. At all times relevant, Steven Koufakis has also had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

[5] *Available at*, http://starcarsny.com/Staff/, last visited January 21, 2016.

75. At all relevant times, Steven Koufakis has had the power to transfer the assets and/or liabilities of Star Auto Group.

76. At all relevant times, Steven Koufakis has had the power to enter into contracts on behalf of Star Auto Group.

77. At all relevant time, Steven Koufakis has had the power to close, shut down, and/or sell Star Auto Group dealerships.

78. Steven Koufakis is a covered employer within the meaning of the FLSA and NYLL, and at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

Michael Koufakis

79. Upon information and belief, Defendant Michael Koufakis is a resident of the State of New York.

80. At all relevant times, Michael Koufakis has been a co-owner and manager of Star Auto Group.

81. In an affidavit submitted in the matter titled, *Star Nissan, Inc. v. Nissan Motor Corp. in the USA,* Michael Koufakis identified himself as the Executive Manager of Star Nissan. **Ex. A**, Affidavit of Michael Koufakis.

82. At all relevant times, Michael Koufakis has had power over personnel decisions at Star Auto Group, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

83. At all relevant time, Michael Koufakis has had power over payroll decisions at Star Auto Group, including the power to retain time and/or wage records.

84. At all relevant times, Michael Koufakis is actively involved in managing the day

to day operations of Star Auto Group.

85. At all times relevant, Michael Koufakis has also had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

86. At all relevant times, Michael Koufakis has had the power to transfer the assets and/or liabilities of Star Auto Group.

87. At all relevant times, Michael Koufakis has had the power to enter into contracts on behalf of Star Auto Group.

88. At all relevant time, Michael Koufakis has had the power to close, shut down, and/or sell Star Auto Group dealerships.

89. Michael Koufakis is a covered employer within the meaning of the FLSA and NYLL, and at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

JURISDICTION AND VENUE

90. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and 1337, and jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

91. This Court also has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

92. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

93. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 because a substantial part of the acts or omissions giving rise to Plaintiffs' claims occurred in this district.

COLLECTIVE ACTION ALLEGATIONS

94. Plaintiffs bring the First Cause of Action, an FLSA claim, on behalf of themselves and all similarly situated current and former sales representatives employed at Star Auto Group owned, operated, and/or controlled by Defendants, for a period July 12, 2013 and the date of final judgment in this matter, and who elect to opt-in to this action (the "FLSA Collective Members").

95. At all relevant times, Plaintiffs and the FLSA Collective Members have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants' decision, policy, plan, and common programs, practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay Plaintiffs at the legally required minimum wage for all hours worked. Plaintiffs' claims stated herein are essentially the same as those of the other FLSA Collective Members.

96. Defendants' unlawful conduct, as described in this Class Action Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by failing to pay full minimum wages.

97. Defendants are aware or should have been aware that federal law required them to pay employees minimum wage for all of the hours they work.

98. Defendants' unlawful conduct has been widespread, repeated, and consistent.

99. The First Cause of Action is properly brought under and maintained as an opt-in collective action pursuant to 29 U.S.C. 216(b).

100. The FLSA Collective Members are readily ascertainable.

101. For the purpose of notice and other purposes related to this action, the FLSA Collective Members' names and addresses are readily available from Defendants' records.

102. Notice can be provided to the FLSA Collective Members via first class mail to the last address known to Defendants.

CLASS ACTION ALLEGATIONS

103. Plaintiffs bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action, NYLL and common law claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a class of persons consisting of:

> All persons who have worked as sales representatives at the Star Nissan dealership operated by the Star Auto Group in New York between July 12, 2010 and the date of final judgment in this matter (the "Rule 23 Class").

104. Excluded from the Rule 23 Class are Defendants; Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who has had at any time during the class period, a controlling interest in Star Auto Group; the judge(s) to whom this case is assigned and any member of the judge(s)' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Rule 23 Class.

105. The members of the Rule 23 Class ("Class Members") are readily ascertainable. The number and identity of the Rule 23 Class Members are determinable from the Defendants' records. The hours assigned and worked, the positions held, pay, and commissions for each Rule 23 Class Member are also determinable from Defendants' records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Federal Rule of Civil Procedure 23.

106. The Rule 23 Class Members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

107. There are more than fifty Rule 23 Class Members.

108. The Plaintiffs' claims are typical of those claims which could be alleged by any Rule 23 Class Member, and the relief sought is typical of the relief which would be sought by each Rule 23 Class Member in separate actions.

109. All the Rule 23 Class Members were subject to the same corporate practices of Defendants, as alleged herein, of failing to pay minimum wages, overtime wages, commissions, failing to provide proper annual wage and hour notices, and failing to provide proper wage statements.

110. The Plaintiffs and the Rule 23 Class Members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL.

111. The Plaintiffs and the Rule 23 Class Members have all been injured in that they have been under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all Rule 23 Class Members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class Members.

112. The Plaintiffs and other Rule 23 Class Members sustained similar losses, injuries, and damages arising from the same unlawful policies, practices, and procedures.

113. The Plaintiffs are able to fairly and adequately protect the interests of the Rule 23 Class Members and have no interests antagonistic to the Rule 23 Class Members.

114. The Plaintiffs are represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

115. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual Rule 23 Class Members are small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Rule 23 Class Members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual Rule 23 Class Members would create a risk of inconsistent and/or varying adjudications with respect to the individual Rule 23 Class Members, establishing incompatible standards of conduct for Defendants and resulting in the impairment of the Rule 23 Class Members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

116. Upon information and belief, Defendants and other employers throughout the state violate the NYLL. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so

can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity, which allows for the vindication of their rights while eliminating or reducing these risks.

117. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

118. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting the Plaintiffs and the Rule 23 Class Members individually and include, but are not limited to, the following:

(a) whether Defendants failed to pay Plaintiffs and the Rule 23 Class minimum wages for all of the hours they worked;

(b) whether Defendants correctly compensated Plaintiffs and the Rule 23 Class for hours worked in excess of 40 hours per workweek;

(c) whether Defendants failed to pay Plaintiffs and the Rule 23 Class wages and all other monies earned in accordance with their commission agreement, as required by NYLL §§ 191 *et seq.*;

(d) whether Defendants failed calculate Plaintiffs' and the Rule 23 Class' commissions in accordance with their commission agreement, as required by NYLL §§ 191 *et seq.*;

(e) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with accurate statements of earnings, as required by the NYLL;

(f) whether Defendants made unlawful deductions from the wages of Plaintiffs and the Rule 23 Class, in violation of the NYLL §§ 193 *et seq.*;

(g) whether Defendants failed to pay Plaintiffs and the Rule 23 Class agreed upon wages;

(h) whether Defendants' policy of failing to pay Plaintiffs and the Rule 23 Class was instituted willfully or with reckless disregard of the law;

(i) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with a proper statement with every payment of wages and proper wage notices as required by the NYLL; and

(j) the nature and extent of class-wide injury and the measure of damages for those injuries.

PLAINTIFFS' FACTUAL ALLEGATIONS

119. Consistent with Defendants' policies, patterns or practices as described herein, Defendants harmed Plaintiffs individually as follows:

Razvan Hotaranu

120. Defendants did not pay Hotaranu the proper minimum wages, overtime pay, and other wages for all of the time that he was suffered or permitted to work each workweek.

121. Defendants withheld from Hotaranu commissions he earned from selling new and used vehicles for Defendants, where Defendants had agreed to pay these commissions to Hotaranu upon performance, and where such commissions were due to Hotaranu in accordance with the agreed terms of his employment.

122. Defendants would only pay Hotaranu flat commissions on certain deals, regardless of the gross profit on the car sold. Hotaranu never agreed to the commission structure for flat commissions and such deals were not paid in accordance with the agreed terms of his employment.

123. Defendants failed to calculate Hotaranu's commissions in accordance with the agreed upon terms of his commission agreement.

124. Defendants made deductions from Hotaranu's wages that were not in accordance with the provisions of any law, rule, or regulation, and that were not expressly authorized by Hotaranu nor made for his benefit.

125. During his employment, Hotaranu generally worked the following scheduled hours unless he missed time for vacation, sick days, or holidays:

- Monday through Friday from approximately 9:00 a.m. until 6:00 p.m. through 8:00 p.m. and every other Saturday from approximately 9:00 a.m. until 6:00 p.m. through 8:00 p.m.

126. Defendants failed to furnish Hotaranu with accurate statements of wages, hours worked, rates paid, and gross wages, or an accurate annual wage notice.

Louis Felix

127. Defendants did not pay Felix the proper minimum wage, overtime pay, and other wages for all of the time that he was suffered or permitted to work each workweek.

128. Defendants withheld from Felix commissions he earned from selling new and used vehicles for Defendants, where Defendants had agreed to pay these commissions to Felix upon performance, and where such commissions were due to Felix in accordance with the agreed terms of his employment.

129. Defendants would only pay Felix flat commissions on certain deals, regardless of the gross profit on the car sold. Felix never agreed to the commission structure for flat commissions and such deals were not paid in accordance with the agreed terms of his employment.

130. Defendants failed to calculate Felix's commissions in accordance with the agreed upon terms of his commission agreement.

131. Defendants made deductions from Felix's wages that were not in accordance with the provisions of any law, rule, or regulation, and that were not expressly authorized by Halliday nor made for his benefit.

132. During his employment, Felix generally worked the following scheduled hours unless he missed time for vacation, sick days, or holidays:

- Monday through Friday from approximately 9:00 a.m. until 6:00 p.m. through 8:00 p.m. and every other Saturday from approximately 9:00 a.m. until 6:00 p.m. through 8:00 p.m.

133. Defendants failed to furnish Felix with accurate statements of wages, hours worked, rates paid, and gross wages, or an accurate annual wage notice.

FIRST CAUSE OF ACTION

Fair Labor Standards Act - Failure to Pay Minimum Wage (Brought on behalf of Plaintiffs and the FLSA Collective)

134. Plaintiffs, on behalf of themselves and the FLSA Collective Members, reallege and incorporate by reference all allegations in all preceding paragraphs.

135. Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Class Action Complaint.

136. At all relevant times, each of the Defendants has been, and continues to be, an employer engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of FLSA, 29 U.S.C. § 203. At all relevant times, each Defendant has employed "employee[s]," including Plaintiffs and the FLSA Collective Members.

137. Defendants were required to pay directly to Plaintiffs and the FLSA Collective Members the applicable minimum wage rates for all hours worked.

138. Defendants failed to pay Plaintiffs and the FLSA Collective Members the minimum wages to which they are entitled under the FLSA.

139. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiffs and the FLSA Collective Members.

140. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. §§ 201 *et seq.*

141. As a result of Defendants' willful violations of the FLSA, Plaintiffs and the FLSA Collective Members have suffered damages by being denied minimum wages in accordance with

the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

SECOND CAUSE OF ACTION

New York Labor Law - Minimum Wage
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

142. Plaintiffs, on behalf of themselves and the Rule 23 Class Members, reallege and incorporate by reference all allegations in all preceding paragraphs.

143. Defendants have engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class Action Complaint.

144. At all times relevant, Plaintiffs and Rule 23 Class Members have been employees of Defendants, and Defendants have been employers of Plaintiffs and the Rule 23 Class Members within the meaning of the NYLL §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

145. At all times relevant, Plaintiffs and the Rule 23 Class Members have been covered by the NYLL.

146. Defendants have failed to pay Plaintiffs and the members of the Rule 23 Class the minimum hourly wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations.

147. Pursuant to the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations, Defendants have been required to pay Plaintiffs and the members of the Rule 23 Class the full minimum wage at a rate of (a) $7.25 per hour for all hours worked from July 24, 2009 through the December 30, 2013; and (b) $8.00 per hour for all hours worked from December 31, 2013 to December 30, 2014; (c) $8.75 per hour for all hours worked

from December 31, 2014 to December 30, 2015; and (d) $9.00 per hour for all hours worked from December 31, 2015 to the present under the NYLL §§ 650 *et seq.* and the supporting New York State Department of Labor Regulations.

148. Through their knowing or intentional failure to pay minimum hourly wages to Plaintiffs and the Class Members, Defendants willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

149. Due to Defendants' willful violations of the NYLL, Plaintiffs and the Rule 23 Class Members are entitled to recover from Defendants their unpaid minimum wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION

New York Labor Law– Unpaid Overtime
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

150. Plaintiffs, on behalf of themselves and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

151. Defendants failed to pay Plaintiffs and the Rule 23 Class Members the proper overtime wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations.

152. Defendants failed to pay Plaintiffs and the Rule 23 Class Members one-and-one-half times the full minimum wage for all work in excess of 40 hours per workweek.

153. Through their knowing or intentional failure to pay Plaintiffs and the Rule 23 Class Members overtime wages for hours worked in excess of 40 hours per workweek, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations. *See also, Karic v. Major Auto. Companies Inc.*,

992 F. Supp. 2d 196, 200 (E.D.N.Y. 2014) (commission sales representatives entitled to overtime pay pursuant to NYLL).

154. Due to Defendants' willful violations of the NYLL, Plaintiffs and the Rule 23 Class Members are entitled to recover from Defendants their unpaid overtime wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

FOURTH CAUSE OF ACTION

New York Labor Law – Unpaid Commissions
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

155. Plaintiffs, on behalf of themselves and the Rule 23 Class Members, reallege and incorporate by reference all allegations in all preceding paragraphs.

156. At all times relevant, Plaintiffs and the members of the Rule 23 Class have been employees within the meaning of NYLL §§ 190, *et seq.*, and any supporting New York State Department of Labor regulations.

157. At all times relevant, Defendants have been employers within the meaning of NYLL §§ 190, *et seq.*, and any supporting New York State Department of Labor regulations.

158. At all times relevant, Plaintiffs and the members of the Rule 23 Class were employed as commission sales persons within the meaning of NYLL §§ 190, 191(c) *et seq.*

159. The wage payment provisions of Article 6 of the NYLL and any supporting New York State Department of Labor Regulations apply to Defendants and protect Plaintiffs and the Rule 23 Class.

160. Defendants failed to pay Plaintiffs' and the Rule 23 Class' commissions earned in accordance with the agreed upon terms of their employment.

161. Defendants failed to calculate Plaintiffs' and the Rule 23 Class' commissions in

accordance with the terms of their commission agreement.

162. By Defendants' knowing or intentional failure to pay earned commissions to Plaintiffs and the Rule 23 Class, Defendants have willfully violated NYLL Article 6, § 191(1)(c).

163. Defendants also violated NYLL Article 6, § 191(1)(c) by failing to furnish Plaintiffs and the Rule 23 Class with an accurate statement of earnings.

164. Due to Defendants' violations of the NYLL, Plaintiffs and the Rule 23 Class are entitled to recover from Defendants their unpaid wages, liquidated damages, as provided for by NYLL Article 6 § 198, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION

New York Labor Law – Unlawful Deductions From Wages
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

165. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

166. Defendants made unlawful deductions from the wages of Plaintiffs and the Rule 23 Class.

167. The deductions Defendants made from the wages of Plaintiffs and the Rule 23 Class were not expressly authorized in writing by Plaintiffs and the Rule 23 Class, and were not for the benefit of Plaintiffs and the Rule 23 Class.

168. Defendants' unlawful deductions include, but are not limited to, repairs to vehicles, floor mats, and missing keys.

169. By Defendants' knowing or intentional effort to make deductions from the wages of Plaintiffs and the Rule 23 Class, Defendants have willfully violated NYLL Article 6, § 193.

170. Due to Defendants' violations of the NYLL, Plaintiffs and the Rule 23 Class are entitled to recover from Defendants their unpaid wages, liquidated damages, as provided for by

NYLL Article 6 § 198, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SIXTH CAUSE OF ACTION

New York Labor Law - Breach of Contract
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

171. Plaintiffs, on behalf of themselves and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

172. Plaintiffs and members of the Rule 23 Class entered into employment contracts with Defendants, including implied and/or express contracts.

173. Defendants agreed to pay Plaintiffs and members of the Rule 23 Class twenty (20) percent commission on the gross profit from the "front end" of a used vehicle sale; fifteen (15) percent commission on the gross profit from the "front end" of a new vehicle sale; and eight (8) percent commission of the profit on the "back end" of new and used vehicle sales.

174. As consideration for these payments from Defendants, Plaintiffs and members of the Rule 23 Class agreed to, and did, provide their labor and services for Defendants.

175. Plaintiffs and members of the Rule 23 Class fully performed all of their obligations under the agreement.

176. With regards to commissions, the terms of these contracts included, but were not limited to:

(a) Defendants agreed to pay commissions to Plaintiffs and members of the Rule 23 Class;

(b) Plaintiffs and members of the Rule 23 Class were to earn commissions by selling vehicles for Defendants; and

(c) The commissions were considered earned when Plaintiffs and members of the Rule 23 Class sold vehicles.

177. Defendants breached the agreement by failing to pay Plaintiffs and members of the Rule 23 Class all commissions and other wages earned.

178. Defendants breached the agreement by failing to calculate Plaintiffs' and members of the Rule 23 Class' commissions in accordance with their commission agreements.

179. Defendant's failure to comply with the terms of the agreement constitutes a breach of contract.

180. As a result of the foregoing, Plaintiff has suffered damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
New York Labor Law – Failure to Provide Proper Wage Notices
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

181. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

182. Defendants failed to furnish Plaintiffs and the members of the Rule 23 Class with wage notices as required by NYLL, Article 6, § 195(1), in English or in the language identified by each employee as their primary language, at the time of hiring, and on or before February first of each subsequent year of the employee's employment with the employer, a notice containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

183. Due to Defendants' violations of NYLL, Article 6, § 195(1), Plaintiffs and the members of the Rule 23 Class are entitled to statutory penalties of fifty dollars for each workday that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with proper wage notices, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

EIGHTH CAUSE OF ACTION
New York Labor Law – Failure to Provide Proper Wage Statements
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

184. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

185. Defendants failed to furnish Plaintiffs and the members of the Rule 23 Class with a statement with every payment of wages as required by NYLL, Article 6, § 195(3), listing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; and the number of regular and overtime hours worked.

186. Due to Defendants' violations of NYLL, Article 6, § 195(3), Plaintiffs and the members of the Rule 23 Class are entitled to statutory penalties of two hundred fifty dollars for each workday that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with proper wage statements, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, collectively and on behalf of all other similarly situated persons, pray for the following relief:

A. At the earliest possible time, Plaintiffs should be allowed to give notice of this class action, or that the court issue such notice, to all persons who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, been employed by Star Auto Group at its dealerships in New York as sales representatives or in roles with the same or similar duties but different titles. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper minimum wage;

B. Unpaid minimum wages and an additional and equal amount as liquidated damages pursuant to 29 U.S.C. §§ 201 *et seq*. and the supporting United States Department of Labor regulations for Plaintiffs and all those similarly situated;

C. Unpaid minimum wages, overtime pay, agreed upon wages, unpaid commissions and unlawful deductions of wages, along with liquidated damages and interest, pursuant to NYLL Article 6, §§ 190 *et seq.* and Article 19, §§ 650 *et seq*., and the supporting New York State Department of Labor regulations.

D. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

E. Designation of Plaintiffs as representatives of the Rule 23 Class, and counsel of record as Class Counsel;

F. Pre-judgment interest and post-judgment interest;

G. An injunction requiring Defendants to pay all statutorily required wages pursuant to the NYLL;

H. Issuance of a declaratory judgment that the practices complained of in this Class Action Complaint are unlawful under NYLL Article 6, §§ 190, 191 *et seq.*, and 193, and NYLL Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations;

I. Statutory penalties of fifty dollars for each workday that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with proper wage notices, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

J. Statutory penalties of two hundred fifty dollars for each workday that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with proper wage statements, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

K. Reasonable attorneys' fees and costs of the action; and

L. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
September 26, 2016

Respectfully submitted,

FITAPELLI & SCHAFFER, LLP
By: _____
Joseph A. Fitapelli

FITAPELLI & SCHAFFER, LLP
Joseph A. Fitapelli
Frank J. Mazzaferro
28 Liberty Street, 30th Floor
New York, New York 10005
Telephone: (212)300-0375

Attorneys for Plaintiffs and the Putative Class

FAIR LABOR STANDARDS ACT CONSENT

1. I consent to be a party plaintiff in a lawsuit against Star Nissan Auto Group and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I hereby designate FITAPELLI & SCHAFFER, LLP ("the Firm") to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorney's fees from any settlement or judgment in the amount of the greater of: (1) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

Signature

RAZVAN HOTARANU

Full Legal Name (Print)

[redacted]

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Signature 9/07/16

Full Legal Name (Print)

[redacted]

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
STAR NISSAN, INC.,

Plaintiff,

-against-

Civil Action No.:
1:08-CV-670(JG)

NISSAN MOTOR CORPORATION IN THE U.S.A., also known as NISSAN NORTH AMERICA CORPORATION,

Defendant.
----------X

AFFIDAVIT OF MICHAEL KOUFAKIS IN SUPPORT OF A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

MICHAEL KOUFAKIS, being duly sworn, deposes and says:

1. I am the Executive Manager of Star Nissan, Inc. (hereinafter, "Star Nissan"). I respectfully submit this affidavit in support of Star's Motion for a Temporary Restraining Order and Preliminary Injunction to enjoin the Defendant, Nissan Motor Corporation in U.S.A. (also known as Nissan North America Corporation) (hereinafter, "Nissan North America") from authorizing the relocation of a competing Nissan dealership to a point unreasonably close to Star Nissan's area of responsibility and thereby constructively terminating Star's Nissan Dealer Sales and Service Agreement (hereinafter, "Dealer Agreement"). In other words, this motion seeks to enjoin Nissan North America from authorizing the relocation of the competing Nissan dealership into market areas and affluent communities presently served by Star Nissan while a declaratory judgment action proceeds on this issue. A copy of the pleadings in that action is annexed as Exhibit 1.

2. My family and I have proudly owned and operated Star Nissan for over sixteen (16) years. Furthermore, I have been in the automobile business my entire life. My family has owned and operated numerous new vehicle dealerships in Queens and Nassau Counties for over twenty-five (25) years. They have worked in the car business for over forty-six (46) years.

3. During that time, my family and I have operated these dealerships with great success. I am delighted to report that my family and I have developed a reputation for honesty and high customer satisfaction. These facts are reflected by, for example, the numerous awards that we have received from various automobile manufacturers based upon our outstanding performance, including awards from Nissan.

4. Since the inception of Star Nissan and pursuant to the Dealer Agreement, the territory within which Star Nissan operates its business has been in the Northeastern Section of Queens County, New York. More specifically, the dealership is located at 206-02 Northern Blvd., Bayside, NY. Northern Blvd. is an east\west, high-volume corridor near the Clearview Expressway.

5. The market area within which Star Nissan sells and services automobiles covers both northeastern Queens and northwestern Nassau County, New York. In fact, over the past three (3) years, a significant number of all vehicles sold by Star Nissan have been to customers residing in the easternmost portion of Queens: Douglaston and Little Neck, as well as Nassau County. Attached hereto as Exhibit "2" is a schedule of total vehicle sales at Star Nissan over the past three years in order to demonstrate that

over the last 3 years, 19% to 20% of all our sales customers came from Nassau County, Little Neck and Douglaston.

6. It is fair to state that dealerships such as Star Nissan focus their energies to service the needs of customers within their immediate geographic area. This focus may include promotional materials such as direct mailings and advertising in local news publications. Even more importantly, our focus centers on building a strong reputation among our customer base through quality sales and service within the area closest to our dealership's facilities. Simply stated, every automobile dealership is best able to serve customers within its locality if it is centrally located and closest to the highest concentration of population within its market area. Ideally, dealerships should be located at or near the center of their market area in order to best serve all customers within a specific territory and to avoid unfair competition and infringement upon territories which have been designated as belonging to other competing dealers. Attached hereto is Exhibit "3" is a copy of the Star Nissan Dealer Agreement, which includes a map indicating the market area within which Star is required by contract to concentrate its sales and service efforts.

7. Star Nissan recently learned that the competing Nassau County Nissan dealership in Great Neck, New York, entered into a contract to sell substantially all of its Nissan assets. This dealership is presently known as Biener Nissan and is located at 803 Northern. Blvd., Great Neck, NY. Star Nissan has also learned that upon completion of the sale, the Great Neck Nissan dealership intends to relocate to facilities located in an area in which Star Nissan has historically maintained significant sales and service

customers. Their intended relocation site is to 240 Northern Blvd, Great Neck, NY. This is very near the border of Great Neck and Douglaston.

8. If this relocation is allowed, this competing Nissan dealership will significantly impact both sales and service volume at the Plaintiff's dealership. The relocated dealership would be 1.03 miles closer to Star Nissan. Presently, the dealerships are 4.02 miles apart and this potential relocation naturally places Biener Nissan a full 25% closer to our dealership. No other Nissan dealerships in Nassau and Queens Counties are presently closer than six (6) miles from each other. Moreover, Nissan dealerships are properly spread out geographically so that there is now at least a fifteen (15) minute drive between any two. If this relocation were permitted, the time by car between the relocated dealership and Star Nissan would be approximately five (5) minutes and a few traffic lights.

9. The proposed relocation would set the competing Nissan dealer on Star Nissan's side of the Great Neck, an extraordinarily affluent North Shore community. Great Neck is divided by a single, massively-traveled road running north/south called Lakeville Road/Middle Neck Road. (This is a single road, the name changes at Northern Blvd, hereinafter referred to as "Lakeville Rd.") At present, Biener Nissan is at 803 Northern Blvd., east of Lakeville Road and therefore on the east side of Great Neck. Star Nissan is at 206-02 Northern Blvd, west of Lakeville Rd. and on the west side of Great Neck. This proposed western relocation of Biener Nissan would place it on Star Nissan's side of Lakeville Rd and well into geographic areas historically served by Star Nissan. Furthermore, by moving only three miles from Star Nissan and on the very

same road: Northern Blvd., it is without question that the competing Nissan dealership will not only maintain all of its existing customer base, but will also add customers from the west end of Great Neck as well as Little Neck and Douglaston. In fact, Star Nissan will be the only party damaged by the improper relocation.

10. At present, all traffic heading in either a north or south direction on the highly traveled Lakeville Rd. may proceed east on Northern Blvd for Biener Nissan's dealership or west on Northern Blvd. for Star Nissan. If the proposed relocation were to be permitted by the Defendant, all local traffic heading north or south on Lakeville Rd. would have to turn west for a Nissan dealership and come to the relocated Biener Nissan well before Star Nissan.

11. Nissan North America will reduce Star Nissan's market area by relocating Biener Nissan westward and 1.03 miles closer. At present the dealerships are 4.02 miles apart. Biener Nissan's market area will increase to include most, if not all, of the affluent community of Great Neck and communities to its north. Star Nissan will lose significant market share. Essentially, the competing Nissan dealer will have its old market area from Lakeville Rd eastward, in addition to a new, huge market area west of Lakeville Rd presently serviced by Star Nissan.

12. Upon learning of this proposed relocation, I contacted the Defendant to object and inform them of the significant impact this relocation would have upon my family dealership. The Defendant's representative curtly advised me that Star Nissan had no right to oppose the relocation and that the Defendant was presumably free to authorize the relocation of Biener Nissan regardless of its impact upon Star Nissan.

Attached hereto as Exhibit "4" is a copy of a letter addressed to the Defendant wherein Star Nissan protests the proposed relocation and urges them to reconsider.

13. It is respectfully submitted that the Defendant has not undertaken any meaningful consultation with Star Nissan regarding the relocation or undertaken any market studies to determine how this relocation impacts Star Nissan. It is respectfully submitted that the time necessary to drive from any Nissan dealership to any other Nissan dealership within Queens County is no less than fifteen (15) minutes. Conversely, if relocation of the competing Nissan point is allowed, it will become less than a five minute drive from Star Nissan. Of course, the impact of the proposed relocation to a point (25%) closer to our dealership is amplified by the fact that the dealerships would also be on the very same road. Attached hereto as Exhibit "5" is the Nissan Nissan Notice of Primary Market Area along with relevant maps exhibiting the location of the Star Nissan dealership in relation to Biener Nissan and the proposed relocated facility.

14. Over the years, Star Nissan has spent millions of dollars upgrading their facilities in order to better represent Nissan and better serve our customers. The expenditures, while significant, have also resulted in Star Nissan's ability to become an outstanding dealership that routinely places in the upper echelon for sales and service scores in the New York City area.

15. It is respectfully submitted however, that the Defendant wants Star Nissan to spend even more money on its facilities pursuant to a program known among Nissan dealers as "NREDI". The NREDI program requests that dealers spend, in certain

instances, well in excess of $1,000,000.00 renovating their facilities. To date, Star Nissan has opposed the NREDI renovating their facilities. To date, Star Nissan has opposed the NREDI program at our dealership as additional renovations at this time simply are not warranted. It is further submitted that the Defendant's apparent willingness to consent to the unfair encroachment upon Star Nissan's territory is in large part in retaliation for Star Nissan's unwillingness to undertake needless renovations requested pursuant to Nissan's NREDI program.

16. If this relocation is not stopped, there is no question that Star Nissan will lose a significant portion of its sales and service business. It is simply inequitable for the Defendant to allow two dealerships to be within such close proximity and make each fight for what had been a single market share. Such actions are particularly egregious toward Star Nissan because we built this dealership based upon the reasonable expectation of a market area which naturally includes the highly affluent areas of northwestern Nassau County and northeastern Queens County.

17. There is no Nissan dealership presently at the intended location. Arguments that the formal relocation of the existing Great Neck Nissan dealership is not a "new dealership" point are meaningless. The impact and effect upon Star Nissan is essentially the same. Any relocation will allow the competing dealer to solicit Star Nissan customers in both northeastern Queens and northwestern Nassau counties.

18. I was advised by my counsel that in order for an automobile manufacturer to constructively terminate the franchise rights of a duly authorized automobile dealership, the manufacturer must meet certain criteria as set forth in the franchise law

for the state of New York. (Vehicle and Traffic Law §460(a) et seq.) Obviously, based upon the stellar and award winning performance of Star Nissan throughout its history, the Defendant has utterly no legal basis upon which to seek the termination of the franchise.

19. It is respectfully submitted that by taking away a critical portion of my market area, the Defendant seeks to do constructively that which it could not do lawfully; destroy my business and take away my franchise. The court must not allow the Defendant to effectuate such underhanded action. The Defendant breached Star Nissan's Dealer Agreement by failing to honor its implied covenants of good faith and fair dealing. Star Nissan has been specifically singled out by Nissan North America as a result of past actions we took for legitimate business reasons to which Nissan North America objected.

20. I am advised by my counsel that in order to obtain a preliminary injunction a party must show irreparable harm if it were not issued. It is respectfully submitted that the instant action is a prime example where such preliminary relief is necessary in order to preserve the value of my dealership. Absent preliminary injunctive relief, the actions proposed by Nissan North America will have a devastating impact on this family automobile dealership and damages which are difficult, if not impossible to calculate. I am concerned that this relocation, once effectuated, could ultimately force the closure of Star Nissan. If the injunction is issued, no one will be harmed because the Great Neck dealership may continue to sell and service Nissan vehicles for customers at its present location.

WHEREFORE, it is respectfully requested that Star Nissan's motion for preliminary injunction be granted pursuant to FRCP 65, CPLR Article 63 and VTL § 469 in its entirety together with such other and further relief as this Court may deem just and proper.

MICHAEL KOUFAKIS

Sworn to before me on this Friday

day of February 22 2008.

Notary Public

Notary Public State of Florida
Kelly M Dining
My Commission DD716845
Expires 09/19/2011

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

----------X Index No.: 700236/2009

JOSEPH COLLINS,

Plaintiff,

-against-

STAR NISSAN and NISSAN NORTH AMERICA,

Defendants.

----------X

AFFIDAVIT IN OPPOSITION

ASSIGNED JUSTICE: AUGUSTUS C. AGATE

STATE OF NEW YORK)
COUNTY OF QUEENS) ss.:

JOHN KOUFAKIS, being duly sworn, deposes and says:

That I am the President of STAR NISSAN, INC., incorrectly sued herein as STAR NISSAN, and as such, am fully familiar with the facts and circumstances herein.

I submit this affidavit in opposition to the motion for summary judgment brought by the plaintiff. My attorney has told me that the Court should not grant summary judgment if a party is not entitled to such a harsh remedy or of questions of fact exist as to the claims. I am also told that the Court could actually grant STAR NISSAN, INC. (hereinafter referred to as "STAR") of NISSAN NORTH AMERICA, INC. (hereinafter referred to as "NNA") summary judgment if the Court finds there is no merit to the claims of the party requesting summary judgment.

At the outset, I must inform the Court that plaintiff and his attorney are incorrect and misleading when they claim That STAR is an agent of NNA. We are not. There is no agency-principal relationship between STAR and NNA but rather, STAR is an independently owned and operated franchise of NNA. NNA does not control the day to day activities of STAR nor does NNA maintain an office at the premises of STAR.

Further, employees of STAR are not employees of NNA such that the actions or inactions of STAR could not be held against NNA.

Further, the subject vehicle, while manufactured by NNA, was sold and delivered to STAR months before the plaintiff actually came to STAR and NNA was not involved with any aspect of any negotiations that may have occurred for the subject vehicle. Any contract that exists for the purchase of the subject vehicle would be between the plaintiff and STAR alone as NNA was not involved. I am informed by my attorneys that the plaintiff, as part of this motion, is requesting summary judgment on his breach of contract claim. A review of the motion, however, reveals the contract to purchase the vehicle is not attached. Instead, the plaintiff appears to attach an invoice for the subject vehicle which cannot be utilized or substituted as a contract as an invoice is not considered a contract. The invoice is not signed by the plaintiff or STAR nor does it reveal any terms of the sales contract. As a result, my attorneys have told me the plaintiff cannot receive summary judgment on a breach of contract claim if the contract is not part of the papers as the Court does not have the authority to guess what is actually contained in the contract.

I believe the same is true for the rescission claim brought by the plaintiff. If no contract is part of the evidence, it would seem impossible for the Court to grant summary judgment directing rescission of a contract that is not produced.

Additionally, I can unequivocally state that the lemon law claim does not apply to this case. In this case, the plaintiff alleges he was not placed in a particular extended warranty program. The new car lemon law, however, regulates disputes that arise between consumers and manufacturers of vehicles if a new car experiences

mechanical defects. The consumer who experiences mechanical problems is required to make several attempts at repairing the same mechanical problems without success before a lawsuit could be brought under the lemon law. I know of no claim of a mechanical problem that has arisen in the subject vehicle nor do the papers in support of the motion reveal any. Additionally, I am told by my attorneys that the New York new car lemon law applies to new cars purchased and registered in New York State. According to the motion, the plaintiff is a resident of Illinois who could not register a vehicle in New York. Thus, there can be no new car lemon law claim.

Likewise, the plaintiff's claim of a violation of New York GBL § 396-q is misplaced. That law requires a dealer to deliver a vehicle with the equipment and options ordered. It is submitted that the plaintiff is not claiming a vehicle delivered without equipment or option ordered, but rather, he was not placed within a particular extended warranty program. A warranty program is not equipment nor is it an option for a vehicle like Lo-jack or some other alarm system. The warranty is similar to insurance that covers a particular part of a vehicle under certain circumstances. Further, it appears the plaintiff is improperly requesting attorney's fees for such a violation. My attorneys have informed me that if a 396-q(4) violation occurs (the section claimed violated by the plaintiff), the most he would be entitled to is a fine of $50.00 and possibly a reduction in price for the option or equipment not delivered. He would not be entitled to attorney's fees as such fees are only applicable to a violation of § 396-q(3), not the violation being claimed in this case.

Additionally, from a review of the papers I am unable to ascertain how the plaintiff claims STAR was unjustly enriched. The papers fail to set forth any proof of

such an enrichment nor do they reveal the amount STAR was enriched. Thus, summary judgment in favor of the plaintiff for unjust enrichment should be denied.

While it is claimed that the above would raise questions of fact that would preclude summary judgment, my attorneys have told me that the same arguments could be made for the granting of summary judgment in favor of STAR dismissing the claims of the plaintiff. There is nothing within the motion papers that could ever be stretched into a new car lemon law claim. Surely, if the plaintiff has not complied with the new car lemon law and the facts of the case (i.e., the plaintiff claims he was not properly placed in a particular extended warranty program) do not apply to the new car lemon law, such a claim should be dismissed.

Likewise, the plaintiff's claim of a violation of GBL § 396-q should be dismissed as baseless and without any proof. The papers fail to set forth any legal or factual basis (from a person within the motor vehicle sales profession) that claims the warranty program is vehicle equipment or an option.

My attorneys have also informed me that the failure to submit the contract being sued upon should lead to the dismissal of the breach of contract and rescission claims as the plaintiff has failed to prove its case. Without a contract, the plaintiff cannot prove a contract was breached or there is a contract that requires rescission. The same is true for unjust enrichment in that no proof exists as to how STAR was unjustly enriched. Without proof, the claim should be dismissed.

For all of the reasons herein, it is respectfully requested the Court deny the plaintiff's motion in its entirety. Additionally, it is requested the Court search the

record and after such a search, grant summary judgment in favor of STAR dismissing the causes of action of the plaintiff.

WHEREFORE, it is respectfully requested the instant motion be denied in its entirety, it is requested the Court search the record, and upon such search, grant summary judgment in favor of STAR without the necessity of a cross-motion, together with any other and further relief the Court may deem just, meet and proper.

Sworn to before me this 6th day
of April, 2010

JEFFREY P. BRODSKY
Notary Public, State of New York
No. 02BR6491738
Qualified in Suffolk County
Commission Expires August 18, 2012

John Koufakis

JOHN KOUFAKIS