

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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GPB CAPITAL HOLDINGS, LLC, GPB HOLDINGS, LP,
GPB AUTOMOTIVE PORTFOLIO LP, GPB HOLDINGS
AUTOMOTIVE, LLC and GPB PORTFOLIO
AUTOMOTIVE, LLC,

Index No. 606417/17

Plaintiffs,

-against-

VERIFIED ANSWER TO
AMENDED VERIFIED
COMPLAINT
AND COUNTERCLAIMS

PATRICK DIBRE,

Defendant,

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Defendant, Patrick Dibre (“Dibre”), by his attorneys, Cyruli Shanks Hart & Zizmor LLP, as and for his Answer and Counterclaims to the Amended Verified Complaint of Plaintiffs GPB Capital Holdings, LLC, GPB Holdings, LP, GPB Automotive Portfolio LP, GPB Holdings Automotive, LLC and GPB Portfolio Automotive, LLC (collectively, “GPB”) alleges, as follows:

AS TO THE NATURE OF THE ACTION

1. Denies the allegations contained in paragraph 1 of the Amended Verified Complaint and avers that the true purpose of this action by GPB is to divert attention away from the fact that the losses occasioned by GPB were in fact caused by a very complicated and manipulative Ponzi scheme.

2. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of the Amended Verified Complaint.

3. In response to the allegations contained in paragraph 3 of the Amended Verified Complaint, Dibre admits only that the parties entered into certain agreements, that the parties

closed on the sale of two automobile dealerships and as to the remaining allegations, refers the agreement at issue to the Court.

4. Dibre denies the allegations contained in paragraph 4 of the Amended Verified Complaint except to admit that the parties entered into the 2016 Master Agreement and refers the agreement at issue to the Court, and specifically denies that all liabilities were not released under the 2016 Master Agreement and as to the remaining allegations, refers the agreement at issue to the Court,

5. Dibre denies the allegations contained in paragraph 5 of the Amended Verified Complaint.

6. In response to the allegations contained in paragraph 6 of the Amended Verified Complaint, Dibre admits only that Plaintiff terminated Dibre's employment and avers that Plaintiff commenced this action to divert attention from the fact that they have not performed as promised due to the fact that they have defrauded investors through a Ponzi scheme and other wrongful acts and seek to wrongfully place the blame on Dibre.

7. Dibre denies the allegations contained in paragraph 7 of the Amended Verified Complaint.

8. Dibre denies the allegations contained in paragraph 8 of the Amended Verified Complaint and avers that GPB has purposely fabricated the earnings, knowing the falsity thereof, in an attempt to falsify their financial statements to investors and to conceal the fact that they have defrauded their investors, and, because GPB has fraudulently reported to investors that they own the dealerships in question, which they do not, GPB had to conceal the fact that it no longer has access to financial records of the dealerships.

9. Dibre denies the allegations contained in the first sentence of paragraph 9 of the Amended Verified Complaint, and denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in the second sentence of paragraph 9 of the Amended Verified Complaint and denies that GPB is entitled to the relief sought therein.

10. Dibre denies the allegations contained in paragraph 10 of the Amended Verified Complaint.

AS TO THE PARTIES

11. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11 of the Amended Verified Complaint.

12. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 12 of the Amended Verified Complaint.

13. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 13 of the Amended Verified Complaint.

14. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in the first sentence of paragraph 14 of the Amended Verified Complaint except to admit that Dibre owned interests in certain GPB entities.

15. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in the first sentence of paragraph 15 of the Amended Verified Complaint except to admit that Dibre owned interests in certain GPB entities.

16. Dibre admits the allegations contained in paragraph 16 of the Amended Verified Complaint.

AS TO JURISDICTION AND VENUE

17. In response to the allegations contained in paragraph 17 of the Amended Verified Complaint, Dibre refers all questions of law to the Court, but denies committing any tortious acts.

18. In response to the allegations contained in paragraph 18 of the Amended Verified Complaint, Dibre refers all questions of law to the Court.

AS THE FACTUAL ALLEGATIONS

19. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 19 of the Amended Verified Complaint.

20. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 20 of the Amended Verified Complaint.

21. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 20 of the Amended Verified Complaint except to admit that Dibre is an experienced automobile dealership owner and operator.

22. In response to the allegations contained in paragraph 22 of the Amended Verified Complaint, Dibre admits only that he became a member and manager of Portfolio Automotive.

23. In response to the allegations contained in paragraph 23 of the Amended Verified Complaint, Dibre admits only that he became a member and manager of Holdings Automotive.

24. In response to the allegations contained in paragraph 24 of the Amended Verified Complaint, Dibre admits only that he became a member of the executive management team.

25. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 25 of the Amended Verified Complaint.

26. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in the first sentence of paragraph 26 of the Amended Verified Complaint except that upon information and belief the investment structure was significantly different than those used with Dibre, and denies the allegations contained in the second sentence of paragraph 26 of the Amended Verified Complaint concerning the cause of the failure to close on the dealerships.

27. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 27 of the Amended Verified Complaint except to deny that the GPB plaintiffs in this action, except for GPB Holdings LP and GPB Automotive Portfolio LP, entered into any agreements to acquire any of the dealerships.

28. In response to the allegations contained in paragraph 28 of the Amended Verified Complaint, Dibre denies the allegations contained in the last sentence of paragraph 28 of the Amended Verified Complaint.

29. In response to the allegations contained in the first sentence of paragraph 29 of the Amended Verified Complaint, Dibre refers the Court to the agreement and denies the allegations contained in the second sentence of paragraph 29 of the Amended Verified Complaint.

30. Dibre denies the allegations contained in paragraph 30 of the Amended Verified Complaint.

31. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 31 of the Amended Verified Complaint except to admit that the parties entered into negotiations in late 2015.

32. In response to the allegations contained in paragraph 32 of the Amended Verified Complaint, Dibre admits only that the parties entered into an agreement and refers the agreement to the Court.

33. Dibre denies the allegations contained in paragraph 33 of the Amended Verified Complaint.

34. Dibre denies the allegations contained in paragraph 34 of the Amended Verified Complaint.

35. Dibre denies the allegations contained in paragraph 35 of the Amended Verified Complaint.

36. Dibre denies the allegations contained in paragraph 36 of the Amended Verified Complaint except to admit that Dibre remains in receipt of the monies advanced.

37. Dibre denies the allegations contained in paragraph 37 of the Amended Verified Complaint except to admit that the parties entered into negotiations to modify the terms of their relationship.

38. Dibre denies the allegations contained in paragraph 38 of the Amended Verified Complaint except to admit that the parties entered into the 2016 Master Agreement.

39. In response to the allegations contained in paragraph 39 of the Amended Verified Complaint, Dibre refers the agreement to the Court.

40. In response to the allegations contained in paragraph 40 of the Amended Verified Complaint, Dibre refers the agreement to the Court.

41. Dibre admits the allegations contained in paragraph 41 of the Amended Verified Complaint.

42. In response to the allegations contained in paragraph 42 of the Amended Verified Complaint, Dibre denies the first sentence and refers the agreement to the Court.

43. In response to the allegations contained in paragraph 43 of the Amended Verified Complaint, Dibre refers the agreement to the Court.

44. In response to the allegations contained in paragraph 44 of the Amended Verified Complaint, Dibre refers the agreement to the Court.

45. In response to the allegations contained in paragraph 45 of the Amended Verified Complaint, Dibre denies that part of the allegation prior to the first “comma” and refers the agreement to the Court.

46. Dibre denies the allegations contained in paragraph 46 of the Amended Verified Complaint.

47. In response to the allegations contained in paragraph 47 of the Amended Verified Complaint, Dibre refers the agreement to the Court.

48. Dibre denies the allegations contained in paragraph 48 of the Amended Verified Complaint.

49. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 49 of the Amended Verified Complaint.

50. Dibre denies the allegations contained in paragraph 50 of the Amended Verified Complaint.

51. Dibre denies the allegations contained in paragraph 51 of the Amended Verified Complaint.

52. Dibre denies the allegations contained in paragraph 52 of the Amended Verified Complaint.

53. Dibre denies the allegations contained in paragraph 53 of the Amended Verified Complaint.

54. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 54 of the Amended Verified Complaint except to deny that Dibre was principally responsible for obtaining manufacturer approval of the transfer of dealerships to GPB.

55. Dibre denies the allegations contained in paragraph 55 of the Amended Verified Complaint except to admit that at the request of Nissan North America certain contracts were not submitted and that, with GPB's approval, the contract for Volvo was not submitted.

56. Dibre denies the allegations contained in paragraph 56 of the Amended Verified Complaint.

57. Dibre denies the allegations contained in paragraph 57 of the Amended Verified Complaint.

58. Dibre denies the allegations contained in paragraph 58 of the Amended Verified Complaint.

59. Dibre denies the allegations contained in paragraph 59 of the Amended Verified Complaint.

60. In response to the allegations contained in paragraph 60 of the Amended Verified Complaint Dibre refers the agreements to the Court.

61. Dibre denies the allegations contained in paragraph 61 of the Amended Verified Complaint.

62. Dibre denies the allegations contained in paragraph 62 of the Amended Verified Complaint.

63. Dibre denies the allegations contained in paragraph 63 of the Amended Verified Complaint except to the extent that Dibre did not have prior knowledge of any limited actions taken by certain employees.

64. Dibre denies the allegations contained in paragraph 64 of the Amended Verified Complaint.

65. Dibre denies the allegations contained in paragraph 65 of the Amended Verified Complaint.

66. Dibre admits the allegations contained in paragraph 66 of the Amended Verified Complaint.

67. Dibre denies the allegations contained in paragraph 67 of the Amended Verified Complaint.

68. In response to the allegations contained in paragraph 68 of the Amended Verified Complaint Dibre denies that any profit opportunities were diverted.

69. Dibre denies the allegations contained in paragraph 69 of the Amended Verified Complaint.

70. Dibre denies the allegations contained in paragraph 70 of the Amended Verified Complaint.

71. Dibre denies the allegations contained in paragraph 71 of the Amended Verified Complaint.

72. Dibre denies the allegations contained in paragraph 72 of the Amended Verified Complaint.

73. Dibre denies the allegations contained in paragraph 73 of the Amended Verified Complaint.

74. Dibre denies the allegations contained in paragraph 74 of the Amended Verified Complaint.

75. Dibre denies the allegations contained in paragraph 75 of the Amended Verified Complaint.

76. In response to the allegations contained in paragraph 76 of the Amended Verified Complaint, Dibre denies that any GCN employees diverted their employment responsibilities in favor of any of the other dealerships.

77. Dibre denies the allegations contained in paragraph 77 of the Amended Verified Complaint.

78. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 78 of the Amended Verified Complaint.

79. Dibre denies the allegations contained in paragraph 79 of the Amended Verified Complaint, except to admit that Ms. Loniewski was the chief financial officer of NPN and that upon information and belief her salary was over \$160,000 per year.

80. Dibre denies the allegations contained in paragraph 80 of the Amended Verified Complaint.

81. Dibre denies the allegations contained in paragraph 81 of the Amended Verified Complaint.

82. Dibre admits the allegations contained in paragraph 82 of the Amended Verified Complaint.

83. Dibre admits the allegations contained in paragraph 83 of the Amended Verified Complaint except to deny that the program provided maintenance services for vehicles other than oil changes and tire rotations.

84. Dibre admits the allegations contained in paragraph 84 of the Amended Verified Complaint.

85. Dibre admits the allegations contained in paragraph 85 of the Amended Verified Complaint.

86. Dibre admits the allegations contained in paragraph 86 of the Amended Verified Complaint, except to deny that the premium went to one or more offshore accounts.

87. Dibre admits the allegations contained in paragraph 87 of the Amended Verified Complaint except to deny that there was an offshore entity.

88. Dibre admits the allegations contained in paragraph 88 of the Amended Verified Complaint, except to deny that there was an offshore entity.

89. Dibre admits the allegations contained in paragraph 89 of the Amended Verified Complaint, and states that such action was done by agreement with plaintiff, except to deny that there was an offshore entity.

90. Dibre denies the allegations contained in paragraph 90 of the Amended Verified Complaint.

91. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 91 of the Amended Verified Complaint except to deny that any such services were to have been reimbursed.

92. Dibre denies the allegations contained in paragraph 92 of the Amended Verified Complaint.

93. Dibre denies the allegations contained in paragraph 93 of the Amended Verified Complaint.

94. Dibre denies the allegations contained in paragraph 94 of the Amended Verified Complaint.

95. Dibre admits the allegations contained in paragraph 95 of the Amended Verified Complaint.

96. Dibre admits the allegations contained in paragraph 96 of the Amended Verified Complaint.

97. Dibre admits the allegations contained in paragraph 97 of the Amended Verified Complaint except to deny that there are any offshore accounts

98. Dibre denies the allegations contained in paragraph 98 of the Amended Verified Complaint.

99. Dibre denies the allegations contained in paragraph 99 of the Amended Verified Complaint.

100. Dibre denies the allegations contained in paragraph 100 of the Amended Verified Complaint and denies any such sums are due.

101. Dibre denies the allegations contained in paragraph 101 of the Amended Verified Complaint.

102. Dibre denies the allegations contained in paragraph 102 of the Amended Verified Complaint.

103. Dibre denies the allegations contained in paragraph 103 of the Amended Verified Complaint.

104. Dibre admits the allegations contained in paragraph 104 of the Amended Verified Complaint.

105. Dibre denies the allegations contained in paragraph 105 of the Amended Verified Complaint except to admit that extended warranties were automatically included in certain lease vehicle transactions.

106. Dibre denies the allegations contained in paragraph 106 of the Amended Verified Complaint.

107. Dibre denies the allegations contained in paragraph 107 of the Amended Verified Complaint.

108. Dibre denies the allegations contained in paragraph 108 of the Amended Verified Complaint.

109. In response to the allegations contained in paragraph 109 of the Amended Verified Complaint Dibre admits that the VGC receives factory to dealer cash incentives and refers the agreement to the Court.

110. Dibre denies the allegations contained in paragraph 110 of the Amended Verified Complaint.

111. Dibre denies the allegations contained in paragraph 111 of the Amended Verified Complaint.

112. Dibre denies the allegations contained in paragraph 112 of the Amended Verified Complaint.

113. Dibre denies the allegations contained in paragraph 113 of the Amended Verified Complaint.

114. Dibre denies the allegations contained in paragraph 114 of the Amended Verified Complaint.

115. Dibre denies the allegations contained in paragraph 103 of the Amended Verified Complaint.

116. Dibre denies the allegations contained in paragraph 116 of the Amended Verified Complaint.

117. Dibre denies the allegations contained in paragraph 117 of the Amended Verified Complaint.

118. Dibre denies the allegations contained in paragraph 118 of the Amended Verified Complaint.

119. Dibre denies the allegations contained in paragraph 119 of the Amended Verified Complaint.

120. Dibre denies the allegations contained in paragraph 120 of the Amended Verified Complaint.

121. Dibre denies the allegations contained in paragraph 121 of the Amended Verified Complaint.

122. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 122 of the Amended Verified Complaint except to admit that he is experienced.

123. Dibre denies the allegations contained in paragraph 123 of the Amended Verified Complaint.

124. Dibre denies the allegations contained in paragraph 124 of the Amended Verified Complaint.

125. Dibre denies the allegations contained in paragraph 125 of the Amended Verified Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

126. In response to the allegations contained in paragraph 126 of the Amended Verified Complaint, Dibre repeats, reiterates and realleges each and every response set forth in the preceding paragraphs as if fully set forth herein.

127. In response to the allegations contained in paragraph 127 of the Amended Verified Complaint, Dibre denies that the 2015 purchase and sale agreements and the December 2015 agreement represent a binding and enforceable contract as they have been terminated by the agreement parties.

128. In response to the allegations contained paragraph 128 of the Amended Verified Complaint Dibre denies that he has any obligations under any agreement with GPB other than the 2016 Master Agreement as all other agreements have been terminated by the agreement of the parties.

129. In response the allegations contained in paragraph 129 of the Amended Verified Complaint, to the extent that it is alleged that there is a distinction between obligations and liabilities under any agreement, Dibre denies such distinction, and to the extent that it is alleged that there are any continuing obligations/liabilities under any agreement other than 2016 Master Agreement, Dibre denies such allegations.

130. In response to the allegations contained in paragraph 130 of the Amended Verified Complaint, Dibre denies that the 2016 Master Agreement provides for payment of net earnings, but instead provides for the payment of net cash flow and denies that he has breached the 2016 Master Agreement.

131. In response to the allegations contained in paragraph 131 of the Amended Verified Complaint, Dibre refers the agreement to the Court.

132. In response to the allegations contained in paragraph 132 of the Amended Verified Complaint, Dibre refers the agreement to the Court, but otherwise denies any allegations that he hindered the approval process.

133. Dibre denies the allegations contained in paragraph 133 of the Amended Verified Complaint.

134. Dibre denies the allegations contained in paragraph 134 of the Amended Verified Complaint.

135. Dibre denies the allegations contained in paragraph 135 of the Amended Verified Complaint.

136. Dibre denies the allegations contained in paragraph 136 of the Amended Verified Complaint and avers that the parties agreed not to submit the Volvo of Glen Cove agreement to the manufacturer.

137. Dibre denies the allegations contained in paragraph 137 of the Amended Verified Complaint.

138. Dibre denies the allegations contained in paragraph 138 of the Amended Verified Complaint.

139. Dibre denies the allegations contained in paragraph 139 of the Amended Verified Complaint.

140. Dibre denies the allegations contained in paragraph 140 of the Amended Verified Complaint.

141. Dibre denies the allegations contained in paragraph 141 of the Amended Verified Complaint.

142. Dibre denies the allegations contained in paragraph 142 of the Amended Verified Complaint.

143. Dibre denies the allegations contained in paragraph 143 of the Amended Verified Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

144. In response to the allegations contained in paragraph 144 of the Amended Verified Complaint, Dibre repeats, reiterates and realleges each and every response set forth in the preceding paragraphs as if fully set forth herein.

145. In response to the allegations contained in paragraph 145 of Amended Verified Complaint, Dibre refers all questions of law to the Court.

146. Dibre denies the allegations contained in paragraph 146 of the Amended Verified Complaint.

147. Dibre denies the allegations contained in paragraph 147 of the Amended Verified Complaint.

148. In response to the allegations contained in paragraph 148, Dibre denies that any profit potential was diverted from GPB.

149. Dibre denies the allegations contained in paragraph 149 of the Amended Verified Complaint.

150. Dibre denies the allegations contained in paragraph 150 of the Amended Verified Complaint.

151. Dibre denies the allegations contained in paragraph 151 of the Amended Verified Complaint.

152. Dibre denies the allegations contained in paragraph 152 of the Amended Verified Complaint.

153. Dibre denies the allegations contained in paragraph 153 of the Amended Verified Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Fraud)

154. In response to the allegations contained in paragraph 154 of the Amended Verified Complaint, Dibre repeats, reiterates and realleges each and every response set forth in the preceding paragraphs as if fully set forth herein.

155. In response to the allegations contained in paragraph 155 of the Amended Verified Complaint, Dibre refers the agreement to the Court and avers that said agreement was terminated.

156. Dibre admits the allegations contained in paragraph 156 of the Amended Verified Complaint.

157. In response to the allegations contained in paragraph 157 of the Amended Verified Complaint, Dibre avers that at the request of the manufacturer the contracts to purchase were not submitted.

158. Dibre denies the allegations contained in paragraph 158 of the Amended Verified Complaint.

159. Dibre denies the allegations contained in paragraph 159 of the Amended Verified Complaint.

160. Dibre denies the allegations contained in paragraph 160 of the Amended Verified Complaint.

161. Dibre denies the allegations contained in paragraph 161 of the Amended Verified Complaint and further denies that the manufacturer gave approval of the sale of NOH.

162. Dibre denies the allegations contained in paragraph 162 of the Amended Verified Complaint.

163. In response to the allegations contained in paragraph 163 of the Amended Verified Complaint, Dibre avers that the parties agreed that said notice would not be submitted.

164. Dibre denies the allegations contained in paragraph 164 of the Amended Verified Complaint.

165. Dibre denies the allegations contained in paragraph 165 of the Amended Verified Complaint and refers all questions of law to the Court except to admit that he was the owner of dealerships.

166. In response to the allegations contained in paragraph 166 of the Amended Verified Complaint, Dibre Avers that it was GPB, not Dibre, that prepared the financial records.

167. Dibre denies the allegations contained in paragraph 167 of the Amended Verified Complaint.

168. Dibre denies the allegations contained in paragraph 168 of the Amended Verified Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Tortious Interference with Business Relations)

169. In response to the allegations contained in paragraph 169 of the Amended Verified Complaint, Dibre repeats, reiterates and realleges each and every response set forth in the preceding paragraphs as if fully set forth herein.

170. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 170 of the Amended Verified Complaint and refers all questions law to the Court.

171. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 171 of the Amended Verified Complaint and refers all questions law to the Court.

172. Dibre denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 172 of the Amended Verified Complaint and refers all questions law to the Court.

173. Dibre denies the allegations contained in paragraph 173 of the Amended Verified Complaint.

174. Dibre denies the allegations contained in paragraph 174 of the Amended Verified Complaint.

175. Dibre denies the allegations contained in paragraph 175 of the Amended Verified Complaint.

176. Dibre denies the allegations contained in paragraph 176 of the Amended Verified Complaint.

177. Dibre denies the allegations contained in paragraph 177 of the Amended Verified Complaint.

178. Dibre denies the allegations contained in paragraph 178 of the Amended Verified Complaint.

AS TO THE FIFTH CAUSE OF ACTION
(Conversion)

179. In response to the allegations contained in paragraph 179 of the Amended Verified Complaint, Dibre repeats, reiterates and realleges each and every response set forth in the preceding paragraphs as if fully set forth herein.

180. Dibre denies the allegations contained in paragraph 180 of the Amended Verified Complaint.

181. In response the allegations contained in paragraph 181 of the Amended Verified Complaint, Dibre denies that he appropriated any profit from GPB and denies that any vehicle was transferred without full payment therefor.

182. Dibre denies the allegations contained in paragraph 182 of the Amended Verified Complaint.

183. In response to the allegations contained in paragraph 183 the Amended Verified Complaint, Dibre responds that there are no proceeds from any sales that are due to plaintiff.

184. Dibre denies the allegations contained in paragraph 184 of the Amended Verified Complaint.

185. Dibre denies the allegations contained in paragraph 185 of the Amended Verified Complaint.

186. Dibre denies the allegations contained in paragraph 186 of the Amended Verified Complaint.

187. Dibre denies the allegations contained in paragraph 187 of the Amended Verified Complaint.

188. Dibre denies the allegations contained in paragraph 188 of the Amended Verified Complaint.

AS TO THE SIX CAUSE OF ACTION
(Specific Performance)

189. In response to the allegations contained in paragraph 189 of the Amended Verified Complaint, Dibre repeats, reiterates and realleges each and every response set forth in the preceding paragraphs as if fully set forth herein.

190. In response to the allegations contained in paragraph 190 of the Amended Verified Complaint Dibre refers to document the Court.

191. Dibre denies the allegations contained in paragraph 191 of the Amended Verified Complaint.

192. Dibre denies the allegations contained in paragraph 192 of the Amended Verified Complaint.

193. In response to the allegations contained in paragraph 193 of the Amended Verified Complaint, Dibre avers that GPB is in possession of the information necessary to determine working capital and GPB's failure to pay Dibre working capital or the balance of the purchase price absolved Dibre of any obligation to list the dealerships with the broker.

194. Dibre denies the allegations contained in paragraph 194 of the Amended Verified Complaint.

195. Dibre denies the allegations contained in paragraph 195 of the Amended Verified Complaint.

196. In response to the allegations contained in paragraph 196 of the Amended Verified Complaint Dibre refers all questions law of the Court.

197. Dibre denies the allegations contained in paragraph 197 of the Amended Verified Complaint.

FACTS COMMON TO ALL AFFIRMATIVE
DEFENSES AND COUNTERCLAIMS

GPB's True Motivations Are To Hide Investor Fraud

198. Contrary to GPB's stated purpose in bringing the instant action against Dibre, the true purpose of this action by GPB is to divert attention away from the fact that the losses occasioned by GPB were in fact caused by a very complicated and manipulative Ponzi scheme.

199. The reason that various dealership sale transactions did not close was because GPB did not have the funds necessary to complete the closing.

200. The structure of GPB's transactions were designed from inception to generate significant brokerage fees to GPB and its related, but undisclosed, captive broker-dealer Ascendant Alternative Strategies, LLC, and further defraud their investors by siphoning off the profits and profitability of the dealerships and using new investor funds to pay for the promised returns to the earlier investors.

201. To accomplish this goal, GPB paid its investors significant returns based upon falsified financial information to generate further interest in the investments.

202. But ultimately, due to its wrongful activities, GPB never generated sufficient profits to continue its operations and also pay the promised returns to their investors.

203. The failure to obtain approval for the sale of the dealerships in 2017, which sale contracts had been submitted to the manufacturers by Dibre, was due to the purposeful delay of GPB in responding to the manufacturer's request for documents as GPB did not have the funds necessary to close.

204. It was GPB, not Dibre, that has been operating the dealerships for the last several years and preparing and providing the financial information and reports in calculating the amounts they claimed were due to them, which reports were fraudulently inflated.

205. After GPB began operating the dealerships, they also continued the same methods of operations as were conducted by Dibre prior to entering into the various transactions, which methods GPB now claims were wrongful,

206. By seeking to set up Dibre as the fall guy, and now seeking to sell the dealerships through a broker to a third-party, even at a loss, would close the chapter on these GPB funds and they could justify the losses and bury their wrongful actions.

207. The transactions at issue are infinitely more complicated than described by GPB in the Amended Verified Complaint.

The Manufacturer Approval Process

208. Generally, automobile dealerships in the United States are independently owned and operated and are subject to a dealer sales and service agreement with a particular manufacturer.

209. Ownership of an automobile dealership is subject to the approval of the particular manufacturer.

210. Typically the manufacturer will require that the dealership have a specified dealer principal and executive or general manager who has been approved by the manufacturer.

211. The manufacturers also typically require that applicants have sufficient experience and working capital to operate the dealership.

212. As such, the manufacturers review the qualifications, history, reputation, experience, and financial capacity of the applicant in making their determination.

213. Until an applicant has developed a sufficient track record in the automobile dealership industry, it is very difficult to obtain approval from the manufacturer.

214. As such, it would be virtually impossible for GPB to have obtained approval to be the sole owner and operator of any dealership.

215. In order for GPB to develop a track record it needed to partner with an established dealer wherein the established dealer would remain the responsible person under the dealer sales and service agreement.

216. The process of approving the sale of the dealership begins with the seller's delivery to the manufacturer of a copy of the proposed purchase agreement and the request for the manufacturer to provide to the purchaser an application.

217. Once that submission has been made, the approval process primarily involves the purchaser submitting to the manufacturer the completed application along with the numerous items requested by the manufacturer.

218. There is very little involvement by the seller in the approval process other than the submission of the purchase agreement.

219. The manufacturer's requests must be completely and adequately provided by the purchaser and the manufacturer will not grant the approval until is fully satisfied that it has all necessary information and that the information provided satisfies its criteria.

220. In the manufacturer approval process the manufacturer provides notification of the approval or denial directly to both the dealer and its proposed purchaser.

Manufacturer Oversight Of Operations

221. Manufacturers have significant oversight of the operation of the dealership.

222. Dealerships operate with the use of an integrated computer system that is used in the operation each of its various departments.

223. This integrated system keeps track all new and used vehicles purchases, sales, financing, parts, service, and all of the financial operations of the dealership.

224. At the end of each month this integrated system is used to prepare a dealer report which is provided to the manufacturer, which reports all monthly financial information for operations.

225. In fact, manufacturers have direct access to this integrated system to ensure that the dealership is operating within the bounds of its dealer services and sale agreement.

226. Manufacturers also conduct regular audits of the dealerships in order to ensure that the dealerships are operating properly.

227. As the manufacturers provide many and varied forms of incentives to dealerships related to the sales of the vehicles, manufacturers keep close track of the sales and the incentives to make sure that the dealership is compliant.

GPB Misrepresents Its Investments

228. GPB began to raise funds from investors based upon their stated strategy to purchase automobile dealerships.

229. GPB ran into trouble from inception by charging its investors, through various related and unrelated broker-dealers, and without adequate disclosure, almost 20% upfront fees, yet promised an 8% annual return on their investment, which investment was then only worth 80% of the money that they had invested.

230. GPB also promised investors that they would start receiving their return on their investment within two months.

231. What GPB did not disclose to its investors was that the process to purchase automobile dealerships requires the approval of the manufacturer, which is not guaranteed, and which process often takes six months.

232. Also, what GPB did not close to its investors was that in order for it to generate a return on their investment within two months it would have to implement a different investment methodology than the one disclosed to the investors.

233. GPB sought to contract with owners of automobile dealerships in the manner in which GPB could immediately generate cash flow despite the fact that they would not own the automobile dealerships.

234. The scheme that GPB fashioned provided that GPB would enter into a contract to purchase an automobile dealership and would, as it raised investor funds, begin to pay the purchase price by lending those funds to the owner of the automobile dealership as a convertible loan, at a very low interest rate, which loan could be converted into equity in the dealership.

235. Once the entire purchase price had been lent to the seller, the process of seeking approval of the sale of the dealership would then begin.

236. In the interim GPB would immediately begin to operate the dealership and, in return, be paid a certain return from dealership.

237. Upon information and belief not only was this methodology never disclosed to the investors, GPB did not disclose that approval by the manufacturer for the purchase of the dealership is not assured.

GPB Engages With Dibre

238. Prior to GPB's relationship with Dibre, GPB had entered into an ownership arrangement of a few automobile dealerships owned by Jeffrey Lash.

239. This arrangement included Volkswagen dealerships in White Plains and Oneonta.

240. Ultimately Volkswagen sought to terminate the dealer sales and service agreements with Volkswagen White Plains and Oneonta due to an alleged unauthorized transfer of interests in the dealerships to GPB.

241. Volkswagen and Volkswagen White Plains and Oneonta have been engaged in litigation concerning such termination since early 2015.

242. In late 2013 GPB was introduced to Dibre through Lash, with whom Dibre had a prior business relationship.

243. At that time GPB expressed an interest in purchasing all dealerships then owned by Dibre.

244. The dealerships were Duarte Nissan Motor Group, LLC (in California) (the "NOD"), Value City Auto Group, LLC d/b/a GCN ("GCN"), NOH LLC ("NOH"), Volkswagen of Huntington ("VOH"), NPN ("NPN"), and Nissan of Richmond (in Virginia) ("NOR").

245. The agreed-upon purchase price for all six dealerships was approximately \$80 million.

246. In determining the purchase price for each dealership there was no formula or multiple used.

247. The purchase price was simply a number that Dibre deemed appropriate based upon his knowledge of the industry.

248. Prior to entering into the various agreements with Dibre, GPB was granted full access to all financial and operational records of the dealerships in order for them to conduct their due diligence.

249. After conducting their own due diligence, GPB created five new single purpose entities to purchase five of the dealerships.

250. The five entities were Nissan of Huntington LLC, Nissan of Duarte LLC, Nissan of Richmond LLC, GPB 5 LLC and GPB Cars 12 LLC.

251. GPB Holdings LP was to purchase VOH.

252. These six entities agreed to pay the purchase price for each dealership as requested by Dibre.

GPB's Contracts With Dibre And Assumption Of His Dealership Operations

253. Over the course of the ensuing year or so, certain of the GPB entities and Dibre entered into several convertible loan agreements, membership interest purchase agreements, and management service agreements for each of the dealerships.

254. The convertible loan agreements provided that either GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC would loan Dibre the amount of the purchase price for each dealership and in exchange would receive a small interest payment from Dibre as well as all of the net cash flow from each dealership.

255. At the time of the loan GPB would also assume the oversight and management function of each dealership, directing the operations, preparing and reviewing all of its sales and financial operations.

256. The management service agreement provided for GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC to provide specific additional oversight and assistance in operating the dealerships for which a separate fee was to be paid.

257. Initially GPB was unable to fund the entire purchase price at the time it entered into the agreements.

258. GPB funded the purchase price over the course of time.

259. Once the purchase price of a particular dealership was fully funded it was anticipated that Dibre, as seller, would submit the membership interest purchase agreement to the manufacturer for approval.

260. GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC was also then entitled to all net cash flow of such dealerships.

261. GPB was primarily managed by David Gentile (“Gentile”) and Jeffrey Schneider (“Schneider”).

262. GPB put in place its own controller, Cathy Liguori (“Liguori”), to oversee all aspects of the financial operation of the dealerships.

263. Liguori had complete access to all books, records, and online access to the entire operation of the dealerships.

264. Liguori had full access to the integrated computer system used by the dealerships as well as online access to all bank accounts.

265. Liguori would compile and generate the financial reports for the dealership, determine the amount of the net cash flow, and generate a wire from the dealerships directly to GPB for the amount due.

GPB Manipulates Financials To Defraud Investors and Take Personal Benefits

266. Shortly after GPB took financial and operational control of dealerships they began to implement policies which negatively affected the dealerships financial performance, but personally benefited GPB or its managers, Gentile and Schneider.

267. In order to cover up the wrongful acts of Gentile and Schneider, GPB manipulated the financial statements of the dealerships and the GPB funds to hide their activities.

268. On April 1, 2015 at the request of Gentile and Schneider, Gentile and Schneider, through an entity over which they had control, entered into an agreement to purchase from Dibre the property on which the Nissan of Richmond dealership operated.

269. Upon information and belief, Gentile and Schneider’s ultimate goal was to have the Nissan of Richmond dealership funnel money, as rent, which they could then increase,

outside of the dealership to the detriment of the GPB investors, but for the personal benefit of Gentile and Schneider.

270. Gentile and Schneider began requiring stipends to be paid to them as board members of the various dealerships.

271. These stipends were expensed by the dealerships and reduced their overall profitability.

272. These stipends were not disclosed to investors.

273. Although GPB was to receive only the net cash flow from the dealerships, in order for GPB to entice new investors it overfunded itself from the dealerships, drawing out more than the net cash flow generated.

274. In 2014 the amount of overstated income was \$1,860,584.00.

275. GPB then used this over funding to distribute to its investors describing the funds as a special distribution due to the exceptional performance of the dealerships.

276. This falsity was then used to entice new investors to invest.

277. After the year-end review disclosed this overstatement, GPB "invested" the amount of the overfunded money into the dealership for "capital improvements" to cover the deficiency because they did not want to correct the fraudulent financial statements.

278. GPB took similar action with GCN, overfunding in June, 2015 in the amount of \$371,700 and again in August, 2015 in the amount of \$196,200 to pay for a "special distribution" announcement to raise more investor's money.

279. When factory incentives were earned by VGC, but not yet received, GPB manipulated the financial performance of VGC by taking the funds not yet received, although earned, and distributing that to its investors.

280. Gentile and Schneider also created an entity called LSG to which they directed in excess of \$4 million from reinsurance funds and manufacturer rebates that should have been paid to the dealerships, and ultimately the investors GPB.

281. Gentile also engaged his father's accounting firm to perform monthly services that were either never performed or which were overbilled in the approximate amount of \$100,000 per month.

282. The performance of those alleged services by a related party was not disclosed to the investors at the time.

283. Upon information and belief, the funds paid by the dealerships were funneled back from the accounting firm to Gentile's family trust.

284. Gentile and Schneider also expensed significant personal expenses such as luxury cars, vacations, and private jets to GPB or the dealerships.

285. One of those expenses totaled \$550,000 for use of an airplane for the month of August 2017.

286. Such actions reduced the profitability of the dealerships which alleged loss of profitability GPB now imputes to Dibre.

287. In order to further personally benefit, Gentile and Schneider recorded the purchase price of the dealerships that they purchased from Dibre at several million dollars more than the combined actual purchase price, closing expenses, and working capital investment.

288. They then directed those additional monies back to themselves, or entities in which they held in interest, as acquisition fees.

289. Due to the fact that dealerships were not generating the necessary cash flow to return to the investors, Gentile and Schneider ultimately had to use some of that money that they took from the closing to pay to the investors to cover the fact that the dealerships were not performing, although they had been reported as over performing.

290. Every quarterly financial report and audited annual reports for all GPB funds showed that none of the funds at any time produced enough cash from operations to support distributions being paid out to investors.

291. The cash shortfall was always made up using cash from new investors' deposits or by borrowing money from other funds.

292. In order to hide the activities of Gentile and Schneider, and to cover up shortfalls or fraudulently disburse additional funds to investors as a “special distribution” and to make it appear that financial performance of the dealerships in the funds were performing as reported, Gentile and Schneider manipulated the earnings in various ways.

293. In 2016, on several occasions GPB would transfer funds from GPB Holdings One Fund to Automotive Portfolio Fund, and vice versa, in order to bolster returns if a fund was lagging behind.

294. Gentile would also have the potential sellers of a dealership increase the purchase price by a dollar amount needed to pay back GPB investors, and then take the additional funds as a rebate at the closing.

295. GPB then had immediate access to cash to cover its shortfalls, while the excess of the purchase price, as “blue sky”, was amortized over time.

296. Gentile also set up receivables from the expected return of the excess purchase price from a Honda store in New Jersey, an auto group in Maryland and a large auto group in New York that he was in negotiations with, but never actually contracted to buy.

297. In 2015, GPB fraudulently obtained personal guarantees, backdated to 2014, in the amount of \$810,462 and \$325,739 so that financial records did not reveal the actual losses.

298. Through various wire transfers, the fraudulent personal guarantee was repaid by funds from other GPB portfolio companies to show a profit rather than a loss.

299. In 2016 Gentile and Schneider arranged to transfer \$1,050,000 from entities over which they had control to show a profit rather than a loss.

300. To further cover for the losses that GPB has generated, GPB reported that Nissan of Richmond, which it bought for \$12 million, was now valued at \$20 million, showing an \$8 million gain.

301. GPB, though, had not bought Nissan of Richmond and was only in contract to buy that dealership.

302. Ultimately, the contract to buy Nissan of Richmond was terminated by the parties.

303. The financial records of GPB are fraudulent and did not accurately represent the operations of the dealerships, or GPB for that matter.

304. The alleged losses, and other allegations raised by GPB against Dibre are merely an effort by GPB to deflect from the fact that GPB has been defrauding investors and now seeks to pawn off their wrongful actions on Dibre.

Application To Nissan For Approval Of Sale Of The Dealerships

305. Dibre acted in good faith and within the bounds of his agreements with GPB in all aspects, including the submission of contracts for GPB's purchase of the dealerships.

306. GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC, after assuming the management and control of the dealerships continued to operate the dealerships in the same manner and fashion as Dibre had done prior to entering into agreements with GPB.

307. After entering into the initial purchase agreements for numerous Nissan dealerships, Dibre being well respected by the manufacturer, Nissan North America ("Nissan"), was concerned about Nissan's reaction to the sale of all of his Nissan dealerships, and to a private equity fund.

308. As such, Dibre reached out to the Nissan approval representative concerning the proposed transactions.

309. Dibre was told that Nissan would not approve of the sale of all of his Nissan dealerships at the same time, and especially to an unknown equity fund.

310. Dibre was advised by Nissan that he would only be permitted to submit two applications initially and that Nissan would review the performance over the following year to see if they would consider any other Nissan transfers.

311. Dibre explained this to GPB.

312. As such, Dibre submitted purchase agreements for the most valuable dealerships, being GCN and NPN.

313. As part of its regular operations a dealership must have floor plan financing to purchase its new and used vehicles.

314. As part of the approval of the sale of the GCN and NPN dealerships, Nissan Motor Acceptance Corporation (“NMAC”), the floor plan financing company, required GPB to open a cash management account to be funded with \$10 million.

315. GPB was unable to fund the cash management account.

316. As such, on June 17, 2015 GPB and Dibre entered into an agreement whereby Dibre funded a credit management account with NMAC in the amount of \$10 million for the benefit of GPB (the “CMA Agreement”).

317. Under the CMA Agreement GPB was to pay Dibre 6% on the \$10 million in monthly interest-only payments of \$50,000.

318. GPB failed to make those monthly payments in full.

319. Nissan approved the sale of GCN and NPN in the spring of 2015 conditioned upon Dibre remaining on as “principal owner”, with ultimate responsibility to ensure that the dealerships were operating under the terms of the dealer sales and service agreement.

320. As far as Dibre and GPB were concerned this requirement was merely a “figurehead” position, although Dibre did have the right to take actions concerning the dealership if he chose to.

321. In fact, Dibre did not personally manage any of his dealerships on a regular basis.

322. The dealerships were managed at all times by executive managers put in place by Dibre and who was on site and manage all aspects of the regular operations of the dealerships.

323. Dibre and GPB, for all practical purposes, granted GPB all operational and financial control of the dealerships and the executive manager reported to GPB.

324. At no time had Nissan ever approve the sale of NOH to GPB.

325. If Nissan had approved the sale of NOH to GPB it would have provided notice of approval to GPB.

326. Dibre could not have concealed from GPB an approval by Nissan of the sale of NOH.

GPB Delays Closing On Purchase Of Nissan Dealerships

327. Despite the fact that Nissan had approved the sale of GCN and NPN to GPB 5 LLC and GPB Cars 12 LLC, respectively, in the Spring 2015, they would not commit to close on the sale.

328. In the interim, GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC continued to run the operations of the dealerships and reap all the benefits of the dealerships.

329. The dealerships operated using millions of dollars of Dibre's working capital and his personal guarantees for financing and floor plan.

330. While GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC continued to reap all the benefits of owning a dealership it had none of the risk as Dibre was still the owner of record, he had millions of dollars of working capital invested in the company and he had guaranteed the floor plan and ultimate responsibility to the manufacturer.

331. It was therefore in Dibre's best interest to close on these transactions which had already been approved.

332. In the fall of 2015, GPB 5 LLC and GPB Cars 12 LLC still had not closed on the sale of the GCN and NPN dealerships despite the fact that they had been approved for a few months.

333. In an effort to compel them to close on those two dealerships, Dibre prohibited GPB Holdings Automotive, LLC and GPB Portfolio Automotive, LLC from making its usual stipend payments to Gentile and Schneider and to withdraw their usual payments.

The First Modification The Agreement Between The Parties

334. After months of deliberation, in December 2015 Dibre and GPB entered into an agreement whereby GPB committed to close on the purchase of GCN and NPN within the first two weeks of January 2016 (the "2015 Agreement").

335. The 2015 Agreement also modified some of their prior agreements, changing the payment structure from the operation of the dealerships to GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC so that in lieu of all net cash flow, the payments to GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC would be 8% of the advanced purchase price.

336. Due to the fact that Volkswagen sought to terminate the Volkswagen White Plains and Oneonta dealerships, and was in litigation with the dealerships, arising from an attempt to transfer interest in the dealership to GPB, and that Volkswagen had raised concerns to Dibre that he may have been trying to transfer interest in Volkswagen of Huntington (“VOH”) to GPB as well, it was decided that Dibre and GPB would not seek to obtain the approval of Volkswagen for the transfer of VOH.

337. Dibre and GPB sought to replace the purchase of VOH with another dealership.

338. Although, at the time that Dibre and GPB first began the relationship Dibre had no other dealerships, since that date Dibre had purchased additional dealerships, including a Nissan dealership in Middletown, Connecticut.

339. As part of the 2015 Agreement, the parties entered into new purchase agreements for the purchase of NOD, NOH, NOR and Nissan of Middletown (“NOM”).

340. GPB created a single purpose entity, Nissan of Middletown LLC, to purchase NOM.

341. As part of the 2015 Agreement, Dibre was also provided with an employment agreement for base compensation plus a commission on income over a certain threshold for all of the dealerships.

342. Dibre also guaranteed a 12% return on purchase price plus working capital for GCN and NPN for the 12 months following the closing.

343. Finally, the parties restructured the method and amounts to be paid to GPB Holdings Automotive, LLC and GPB Portfolio Automotive, LLC during the period prior to the closings on the dealerships.

344. As part of that restructuring, they coordinated an audit between their respective accountants to calculate the prior amounts due through that date and arranged for payment shortly thereafter.

345. The audit was conducted and the respective accountants agreed upon the amount that was due as provided in the 2015 Agreement.

346. That amount was paid to GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC.

347. Although the 2015 Agreement provided for closing dates for the other Nissan dealerships, the parties were aware that such dates were not only unrealistic, but impossible.

348. Not only had there been no approvals by Nissan for the purchase of those dealerships, which approvals take months, Nissan had already expressed to Dibre that they would not approve any new sale of the Nissan dealerships to any GPB entities until they had seen the performance of GPB 5 LLC and GPB Cars 12 LLC for the period of one year.

349. Therefore, Dibre could not submit those applications at that time.

350. Had GPB 5 LLC and GPB Cars 12 LLC closed on the purchases of GCN and NPN when they were supposed to, July 2015, then Dibre might have been able to submit an application for another Nissan dealership in July 2016.

Dibre's Regular Practice Of Selling Profitable High-Quality Used Cars At The Dealerships

351. Purchasing high quality and reliable used cars was a priority by Dibre and all of dealerships that he operated over the years.

352. While many dealerships purchase used vehicles at auction, often sight unseen, Dibre was aware of the pitfalls of such purchases in either significant dealership costs in repairs or unsatisfied customers.

353. In order to provide a steady and reliable source of used cars for the dealerships, Dibre formed Luxury Fleet Service, Inc. ("Luxury Fleet") just for that purpose.

354. Before entering into the agreements with GPB or any of the purchasing entities, all of the dealerships then owned or previously owned by Dibre arranged with Luxury Fleet to

purchase certain vehicles which had come off lease but whose value was at or below the payoff price and/or were in need of repairs.

355. The purchase of these vehicles were not, overall, a profitable venture for the dealerships.

356. Use of union mechanics and dealership service bays for repairs or reconditioning of used cars is a significant drain on a dealership's resources which could be put to better use by servicing vehicles of paying customers or for warranty services.

357. Luxury Fleet though, immediately paid the dealerships the vehicles' full purchase price, and, as a non-branded wholesaler, was able to take advantage of opportunities which the dealerships could not.

358. Luxury Fleet would always have a plentiful supply of reliable and high quality used cars available at wholesale prices for the various dealerships to purchase for their lots.

359. The overall impact on the dealerships by this arrangement positively affected the dealerships profitability and customer service ratings.

360. In fact, for the years 2008 through 2016 GCN was the largest Nissan dealership in the world, and was in the top 50 worldwide for customer satisfaction.

361. GPB was, at all times, aware of this arrangement and approved its continued operations with the dealerships for years after GPB began managing and operating the dealerships.

GPB Closes On The Purchase Of Two Nissan Dealerships

362. In January 2016, GPB 5 LLC and GPB Cars 12 LLC closed on the purchases of the GCN and NPN dealerships, respectively.

363. As part of that purchase GPB Cars 12 LLC and GPB 5 LLC agreed to assume all obligations of the customer care program that had been put in place by Dibre prior to first entering into its arrangement with GPB Cars 12 LLC and GPB 5 LLC.

364. As such Dibre was not required to reimburse GPB Cars 12 LLC and GPB 5 LLC from the premiums of those customer care programs for any services provided by GPB Cars 12 LLC and GPB 5 LLC in honoring the customer care program.

Pre-Contract, GPB Is Advised Of Customer Product Inquiry

365. Prior to entering into the agreements with GPB Holdings Automotive, LLC and GPB 5 LLC, GCN had also offered a credit monitoring service offered by an outside services company, Credit Forget It.

366. This product had been provided to the customers upon the opinion of legal counsel that the product was in compliance with all applicable law

367. The income generated from this product was not significant.

368. Prior to entering into any agreements with any GPB entities concerning GCN, the New York State Attorney General (the "Attorney General") began an investigation into the practices of Credit Forget It and the dozens of automobile dealerships around the State of New York that were selling the product (the "Investigation").

369. Prior to entering into any agreements with any GPB entities concerning GCN, Dibre disclosed the Investigation to GPB.

370. Notwithstanding its knowledge of the Investigation, GPB Holdings Automotive, LLC and GPB 5 LLC moved forward with the loan and asset purchase transaction with Dibre GCN.

371. After first entering into the loan and asset purchase transaction with GCN, GPB Holdings Automotive, LLC assumed the management and operation and financial controls of GCN

372. Over the course of the next year GPB Holdings Automotive, LLC and GPB 5 LLC were kept apprised of in the Investigation.

373. More than a year later, GPB Holdings Automotive, LLC and GPB 5 LLC closed on the purchase of GCN with full knowledge of the Investigation.

374. Ultimately the Attorney General settled the investigation with GCN, at GCN's cost, without any admission of liability or determination of illegality.

GPB Engages In Significant "Power Booking" After Buying Dealerships

375. Also prior to entering into the agreements with GPB, Dibre would become aware of the occasional use of "power booking" by certain employees of the dealerships.

376. This practice of "power booking" is engaged in by dealerships across the country.

377. This practice is only applicable to used vehicles, not new vehicles, as new vehicles have the original "sticker" which is provided to the lender and lists all of the optional items on the vehicle.

378. This practice was not approved or promoted by Dibre but, as it enabled certain sale transactions to be approved by lenders, occasionally an overzealous salesperson or finance person at the dealership might engage in such activities.

379. In every occasion in which Dibre became aware of this situation, he immediately rectified it with the appropriate lending institution.

380. The few instances of power booking prior to entering into the arrangement with GPB had an insignificant impact on sales, if it had any impact at all.

381. Contrarily, upon information and belief, between the months of June and August 2016, six months after GPB 5 LLC closed on the purchase of GCN, GPB 5 LLC was audited by various lenders and found to have "power booked" almost \$3.5 million dollars of used car sales.

382. Upon information and belief, this new methodology employed by GPB 5 LLC was promoted by their general manager, Phil Delzatto ("Delzatto"), with GPB's approval.

383. While Delzatto had been the general manager employed by Dibre, in the amount of \$40,000 per month, GPB increased his salary significantly.

384. It was also Delzatto who promoted the sale of the Credit Forget It product.

Dibre Overfunds GPB On Advances On Reinsurance

385. As part of most automobile dealership operations across the country, it is a regular practice of the owners of the dealership to offer warranty products, through the dealership, to its

customers, which warranty products are reinsured by the owners to an outside reinsurance company and administered by a third-party administrator.

386. The third-party administrator charges a fee to administer the warranty and the balance of the price paid for the product is deposited with the reinsurance company.

387. The warranty products have an expiration date.

388. As such, to the extent that no claims were made under that warranty, the balance left with the reinsurance company would be released to the owner of the dealership upon the warranties' expiration.

389. This is a typical profit center for the owner of the dealership outside of the dealership enterprise itself.

390. Dibre had engaged in such reinsurance business through his various dealerships prior to his relationship with GPB.

391. Prior to entering into his relationship with GPB, GPB was well aware that Dibre had such reinsurance business.

392. Upon GPB entering into its relationship with Dibre, Gentile and Schneider sought to form their own reinsurance business with the same reinsurance company used by Dibre.

393. Upon information and belief, Gentile and Schneider initially elected not to do so as they sought to personally benefit from such reinsurance business, at the expense of investors, but did not want this breach of their duties clearly documented.

394. Therefore, after GPB entered into its arrangements with Dibre, new warranties that were sold by the dealership were funded into Dibre's reinsurance company.

395. As those funds were released they were to be payable for the benefit of GPB.

396. The release of those unused warranty funds would not be payable by the reinsurance company for several years, until the warranties expire.

397. In order to assist GPB in its cash flow, Dibre, without obligation, agreed to advance GPB a portion of the warranty funds.

398. Occasionally Gentile and Schneider requested Dibre to make those payments to LSG, a company in which they had an interest, but outside of GPB.

399. The benefit of that reinsurance money should have been used for dealership operations, and its investors, not for Gentile and Schneider.

400. The third-party administrator had advised Dibre that the average loss ratio of these warranties was 13%.

401. As such, on a quarterly basis Dibre funded the appropriate GPB entity 87% of the warranty funds deposited with the reinsurance company.

402. After the processing of the actual warranty claims, the third-party administrator advised Dibre that the actual loss ratio was approximately 24%, not the estimated 13%.

403. As such Dibre had over advanced GPB approximately 11% of the warranty funds deposited with the insurance company, totaling over \$2 million.

404. Although duly demanded, GPB has failed and refused to repay to Dibre his over advance of the warranty funds.

405. As warranty claims continue to be processed, the amount that was over advanced may continue to increase.

The Master-Agreement: Second Modification And General Release

406. Over the course of 2016 the relationship between Dibre and GPB deteriorated.

407. In July 2016 GPB, without Dibre's knowledge or approval, submitted all four Nissan dealership contracts to Nissan for approval.

408. Nissan rejected the submission by GPB out of hand as the only party that may submit the initial request to transfer a dealership under the dealer sales and service agreement is the existing dealer.

409. Following Nissan's rejection, the Nissan representative reached out to Dibre with great concern as Nissan had already expressed to Dibre that they would not accept these requests at this time, especially for all the dealerships.

410. Nissan requested a meeting with Dibre and GPB to discuss this further.

411. In a meeting with the Nissan representative in September 2016, Nissan made it very clear that they might approve one of the transactions after seeing the performance of GPB 5 LLC and GPB Cars 12 LLC after a year under GPB's ownership.

412. GPB then decided that the only Nissan dealership it wanted to purchase was NOH.

413. GPB wanted to replace NOD, NOR and NOM with three other dealerships that Dibre had purchased over the preceding year or two.

414. Specifically, GPB wanted to purchase Honda of Freehold ("HOF"), Honda of Aventura ("HOA") and Volvo of Glen Cove ("VGC").

415. The Honda dealerships were worth more than the Nissan dealerships.

416. By this point in the relationship, the Fall 2016, Dibre and GPB wanted to separate to the fullest extent possible.

417. Dibre was aware of various wrongful actions of GPB, Gentile and Schneider and wanted no part of their organization.

418. In fact, upon information and belief, GPB had submitted applications to manufacturers for other dealerships around the country seeking approval for purchases claiming ownership of several of Dibre's dealerships, and the performance thereof, which dealerships they did not yet own.

419. Unfortunately, due to the fact that GPB 5 LLC and GPB Cars 12 LLC had been approved as the purchasers of GCN and NPN solely on the condition that Dibre was to remain as the dealer principal with ultimate responsibility to Nissan under the dealer sales and service agreement, Dibre could not extricate himself from that relationship as Nissan would terminate GPB 5 LLC's and GPB Cars 12 LLC's dealer sales and service agreement.

420. Dibre was amenable to change the structure of their transactions and the dealerships involved, and give up his equity interest in GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC if it would extricate him from his relationship with GPB to the greatest extent possible.

421. As such the parties agreed to move forward under a completely new structure and terms.

422. While in the 2015 Agreement the parties merely replaced a payment structure under the previous loan and purchase agreements, in the new agreement, termed the Master Agreement (the "Master Agreement"), the parties completely terminated and released each other from every agreement and obligation that they had to each other prior to the date of the Master Agreement, save for a few carve-outs provided for in the Master Agreement.

423. That release of obligations not only included obligations under the written agreements but any obligations they may have had to each other of whatever kind or nature.

424. In consideration of that release and separation of the parties, Dibre agreed that the monies advanced by GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC toward the three Nissan dealerships that GPB no longer sought to purchase could be applied to HOF, HOA and VGC.

425. Pursuant to the Master Agreement the advances to Dibre towards the four Nissan dealerships were \$36,787,014.

426. The amount that GPB agreed to pay for HOF, HOA and VGC was \$42,835,294, plus the amount that Dibre had paid for leasehold improvements at HOF, HOA and VGC.

427. As such, in order to close on these transactions GPB purchasers would owe Dibre approximately an additional \$6 million.

428. In the Master Agreement Dibre also surrendered his 15% interest in the GPB entities.

429. As part of this complete release between the parties, this new structure under the Master Agreement provided that there would be new purchase agreements for NOH, HOF, HOA and VGC.

430. The purchasing entities for all of the dealerships were GPB Holdings LP or GPB Automotive Portfolio LP (the "GPB LP's").

431. The parties would then seek to obtain approval from the manufacturers for the sale of these dealerships.

432. Under the Master Agreement, each party was to use “reasonable best efforts” to effectuate the sale.

433. Dibre’s primary obligation to effectuate the sales was to submit the purchase agreements to the manufacturers and request that an application be provided to the GPB LP’s for approval of the sales.

434. Fulfilling the application requirements of the manufacturer is almost exclusively the obligation of the purchasing party, the GPB LP’s.

435. The Master Agreement provided that the closing for any of the dealerships was to occur no more than seven business days after receiving manufacturer approval.

436. In the event of a willful delay of the closing by either party to the agreement after receiving approval, there would be a liquidated damage amount of \$5,000 per day payable to the other party until the closing.

437. In the event that any closing did not occur by April 30, 2017, GPB was, within five days thereafter, to pay Dibre his working capital in such dealership or dealerships as of March 31, 2017.

438. Dibre was also due the balance of the \$6 million purchase price for the dealerships.

439. After payment of the working capital to Dibre, and the balance of the purchase price, Dibre was to list such dealership or dealerships for sale with a broker.

440. All proceeds from such sale were to go to the benefit of GPB.

441. As part of the Master Agreement, the parties, again, revised the method and amounts to be paid to GPB Holdings Automotive, LLC and GPB Portfolio Automotive, LLC going forward from the date of the Master Agreement.

442. Going forward, the Master Agreement provided that for the fourth quarter of 2016 GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC would be paid the “net cash flow from operations” for the NOH, NOD, NOR and NOM.

443. From January 1, 2017 until the closing on the Master Agreement’s sale agreements, GPB Holdings Automotive, LLC or GPB Portfolio Automotive, LLC would be paid the “net cash flow from operations” for NOH, HOF, HOA and VGC.

444. Being that all prior obligations and liabilities of each party were being released in the Master Agreement, GPB sought to address certain unpaid liabilities and obligations of Dibre that remained due under the 2015 Agreement.

445. The parties agreed to carve out certain prior obligations and liabilities from the general release in the Master Agreement.

446. Therefore, the Master Agreement provided that the unpaid 8% per annum on the advances toward NOH, NOD, NOR and NOM remaining from the 2015 Agreement would still be due and payable through September 30, 2016.

447. The only other carve-out from the general release in the Master Agreement was to reaffirm the unpaid obligation and liability of Dibre concerning his 12% guarantee of the return on investment of GPB Cars 12 LLC (NPN) under the 2015 Agreement.

448. The Master Agreement provided that the guarantee would be waived if Dibre surrendered and waived various past due compensation due to him from GPB and upon Dibre’s compliance with the Master Agreement.

449. Under separate agreement executed in November 2016, Dibre and GPB also agreed to apply \$5.66 million due from Dibre to GPB under a separate 2015 agreement, toward an option by GPB Holdings Automotive, LLC to purchase VOH.

450. Under the option agreement, GPB waived \$2.66 million and the balance of \$3 million would be applied toward the purchase price of VOH if GPB Holdings Automotive, LLC exercised its option and the closing would occur.

GPB Delays In Seeking Approval For Purchase Of Dealerships

451. Following the execution of the Master Agreement, it became a concern by the parties that submission by Dibre of the sale contract for VGC to the manufacturer at that time might result in the manufacturer's withdrawal of the funds it had committed to Dibre toward the upgrade of the VGC facility.

452. It was therefore agreed by the parties for Dibre to hold off on submission of the VGC sale contract to the manufacturer at that time.

453. Over the next several months, ultimately it was decided by both parties that GPB was no longer desirous of closing on the purchase of VGC.

454. As such, Dibre did not submit the VGC sale contract.

455. Dibre paid the amounts due under the Master Agreement.

456. Dibre then timely submitted the sale contract for NOH, HOF and HOA to the manufacturers.

457. Upon information and belief, the manufacturers provided the GPB LP's with applications, and requirements for information and documentary submissions necessary to consider approval of the sale.

458. Upon information and belief, by April 30, 2017 the GPB LP's had still failed to submit all of the necessary information and documentation to the manufacturers in order for the manufacturers to consider approval.

459. The GPB LP's failure to timely complete the application to the manufacturers resulted in the failure of these transactions to close by April 30, 2017.

460. Upon information and belief, one of the reasons that the GPB LP's failed to provide the necessary information and documentation to the manufacturers was that they did not have sufficient funds to close on the transaction, which funds included payment to Dibre of over \$15 million in working capital and the \$6 million balance of the purchase price.

461. Nor could the GPB LP's obtain approval and then delay closing the transactions as the Master Agreement provided for liquidated damage payments to Dibre of \$5,000 per day, per dealership, for the delay in closing.

GPB Fails To Satisfy Conditions Precedent To List Dealerships For Sale

462. Having not closed on the sale of those dealerships by April 30, 2017, GPB was required, within five days thereafter, to pay to Dibre his working capital in those dealerships as of March 31, 2017.

463. The amount of that working capital was in excess of \$15 million.

464. GPB was also to pay Dibre \$6 million for the balance of the purchase price for the dealerships.

465. The payments to Dibre were a conditions precedent to Dibre's obligation to list the dealerships for sale with a broker.

466. At all times through July 3, 2017 GPB had access to all financial operations and bank accounts of the dealerships at issue.

467. Through September 2017 GPB had access to all financial operations of the dealerships at issue.

468. At all times GPB had, or had access to, the information necessary to determine the amount of working capital due to Dibre as of March 31, 2017.

469. GPB failed to pay Dibre the working capital or the balance of the purchase price, which payments remain outstanding as of the date hereof.

GPB Overfunds Itself To The Detriment Of Dibre, And Overstates Income

470. Over the course of their relationship, GPB overfunded itself to the detriment of Dibre, and falsely reported its financial performance to its investors, by calculating and generating payments of net earnings from the various dealerships when, instead they were to have calculated payments based upon net cash flow.

471. Net cash flow consists of the cash from operations less the payment of all liabilities and expenses of the company.

472. The liabilities of the company included the payment of interest on debt as well as principal.

473. GPB did not deduct from its net cash flow the principal payments for debt.

474. In seeking payment from Dibre for monies allegedly owed to GPB under the Master Agreement, GPB has provided false statements concerning the amount alleged to be due without any basis for said calculations.

475. The actual operations of the dealerships resulted in losses rather than gains.

476. GPB's purpose in falsifying statements to Dibre is to enable GPB to use those falsified numbers as the basis for the false financial statements to GPB's investors.

477. GPB also wrongfully terminated Dibre's employment agreement with GCN.

FIRST AFFIRMATIVE DEFENSE

478. The Amended Verified Complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

479. All claims raised concerning issues or alleged liabilities that existed prior to the Master Agreement have been released.

THIRD AFFIRMATIVE DEFENSE

480. Breach of Contract by GPB, although Dibre has specifically performed as reasonably required.

FOURTH AFFIRMATIVE DEFENSE

481. Waiver and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

482. Laches.

SIXTH AFFIRMATIVE DEFENSE

483. GPB does not have clean hands.

SEVENTH AFFIRMATIVE DEFENSE

484. Lack of consideration.

EIGHTH AFFIRMATIVE DEFENSE

485. GPB has failed to satisfy conditions precedent required to be satisfied prior to listing the dealerships for sale with the broker.

NINTH AFFIRMATIVE DEFENSE

486. GPB has failed to Mitigate Damages.

TENTH AFFIRMATIVE DEFENSE

487. GPB assumed all obligations under the customer care program.

ELEVENTH AFFIRMATIVE DEFENSE

488. All agreements between the parties prior to the Master Agreement were terminated.

TWELFTH AFFIRMATIVE DEFENSE

489. The amounts alleged to be due from Dibre, if any, under the Master Agreement are incorrect.

THIRTEENTH AFFIRMATIVE DEFENSE

490. Due to GPB's material breaches of the agreements with Dibre, Dibre is no longer obligated, if he ever was, to perform under any of the agreements.

FOURTEENTH AFFIRMATIVE DEFENSE

491. Dibre never made any misrepresentations to GPB.

FIFTEENTH AFFIRMATIVE DEFENSE

492. As a sophisticated investor GPB cannot have reasonably relied on any alleged misrepresentations of Dibre.

SIXTEENTH AFFIRMATIVE DEFENSE

493. GPB has failed to sufficiently state a cause of action for fraud as it has failed to allege with specificity when any alleged misrepresentations were made, who made those representations, that said representations were made to induce GPB or that it reasonably relied upon any such alleged misrepresentations.

SEVENTEENTH AFFIRMATIVE DEFENSE

494. GPB was aware of the Attorney General investigation concerning the Credit Forget It products prior to entering into its agreement with Dibre to purchase GCN dealership.

495. GPB was aware of the Attorney General investigation concerning the Credit Forget It product prior to closing on the purchase of GCN dealership.

496. As a result of the disclosure no fraud claim may proceed.

EIGHTEENTH AFFIRMATIVE DEFENSE

497. GPB waived any claim it may have concerning the Attorney General investigation.

NINETEENTH AFFIRMATIVE DEFENSE

498. GPB released Dibre from any claim it may have concerning the Attorney General investigation.

TWENTIETH AFFIRMATIVE DEFENSE

499. GPB assumed the risk of the Attorney General investigation.

TWENTY-FIRST AFFIRMATIVE DEFENSE

500. Dibre took all appropriate, prudent, and agreed upon actions in submitting the various sales contracts to the various manufacturers.

TWENTY-SECOND AFFIRMATIVE DEFENSE

501. At all times GPB was aware of and accepted the relationship and sales between the dealerships and Luxury Fleet.

TWENTY-THIRD AFFIRMATIVE DEFENSE

502. Luxury Fleet did not usurp any business opportunities of GPB.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

503. The actual loss ratios of the reinsurance placed during the period of time in which GPB was operating dealerships was in excess of the expected loss ratio.

504. The amount advanced by Dibre to GPB from the reinsurance proceeds exceeded the amount that GPB was entitled to.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

505. It was GPB, not Dibre, that manipulated the accounting of VGC in order to withdraw cash earned, but not yet received.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

506. Dibre never disparaged GPB's reputation or made derogatory comments to the manufacturers in an effort to prevent GPB from obtaining approval for the sale dealerships.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

507. The sale contract for VGC was not submitted to the manufacturer upon the agreement of both parties.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

508. Prior to the Master Agreement, the financial statements relied upon by GPB in calculating the amount claimed to be due from Dibre, and the amount paid by Dibre, were all calculated by GPB with full access to all financial records of GPB.

509. As such, there is no valid claim that Dibre manipulated or otherwise failed to calculate or pay the appropriate amounts due from the dealerships.

TWENTY-NINTH AFFIRMATIVE DEFENSE

510. Nissan never approved any sale of NOH to any GPB entity.

THIRTIETH AFFIRMATIVE DEFENSE

511. Statute of limitations.

THIRTY-FIRST AFFIRMATIVE DEFENSE

512. Based upon documentary evidence, Dibre is not liable to GPB for the claims alleged.

THIRTY-SECOND AFFIRMATIVE DEFENSE

513. The breach of fiduciary duty claim is duplicative of the breach of contract claim and should be dismissed.

THIRTY-THIRD AFFIRMATIVE DEFENSE

514. The fraud claim is duplicative of the breach of contract claim and should be dismissed.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

515. There is a lack of privity between Dibre and plaintiffs concerning some of GPB's breach of contract claims.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

516. GPB has failed to name necessary parties to this action, specifically the various GPB entities which entered in the spaghetti the affirmative defenses and then you stick a look you just missed anything clearly only into the purchase agreements with Dibre.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

517. The damages sought by GPB are speculative or are not otherwise recoverable.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

518. Election of remedies.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

519. GPB has failed to plead fraud with specificity as required by the CPLR.

AS AND FOR A FIRST COUNTERCLAIM

520. Dibre repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

521. Pursuant to the Master Agreement Dibre was to be paid his working capital in the dealerships.

522. GPB has breached the Master Agreement and failing to pay to Dibre his working capital.

523. GPB has failed to make the payment thereon despite due demand for same.

524. As a result of the foregoing Dibre has been damaged the amount of to be determined by the Court but believed to be in excess of \$15 million.

AS AND FOR A SECOND COUNTERCLAIM

525. Dibre repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

526. Under the Master Agreement Dibre was to receive fixed payments and bonus payments from GCN for a period of three years so long as GCN achieved certain minimum returns.

527. Upon information and belief GCN achieved those minimum returns.

528. Despite having achieved those minimum returns GPB has terminated the agreement and failed to pay Dibre the amounts due thereunder.

529. As a result the foregoing Dibre is due amount to be determined by the Court but the believed to be no less than \$3,000,000.

AS AND FOR A THIRD COUNTERCLAIM

530. Dibre repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

531. Due to the breaches of GPB under the Master Agreement, Dibre's waiver and surrender of his compensation under paragraph 7(a) is no longer effective and he is entitled to the compensation due thereunder.

532. As a result the foregoing Dibre is due amount to be determined by the Court but the believed to be no less than \$1,000,000.

AS AND FOR A FOURTH COUNTERCLAIM

533. Dibre repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein

534. To the extent that there is any past and continuing liability under the CMA Agreement, there is due and owing from GPB the approximate amount of \$965,000 under the CMA account agreement through March 2018.

535. GPB has failed to make the payment thereon despite due demand for same.

536. As a result the foregoing Dibre is due amount to be determined by the Court but the believed to be no less than \$965,000.

AS AND FOR A FIFTH COUNTERCLAIM

537. Dibre repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

538. To the extent that there is no past and/or continuing obligation and liability under the CMA Agreement, GPB has had the benefit of the funds being held under the CMA agreement.

539. GPB was enriched by use of the funds being held under the CMA agreement from November 2016.

540. Such enrichment by GPB was at the expense of Dibre.

541. It is against equity and good conscience for GPB to have benefited without compensation to Dibre.

542. As a result the foregoing Dibre is due and amount to be determined by the Court.

AS AND FOR A SIXTH COUNTERCLAIM

543. Dibre repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

544. Pursuant to the Master Agreement Dibre was to be paid the balance of the purchase price for and the dealerships.

545. GPB has breached the Master Agreement and failed to pay to Dibre the balance of the purchase price for the dealerships.

546. GPB has failed to make the payment thereon despite due demand for same.

547. As a result of the foregoing Dibre has been damaged the amount of to be determined by the Court but believed to be in excess of \$6,000,000.

AS AND FOR A SEVENTH COUNTERCLAIM

548. Dibre repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

549. To the extent that the Master Agreement is not deemed a release of all prior liabilities to each other, Dibre is due the return from GPB of the excess advances that he paid to GPB for future reinsurance warranty funds for the amounts advanced through September 2016.

550. Dibre is due the return from GPB the excess advances that he paid to GPB for future reinsurance warranty funds for the amounts advanced beginning November 2016.

551. GPB has failed to make the payment thereon despite due demand for same.

552. As a result of the foregoing Dibre has been damaged the amount of to be determined by the Court but believed to be in excess of \$2,000,000.

AS AND FOR AN EIGHTH COUNTERCLAIM

553. Dibre repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

554. Pursuant to the agreements between the parties GPB was only to be paid the net cash flow from the dealerships, including all expenses and liabilities, pending the closing on the sale.

555. Necessarily, that arrangement would entail the GPB only taking the cash generated by the dealership less the payment of expenses and interest charges incurred by the dealership for its ongoing operations, as well as payment of principal on any loans, being a liability of the dealerships.

556. GPB, though, calculated its payments to be net earnings from the dealerships, not net cash flow, enabling GPB to withdraw more cash from the dealership and depleting Dibre's working capital which was used to pay principal on the loans.

557. To the extent that the Master Agreement is not deemed a release of all prior liabilities to each other, Dibre is owed from GPB for the depletion of his working capital through September 2016.

558. Dibre is owed from GPB for the depletion of his working capital commencing November 2016.

559. As a result of the foregoing Dibre has been damaged the amount of to be determined by the Court but believed to be in excess of \$4,500,000.

AS AND FOR A NINTH COUNTERCLAIM

560. Dibre repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

561. Under the Master Agreement Liguori was to calculate the working capital as well as amounts due to GPB from Dibre.

562. The implied covenant of good faith and fair dealing in the Master Agreement required Liguori to perform those to functions in good faith.

563. Liguori has failed any attempt to calculate the working capital despite the fact that she has sufficient access the information necessary to make the calculation.

564. Liguori has created fictitious and false statements and amounts claimed to be due to GPB from Dibre admitting that she does not have the information necessary to make accurate calculations.

565. Yet GPB has relied upon Liguori's knowingly false calculations in seeking compensation from Dibre.

566. Such actions are in breach of GPB's implied covenant of good faith and fair dealing.

567. As a result of the foregoing Dibre has been damaged the amount of to be determined by the Court.

AS AND FOR A TENTH COUNTERCLAIM

568. Dibre repeats, reiterates and realleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

569. Dibre is entitled to his reasonable attorney's fees under the terms of the Master Agreement.

WHEREFORE, Dibre demands judgment dismissing the complaint in its entirety, and

a. As to the first counterclaim, in an amount of to be determined by the Court but believed to be in excess of \$15 million;

b. As to the second counterclaim, in an amount to be determined by the Court but the believed to be no less than \$3,000,000;

c. As to the third counterclaim, in an amount to be determined by the Court but the believed to be no less than \$1,000,000;

d. As to the fourth counterclaim, in an amount to be determined by the Court but the believed to be no less than \$965,000;

e. As to the fifth counterclaim, in an amount to be determined by the Court.

f. As to the sixth counterclaim, in an amount of to be determined by the Court but believed to be in excess of \$6,000,000;

g. As to the seventh counterclaim, in an amount of to be determined by the Court but believed to be in excess of \$2,000,000;

h. As to the eighth counterclaim, in an amount of to be determined by the Court but believed to be in excess of \$4,500,000;

i. As to the ninth counterclaim, in an amount of to be determined by the Court;

j. As to the tenth counterclaim, in an amount of his reasonable attorney's fees under the terms of the Master Agreement;

and for costs and attorney's fees and such further relief as this Court deems just and proper.

Dated: New York, New York
March 19, 2018

Cyruli Shanks Hart & Zizmor LLP

By: /s/ Jeffrey C. Ruderman
Jeffrey C. Ruderman, Esq.

