

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JERRY ACKERMAN, an individual, on  
behalf of itself and all others similarly  
situated,

and

AUTOMOTIVE LEASING  
CORPORATION, a Missouri Corporation,  
on behalf of itself and all others similarly  
situated,

Plaintiffs,

v.

GLOBAL VEHICLES U.S.A., INC., a  
Nevada corporation,

and

MAHINDRA & MAHINDRA, LTD., an  
Indian corporation,

Defendants.

Case No.: \_\_\_\_\_

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiffs JERRY ACKERMAN, an individual, and AUTOMOTIVE LEASING CORPORATION, a Missouri corporation, on behalf of themselves and all others who are similarly situated, allege as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff Jerry Ackerman (“Ackerman”) is an individual who resides in and maintains his principal place of business in the county of St. Louis,

Missouri, and is entitled to invoke the jurisdiction of this Court.

2. Plaintiff Automotive Leasing Corporation (“Automotive Leasing”) is a Missouri corporation with its principal place of business in the County of St. Louis, Missouri and is entitled to invoke the jurisdiction of this Court.

3. Defendant Global Vehicles, USA, Inc. (“Global”) is a Nevada corporation with its principle place of business at 1720 Windward Concourse, Suite 400, Alpharetta, Georgia 30005.

4. Defendant, Mahindra & Mahindra Ltd. (“Mahindra”) is an Indian corporation with its principal place of business in Mumbai, India. Mahindra and Global were parties to an agreement wherein Global was given the exclusive right to distribute Mahindra brand motor vehicles throughout the United States.

5. Plaintiffs are informed and believe that Mahindra does substantial business within the United States and, through its various subsidiaries, maintains manufacturing facilities and offices within this country. At all times mentioned herein, Mahindra and Global were joint venturers, partners, co-conspirators, and/or aiders and abettors of each other and were acting within the scope of and in furtherance of their joint venture, partnership, agency and/or conspiracy.

6. The Court has original jurisdiction over this case because 1) Plaintiffs seek to represent a class of similarly situated parties, 2) the aggregate amount in controversy for the Class exceeds \$5,000,000 and 3) members of the class of plaintiffs are citizens of a state different from any defendant. Diversity, therefore, can be found under U.S.C. §1332(d)(2)(A), also known as the Class Action Fairness Act. No exceptions to jurisdiction under U.S.C. §1332(d) apply.

7. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(a)(1) because Plaintiffs have their principal places of business in this judicial district. Venue is also proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

### **FACTS**

8. Mahindra is one of the world's largest manufacturers of trucks, farm equipment, and consumer vehicles. In 2006, Mahindra decided that it wanted to introduce its vehicles to the United States market and, at that time, began negotiating with Global for the purpose of establishing a distribution network within this country. At the conclusion of these negotiations, Global and Mahindra entered into a joint venture agreement whereby Global agreed to become the exclusive distributor of Mahindra manufactured vehicles throughout the United States.

9. In order to develop a dealer base to distribute Mahindra vehicles, Global began marketing dealership franchises to individuals and entities throughout the United States. Specifically, Global represented to prospective dealers that it was the sole distributor in North America for motor vehicles manufactured in India by Mahindra. Global further told potential dealers that it, in conjunction with Mahindra, would soon be importing Mahindra manufactured vehicles that would be sold at the retail level to consumers through franchise dealerships appointed by Global. The price to become a Mahindra dealer ranged from \$125,000 to \$195,000.

10. In reliance on the representations of Global which, upon information and belief, were both known to and authorized by Mahindra, Plaintiffs agreed to open three separate Mahindra dealerships in the St. Louis area. Plaintiff Ackerman signed a Letter of Intent and issued payment to Global in the amount of \$150,000.00 for one of the proposed dealerships. Plaintiff Automotive Leasing signed a letter of intent and issued payment to Global in the amount of \$150,000.00 for two of the proposed dealerships.

11. On March 5, 2008, Global notified Plaintiff Ackerman in the letter attached hereto as Exhibit "A" that Plaintiff Ackerman had been approved as a Mahindra dealer. Global also forwarded to Ackerman the Dealer Sales and Service Agreement attached hereto as Exhibit "B," which Plaintiff signed and returned to Defendant.

12. Plaintiff Automotive Leasing likewise was notified by Global that it had been approved as a Mahindra dealer and also received Dealer Sales and Service Agreements, which were signed and returned to Global.

13. Plaintiffs are informed and believed that in excess of 300 other entities and/or individuals throughout the United States entered into identical dealer franchise agreements with Global and Mahindra. It is believed that the total amount paid by these entities for this franchise opportunity exceeds \$60,000,000.

14. Despite promising to import Mahindra vehicles for sale to the public through Plaintiffs and members of the Class, neither Global nor Mahindra ever imported any vehicles into the United States for distribution through its network of

franchise dealers.

15. In August of 2010, Mahindra unequivocally announced that it was terminating its relationship with Global and would not be importing any vehicles into the United States.

16. Plaintiffs have demanded a refund of all amounts paid by Plaintiffs for Mahindra dealerships. Both Global and Mahindra have failed and refused to release any of the funds paid by Plaintiffs and, upon information and belief, the other members of the Class.

### **CLASS ACTION ALLEGATIONS**

17. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of itself and the following Class:

**Any and all individuals and/or entities that entered into one or more Dealer Sales and Service Agreements with Global and paid money to Global for the right to sell and market vehicles, products, and accessories manufactured by Mahindra & Mahindra, Ltd. in the United States (the “Class”).**

Excluded from the Class are Defendants, as well as Defendants' employees, affiliates, officers, and directors and the Judge to whom this case is ultimately assigned. Plaintiffs reserve the right to amend the definition of the Class if discovery and/or further investigation reveals that the Class should be expanded or otherwise modified.

18. Numerosity & Impracticality of Joinder: The members of the Class are so numerous that joinder of all members would be impractical. Plaintiffs

reasonably estimate that there are at least 300 Class members who entered into dealership agreements with Global and Mahindra. The members of the Class are easily and readily identifiable from information and records in Defendants' possession, control, or custody.

19. Commonality and Predominance: There is a well-defined commonality of interest and common questions of law and fact that predominate over any questions affecting individual members of the Class. These common legal and factual questions, which exist without regard to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. Whether Defendants breached their contract with members of the Class;
- b. Whether Defendants violated the Georgia Motor Vehicle Franchise Practices Act;
- c. Whether Defendants breached their duty of good faith and fair dealing;
- d. Whether Defendants made false and misleading statements to the Class in order to induce them into paying money to Defendants;
- e. Whether Defendants interfered with the contractual relationships and/or expected economic advantage of the Class;
- f. Whether Defendants have been unjustly enriched;
- g. Whether Plaintiff and the Class are entitled to damages; and,

h. Whether Plaintiff and the Class are entitled to equitable relief or other relief, and the nature of such relief.

20. Typicality: The Plaintiffs' claims are typical of the Class in that Plaintiffs and the Class all suffered damages as a direct proximate result of the same wrongful practices that the Defendants engaged in. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the Class members' claims. Plaintiffs' claims are based upon the same legal theories as the Class members' claims. The only difference between the Plaintiffs' and Class members' claims would lie in the amount of damages sustained, which could be determined readily and does not bar class certification.

21. Adequacy: Plaintiffs will fully and adequately protect the interests of the members of the Class and have retained class counsel who are experienced and qualified in prosecuting class actions and other forms of complex litigation. Neither the Plaintiffs nor their counsel has interests which are contrary to, or conflicting with, those interests of the Class.

22. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because, *inter alia*: it is economically impracticable for members of the Class to prosecute individual actions; prosecution as a class action will eliminate the possibility of repetitious and redundant litigation; and, a class action will enable claims to be handled in an orderly, expeditious manner.

## **COUNT I**

### **BREACH OF CONTRACT**

23. Plaintiff restates and incorporates herein by reference the allegations contained in paragraphs 1 through 22 above.

24. The parties had a contract as reflected in the Dealer Sales and Service Agreement which required Defendants, *inter alia*, to supply to Plaintiffs vehicles, parts, and accessories manufactured by Mahindra for resale to consumers. At the time of entering the contract, Global was an agent, joint venturer, or partner of Mahindra and was acting within the course and scope of its agency, joint venture, and/or partnership.

25. Defendants breached the contract between the parties by failing to supply to Plaintiff and the Class vehicles, parts and accessories manufactured by Mahindra for resale to consumers throughout the United States.

26. Plaintiff and the Class are entitled to recover damages from Defendants which have occurred as direct consequence of Defendants' aforementioned breach of contract.

## **COUNT II**

### **BREACH OF CONTRACT (THIRD PARTY BENEFICIARY)**

#### **AGAINST DEFENDANT MAHINDRA, ONLY**

27. Plaintiff restates and incorporates herein by reference the allegations contained in paragraphs 1 through 26 above.

28. At all times mentioned herein, there existed a contract between Mahindra and Global wherein Mahindra agreed to allow Global to serve as the exclusive distributor of Mahindra vehicles, parts, and accessories in the United States. The Plaintiff and the Class were intended third-party beneficiaries of this

contract.

29. Mahindra breached this contract by failing to export the vehicles, parts and accessories that were to be distributed by Plaintiffs and the Class.

30. As a direct result of this breach, Plaintiffs and the Class have been damaged.

### **COUNT III**

#### **VIOLATION OF THE GEORGIA MOTOR VEHICLE FRANCHISE PRACTICES ACT**

31. Plaintiff restates and incorporates herein by reference the allegations contained in paragraphs 1 through 30, above.

32. The agreement between Defendants and the Class provides that Georgia law will apply to any disputes arising under the agreement. Hence, the Georgia Motor Vehicle Franchise Practices Act, O.C.G.A. Section 10-1-620 *et seq.* regulates the transactions between the Defendants and the Class.

33. Defendants violated O.C.G.A. Section 10-1-662(a)(4) and (5) by making false and deceptive statements in order to induce Plaintiffs and the Class to enter into the agreements that are the subject of this case and to pay more than \$60,000,000 in franchise fees to Defendants.

34. Defendants violated O.C.G.A. Section 10-1-631(a)(1) by failing to act in good faith with respect to its transactions with Plaintiffs and the Class.

35. Plaintiffs and the Class have sustained actual damages as a direct result of Defendants' violation of the Georgia Motor Vehicle Franchise Practices Act.

36. Pursuant to O.C.G.A. Section 10-1-623 Plaintiff and the Class are

entitled to recover damages consisting of the greater of (1) their actual monetary loss or (2) three times their loss, not to exceed \$750,000, plus attorney's fees and punitive damages.

#### **COUNT IV**

##### **TORTIOUS INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONS AGAINST DEFENDANT MAHINDRA, ONLY**

37. Plaintiffs restate and incorporate herein by reference the allegations contained in paragraphs 1 through 36.

38. Plaintiffs and the Class had an existing contractual relationship with Global for the distribution of Mahindra motor vehicles.

39. As described herein, Mahindra interfered with that existing contractual relationship. Mahindra's actions were taken for the purpose of harming Plaintiffs and the Class and were not privileged or justified.

40. As a direct and proximate result of Mahindra's conduct, Plaintiffs and the Class have been damaged.

#### **COUNT V**

##### **TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE AGAINST DEFENDANT MAHINDRA, ONLY**

41. Plaintiffs restate and incorporate herein by reference the allegations contained in paragraphs 1 through 40.

42. As described herein, Plaintiffs and the Class had legitimate expectations of future business relationships and economic advantage as a result of being able to distribute Mahindra vehicles, parts and accessories to the public.

43. As described herein, Mahindra interfered with these expectations of

future business relationships and economic advantage. Mahindra's actions were taken for the purpose of harming Plaintiffs and the Class and were not privileged or justified.

44. As a direct and proximate result of Mahindra's conduct, Plaintiffs and the Class have been damaged.

#### **COUNT VI**

#### **UNJUST ENRICHMENT**

45. Plaintiffs restate and incorporate herein by reference the allegations contained in paragraphs 1 through 44 above.

46. Plaintiffs and the Class paid valuable consideration to Defendants in expectation of them being able to sell Mahindra vehicles, parts and accessories to the public throughout the United States as franchise dealers.

47. Defendants have failed to distribute any Mahindra motor vehicles to Plaintiffs or the Class for resale to the public in the United States.

48. It would be unjust to allow Defendants to retain the monies paid by Plaintiffs and the Class to become franchise dealers.

49. Plaintiff and the Class are entitled to restitution from Defendants for all amounts paid to become franchise dealers.

#### **COUNT VII**

#### **PROMISSORY ESTOPPEL**

50. Plaintiffs restate and incorporate herein by reference the allegations contained in paragraphs 1 through 49 above.

51. The representations of the Defendants as described herein caused

Plaintiffs and the Class to reasonably believe that Defendants would provide Mahindra vehicles, parts and accessories to Plaintiffs and the Class for distribution to consumers throughout the United States.

52. Plaintiffs and the Class reasonably relied on the Defendants' representations by submitting the initial dealer franchise payments to Defendants and incurring other expenses in anticipation that they soon would be distributing Mahindra vehicles, parts and accessories.

53. Despite their representations to the contrary, Defendants have failed to deliver any Mahindra vehicles to Plaintiffs and the Class and have represented that such vehicles will never be delivered to Plaintiffs and the Class. It would be unjust to allow Defendants to retain the dealer franchise payments paid by the Plaintiffs and the Class.

54. Plaintiffs and the Class are therefore entitled to a refund of all amounts paid in reasonable reliance on defendants' promises as outlined herein.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Jerry Ackerman and Automotive Leasing Corporation, on behalf of themselves and all parties similarly situated, pray for judgment against Defendants, Global Vehicles USA and Mahindra & Mahindra, Ltd., jointly and severally, as follows:

1. For compensatory damages in an amount to be determined at trial;
2. For restitution to the Class of all funds unlawfully acquired by Defendants;
3. For punitive damages in an amount to be determined at trial

4. For reasonable attorney's fees;
5. For costs and expenses incurred herein; and
6. For such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

Dated: \_\_\_\_\_.

Respectfully submitted,

JOHN E. TOMA, LLC

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