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May 13, 2020

VIA EMAIL

Mark C. Oberkircher
Manager Industry & Dealer Affairs
General Motors Company
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Mail Code 482-A15-C61
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Re: Clean Dealer Participation Agreement

Dear Mr. Oberkircher:

We are attorneys for the California New Car Dealers Association (“CNCDA”) which is a statewide trade association that represents the interests of over 1,100 franchised new car and truck dealer members. CNCDA members are primarily engaged in the retail sale and lease of new and used motor vehicles, but also engage in automotive service, repair, and part sales. There are approximately 160 GM dealer members of CNCDA.

We are writing today because CNCDA has received many calls and communications from California General Motors (“GM”) dealers who are very concerned about signing GM’s “Clean” Dealer Participation Agreement. While we admire GM’s efforts in lending assistance to avoid the spread of the COVID-19 pandemic, CNCDA believes there are a number of reasons why the agreement should not be signed.

CNCDA is concerned that dealers signing the Participation Agreement are agreeing to the representations that the Clean Program will be making, directly or by implication, about the safety of the dealership and the vehicles. The dealer would in effect be making representations about freedom from the virus on the dealership premises and in the vehicles, which could subject the dealer to liability for breaching those representations.

In signing the Participation Agreement dealers would have to examine and check with their insurance companies and brokers about the scope of their insurance coverage for claims related to COVID-19. Participation in the Clean Program might adversely

affect their insurance coverage. If a claim were asserted against a dealer arising from a COVID-19 issue, the fact the dealer agreed to adhere to the Guidelines in the Participation Agreement, but failed to do so, could be used against the dealer.

The Participation Agreement recites that the dealer signing the agreement will be permitted to participate in GM marketing initiatives related to the Clean Program. If there is any intent for GM to have local dealer marketing associations advertise the Clean Program through TV and radio, or in other media, how could that be advertised if all dealers in the marketing association have not signed the Participation Agreement? It appears that the way the program has been presented approaches coercion for the dealers to participate, or risk loss of business if they do not. California Vehicle Code § 11713.2(d) provides:

[It is unlawful for a manufacturer to coerce or attempt to coerce any dealer in this state to] participate in an advertising campaign or contest, any promotional campaign, promotional materials, training materials, showroom or other display decorations or materials at the expense of the dealer.

Section 8 of the Participation Agreement has the dealer releasing GM from all claims arising out the dealer's performance or attempted performance of the terms of the agreement and indemnifying GM from third party claims arising from an alleged breach of the agreement. We believe that the release and indemnification language of this section violates California Vehicle Code § 11713.13(f) which provides in relevant part:

It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do, directly or indirectly through an affiliate, any of the following:

(f) (1) Fail, upon demand, to indemnify any existing or former franchisee and the franchisee's successors and assigns from any and all damages sustained and attorney's fees and other expenses reasonably incurred by the franchisee that result from or relate to any claim made or asserted by a third party against the franchisee to the extent the claim results from any of the following:

(B) Service systems, procedures, or methods the franchisor required or recommended the franchisee to use if the franchisee properly uses the system, procedure, or method.

(D) Any act or omission of the manufacturer or distributor for which the franchisee would have a claim for contribution or indemnity under applicable law or under the franchise, irrespective of and without regard to any prior termination or expiration of the franchise.

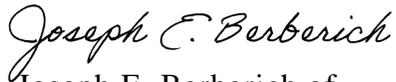
(2) Require a franchisee to indemnify its franchisor, or any third party, for the actions of the franchisee that were properly made in compliance with a franchisor's policy, program, or requirement.

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For the above reasons, CNCDA is requesting that GM not use the Clean Program in California. Thanks you for your consideration of this request.

Very truly yours,



Joseph E. Berberich of
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cc:

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All CNCDA GM Dealers