

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

LYNDA COLE, an individual	)	
39435 W 167 <sup>th</sup> Street	)	Case No.
Edgerton, KS 66021	)	Pursuant to K.S.A. Chap. 60
Plaintiff,	)	
	)	WHISTLEBLOWER RETALIATION
v.	)	
	)	WRONGFUL TERMINATION
ROBERT BROGDEN’S OLATHE	)	
BUICK GMC, INC.	)	INTENTIONAL INFLICTION OF
Serve Registered Agent:	)	EMOTIONAL DISTRESS
<i>Robert Brogden</i>	)	
1500 E Santa Fe	)	FAILURE TO PAY
Olathe, KS 66061	)	WAGES
	)	
and	)	NEGLIGENCE
	)	
ROBERT BROGDEN	)	
Serve at:	)	
1500 E Santa Fe	)	
Olathe, KS 66061	)	
	)	
Defendants.	)	

**PETITION FOR DAMAGES**

Plaintiff Lynda Cole, for her Petition for Damages, states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Lynda Cole (“Plaintiff”) is an individual resident of Edgerton, Johnson County, Kansas.
2. Defendant Robert Brogden’s Olathe Buick GMC, Inc. (“Defendant Dealership”) is a corporation organized and existing under and by virtue of the laws of the state of Delaware, with its principal place of business at 1500 E Santa Fe, Olathe, Johnson County, Kansas 66061.
3. Defendant Robert Brogden (“Defendant Owner”) is an individual and, upon information and belief, the owner of Robert Brogden’s Olathe Buick GMC, Inc.

4. The acts complained of here occurred in Olathe, Johnson County, Kansas, and therefore, venue, pursuant to K.S.A. § 60-303, and jurisdiction, pursuant to K.S.A. § 60-308 are proper in this Court.

#### **GENERAL FACTS APPLICABLE TO ALL COUNTS**

5. Plaintiff is a female, 62 years of age, resident of Edgerton, Johnson County, Kansas. Plaintiff was employed by Defendant from August 5, 2015, to October 31, 2021. Throughout these 6 years, she served as the Controller for Defendant's Robert Brogden's Olathe Buick GMC, Defendant's Robert Brogden's Buick GMC Cadillac in Hays, Kansas, and Defendant's Robert Brogden's Olathe Kia stores.

6. On or about January 2020, the wholesale buyer for Dealership Defendant was promoted to General Manager for Robert Brogden's Olathe Buick GMC. The same individual later, specifically on May 17, 2021, became the general manager of Robert Brogden's Olathe Kia.

7. Plaintiff had worked with the new manager at a different dealership. Immediately upon the hiring of the new manager, Plaintiff send Defendant Owner as well as to Russell Dent, warning them of the type of behavior to expect.

8. Upon learning about the email, the new general manager became very confrontational and angrily berated Plaintiff and belittled her in front of Russell Dent, who sat quietly and allowed it to continue unabated.

9. Soon after January 2020, when the new general manager began exercising his role at Defendant's Olathe Buick GMC, Plaintiff began witnessing and receiving reports of the general manager's verbal and emotional abuse of the employees, particular of black and women employees.

10. Each time abusive behavior was witnessed by Plaintiff or reported to Plaintiff, Plaintiff reported them to a member of the upper management structure, Russel Dent.

11. Plaintiff was also routinely informed of the new general manager's constant use of illegal substances while on the premises of Defendant Dealership. These included, but were not limited to, the use of cocaine, Adderall abuse, and marijuana. On many occasions, the new general manager would even brag about such use and behavior.

12. Each time use of illegal substances were reported to Plaintiff, Plaintiff reported them to a member of the upper management structure, Russel Dent.

13. As the controller, Plaintiff also learned first-hand that the new general manager would routinely steal Defendant Dealership's customer's cash deposits. When the new general manager was asked where the down payment money was, he would blame other employees but instruct Plaintiff to "just write it off."

14. Each time such incidents occurred, Plaintiff reported them to a member of the upper management structure, Russel Dent.

15. Mr. Dent served as the liaison between Defendant's store employees and Defendant Owner, Robert Brogden. In fact, each time, Plaintiff made a report, she was assured by Russell Dent that he was reporting everything to Defendant Owner. However, nothing was ever done to address Plaintiff's reports of these illegal activities.

16. Sometime in 2021, in a conversation between the Plaintiff and the new general manager, the new general manager told Plaintiff that he "didn't like to fire anyone but preferred instead to just make them so miserable through abuse and unrealistic workload that they would choose to quit."

17. In another conversation that Plaintiff had with the new general manager, he told Plaintiff that “the only thing that should be addressed when inspecting a used car was to make sure it could stop, start, and steer – nothing else.”

18. Soon after, Plaintiff learned that the new general manager had instructed a used car technician not to document any problems he found on used cars being prepared for resale. His explanation was that “if the dealership didn’t document a problem, then the dealership couldn’t be held liable for anything that might go wrong with the vehicle or any injuries that might happen to a customer.”

19. After receiving these instructions, the technician told the used car manager that such was unethical and that he wouldn’t comply. The used car manager reported that back to the new general manager. Soon thereafter, the technician’s flag hours were substantially reduced; he was harassed; and ultimately forced to quit.

20. Upon learning of the technician’s reports, objections to the fraudulent activities, and ultimate firing, Plaintiff reported the incident to upper management of Defendant Dealership. No investigation or action was taken by Defendant Dealership or its agents and upper management.

21. Over the next months, the new general manager’s activities became more pronounced. By the summer of 2021. The new general manager hired an employee friend to work in the finance department. This new employee was originally hired for Defendant’s Buick GMC store as a receptionist/administrative capacity but, without any prior experience in finance, and at the request of the new general manager, was moved to the Kia store to work in the finance department.

22. Plaintiff received reports that the new hire, following direct instructions from the new general manager, was routinely committing, or participating in fraudulent activities.

Specifically, the new hire would routinely bring a customer into her office and print the finance contract for the customer to sign. The customer would sign the contract and finish their dealings and leave with their new purchased vehicle. Afterwards, the new hire would go back into the DMS and alter the contract adding line items such as extended service contracts and/or gap policies without the customer's consent, and on occasions, would forge the customer's signature on the new created documents. This was a routine practice instructed by the new general manager and carried out by his new hire.

23. These activities became so rampant, that even a daughter of an employee of Defendants was victimized by such illegal and fraudulent practice.

24. Immediately upon learning of these activities, Plaintiff reported them to Defendant Dealership's upper management, but nothing was done. In fact, Plaintiff (presuming the new general manager may not have been aware) reported this to the new general manager as well. He merely laughed about it. Instead of an immediate, appropriate, and required investigation, Plaintiff was ultimately fired or forced to resign.

25. Due to Plaintiff's reporting to upper management, by mid-2021, Defendants knew or were well aware of the new general manager's illegal activities and practices.

26. Because of these activities reported to or witnessed by Plaintiff, she chose to always keep her office locked, where the new general manager was not to have a key to it. This was first approved by Defendant Dealership's upper management, specifically Russel Dent.

27. However, in September 2021, Plaintiff contracted COVID-pneumonia. Soon thereafter, Plaintiff's father fell ill and needed care. Plaintiff was forced to take FMLA for 6 weeks. While away from work, the new general manager literally broke into Plaintiff's office, and told a

salesperson who witnessed him doing it, that he wished to access Plaintiff's office to see if Plaintiff had "any dirt on him."

28. Immediately upon learning of this "intrusion", Plaintiff sent an email to Defendant Dealership's upper management expressing her objections. In response, Defendants told Plaintiff that they would accept her resignation. Upon receiving this email, on the same day of her father's death, Plaintiff called Russell Dent and told him that she wasn't resigning.

29. Russell Dent told Plaintiff, however, that it was his decision to terminate Plaintiff because of Plaintiff's multiple complaints about the new general manager's conduct and behavior; and specifically confessed to Plaintiff that "Phil is making us money – that's what is important."

30. Due to Plaintiff's many reports and complaints, Defendant Dealership as well as Defendant Owner were well aware of the new general manager's abusive behavior, unethical conduct, and criminal activities.

31. Plaintiff specifically reported the activities where the new general manager and his new friend hire were fraudulently adding items to previously signed finance agreements, without customers' knowledge or consent. Instead of an immediate, appropriate, and required investigation, Plaintiff was fired or forced to resign.

32. As stated to Plaintiff by Russell Dent, the true reason Plaintiff was being pushed out and terminated was for her whistleblower complaints which exposed the criminal enterprise of Defendant Dealership's general manager.

33. An additional reason for Plaintiff's termination (forced or otherwise) was the fact that Plaintiff also complained and reported to Defendant Dealership that the general manager of Defendant Dealership was diverting Plaintiff's and others' bonuses and commissions to himself in an ongoing wage theft scheme.

**FIRST CAUSE OF ACTION  
(Whistleblower Retaliation Against Defendants Dealership)**

34. Plaintiff incorporates paragraphs 1 through 33 above, as if fully set forth here.

35. At all times relevant to this Petition for Damages, Defendant Dealership was Plaintiff's employer.

36. At all times relevant to this Petition for Damages, Defendant Dealership's general manager and others in Defendant Dealership's upper management, specifically Mr. Phil Skid, Mr. Russell Dent, and Mr. Robert Brogden, were the managing agents, agents, and/or employees of Defendant Dealership, and acting within their course and scope of their agency and/or employment.

37. Executive management of Defendant Dealership believed that Plaintiff had disclosed to a person with authority over Plaintiff as well as to other employees with authority to investigate, discover, and document numerous financial crimes, fraud, and other violations of law, including, but not limited to, falsification, alteration, and forgery of legal contracts all of which were actively being covered up by Defendant Dealership and its management.

38. In disclosing the above, Plaintiff had a reasonable cause to believe that the information disclosed violations of state and federal law as well as the ethical rules and policies of Defendant Dealership.

39. As a result of the disclosures, Defendant Dealership harassed the Plaintiff, abused, intimidated, and retaliated against the Plaintiff which included, among other things, the forced resignation or termination of the Plaintiff from her employment.

40. As a direct and proximate result of the unlawful conduct of Defendant Dealership, Plaintiff was harmed and suffered special damages including, but not limited to, past and future

loss income, benefits, medical expenses, and other damages in an amount to be proven at the time of trial.

41. As a direct and proximate result of Defendant Dealership's unlawful conduct, Plaintiff was harmed and suffered general damages, including but not limited to, shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress, and other damages in an amount to be proven at the time of trial.

42. Defendant Dealership's conduct was a substantial factor in causing Plaintiff's harm.

43. Defendant Dealership committed the acts alleged here maliciously, fraudulently, and oppressively in conscious disregard for Plaintiff's rights, and such acts were committed by, and/or ratified by, and/or were committed with the knowledge of employees' lack of fitness in the workplace, but were allowed to proceed, and/or were ratified by officers, directors, managing agents, and owners of Defendant Dealership.

WHEREFORE, for all the reasons stated above, Plaintiff prays for a judgment against Defendant Dealership Robert Brogden's Olathe Buick GMC, Inc. in an amount in excess of \$75,000.00 and sufficient to compensate Plaintiff for her injuries and damages, for her costs and disbursements incurred here, and for such other and further relief as the Court deems just and proper.

**SECOND CAUSE OF ACTION  
(Wrongful Termination Against Defendant Dealership)**

44. Plaintiff incorporates paragraphs 1 through 43 above, as if fully set forth here.

45. At all times relevant to this Petition for Damages, Defendant Dealership was Plaintiff's employer.



46. Plaintiff was terminated from or forced to resign her employment for reasons that violate a public policy. In this regard, Plaintiff engaged in activities protected under the Kansas Whistleblower Laws, including making “Whistleblower” complaints and exercising her legitimate rights by opposing the employer’s practices forbidden under the Kansas Whistleblower Laws regarding falsification, alteration, and forgery of legal contracts; harassment; whistleblower retaliation; and wage theft that she experienced under Defendant Dealership.

47. Despite engaging in protected activities, the employer, Defendant Dealership unlawfully and aggressively harassed and retaliated against the Plaintiff, including, but not limited to, her unlawful termination, which resulted in, among other things, pain, humiliation, and anxiety.

48. On or about September 2021, Plaintiff was unlawfully terminated, because, as Russel Dent stated in his own words:

“IT IS MY DECISION TO TERMINATE YOU BECAUASE YOU COMPLAINED ABOUT PHIL’S BEHAVIOR TOO MANY TIMES BEFORE. PHIL IS MAKING US MONEY – THAT IS WHAT’S IMPORTANT.

49. Plaintiff engaging in protected activities including workplace whistleblower complaints and exercising her legitimate rights by opposing Defendant Dealership’s practices forbidden under Kansas Labor Code regarding the falsification, alteration, and forgery of legal contracts; harassment; whistleblower retaliation; and wage theft were motivating reasons for Plaintiff’s wrongful termination or forced resignation.

50. As a direct and proximate result of Defendant Dealership’s unlawful conduct, Plaintiff was harmed and suffered special damages including, but not limited to, past and future loss of income, benefits, and other damages to be proven at the time of trial.

51. As a direct and proximate result of Defendant Dealership’s unlawful conduct, Plaintiff was harmed and suffered general damages including, but not limited to, shock,

embarrassment, humiliation, emotional distress, stress, and other damages to be proven at the time of trial.

52. Defendant Dealership's wrongful termination of Plaintiff was a substantial factor in causing Plaintiff's harm.

53. As a direct and proximate result of the conduct of Defendant Dealership, Plaintiff was forced to retain an attorney in order to protect her rights. Accordingly, Plaintiff seeks the reasonable attorneys' fees and costs incurred and to be incurred in this litigation in an amount according to proof at trial.

WHEREFORE for all the reasons stated above, Plaintiff prays for a judgment against Defendant Dealership Robert Brogden's Olathe Buick GMC, Inc. in an amount in excess of \$75,000.00 and sufficient to compensate Plaintiff for her injuries and damages, for attorneys' fees, for her costs and disbursements incurred here, and for such other and further relief as the Court deems just and proper.

**THIRD CAUSE OF ACTION  
(Intentional Infliction of Emotional Distress Against Defendant Dealership)**

54. Plaintiff incorporates paragraphs 1 through 53 above, as if fully set forth here.

55. At all times relevant to this Petition for Damages, Defendant Dealership was Plaintiff's employer.

56. At all times relevant to this Petition for Damages, the new general manager as well as Defendant Dealership's upper management and owner, were the managing agents, agents, and/or employees of Defendant Dealership, and acting within the course and scope of their agency or employment.

57. Defendant Dealership, through the acts and conduct of its agents, acted intentionally and/or recklessly against Plaintiff.

58. Defendant Dealership's conduct was extreme and outrageous.

59. Defendant Dealership harmed Plaintiff because those actions caused her to suffer humiliation, mental anguish, and severe emotional distress.

60. Defendant Dealership's verbal abuse, threats, and bullying was done with the intent of injuring, and did injure Plaintiff, and such conduct by Defendant Dealership was the direct and proximate cause of Plaintiff's severe emotional distress.

61. As a direct and proximate result of Defendant Dealership's unlawful and intentional acts, Plaintiff was caused to suffer and will continue to incur and suffer, injuries and damages.

62. Defendant Dealership's conduct was a substantial factor in causing Plaintiff's severe emotional distress.

63. Defendant Dealership committed the acts alleged here maliciously, fraudulently, and oppressively in conscious disregard for Plaintiff's rights. The unlawful conduct alleged above was engaged in by the officers, directors, supervisors, managers, and owners of Defendant Dealership, inclusive by those who were acting, at all times relevant to this Petition for Damages, within the course and scope of their agency or employment.

64. Defendant dealership knew or should have known of the conduct of its agents and ratified their unlawful conduct.

65. Because of Defendant Dealership's intentional infliction of emotional distress, Plaintiff has been damaged in an amount according to proof at the time of trial of this matter.

WHEREFORE for all the reasons stated above, Plaintiff prays for a judgment against Defendant Dealership Robert Brogden's Olathe Buick GMC, Inc. in an amount in excess of \$75,000.00 and sufficient to compensate Plaintiff for her injuries and damages, for her costs and

disbursements incurred here, and for such other and further relief as the Court deems just and proper.

**FOURTH CAUSE OF ACTION  
(Failure to Pay Wages Against Defendant Dealership)**

66. Plaintiff incorporates paragraphs 1 through 65 above, as if fully set forth here.

67. At all times relevant to this Petition for Damages, Defendant Dealership was Plaintiff's employer.

68. At all times relevant to this Petition for Damages, the new general manager as well as Defendant Dealership's upper management and owner, were the managing agents, agents, and/or employees of Defendant Dealership, and acting within the course and scope of their agency or employment.

69. During Plaintiff's employment with Defendant Dealership, Plaintiff earned bonuses and commissions. However, at the same time, certain managers with Defendant Dealership were diverting Plaintiff's and others' earned bonuses and commissions to themselves in an ongoing wage theft scheme.

70. Kansas Wage Payment Act provides in pertinent part:

Wages means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis .... (K.S.A. 44-313(c)).

71. The bonuses and commissions due to Plaintiff are considered "wages," and Defendant Dealership's failure to Pay Plaintiff such wages was unlawful.

72. As a direct and proximate result of Defendant Dealership's unlawful conduct, Plaintiff was harmed and suffered special damages including, but not limited to, loss of income, interest, waiting time penalties, and other damages in an amount to be proven at the time of trial.

73. Defendant Dealership's conduct was a substantial factor in causing Plaintiff's damages.

74. Because of Defendant Dealership's failure to properly and fully pay all wages, Plaintiff has been damaged in an amount according to proof at the time of trial of this matter.

WHEREFORE for all the reasons stated above, Plaintiff prays for a judgment against Defendant Dealership Robert Brogden's Olathe Buick GMC, Inc. in an amount in excess of \$75,000.00 and sufficient to compensate Plaintiff for her injuries and damages, interest, waiting time penalties, for her costs and disbursements incurred here, and for such other and further relief as the Court deems just and proper.

**FIFTH CAUSE OF ACTION  
(Negligence Against All Defendants)**

75. Plaintiff incorporates paragraphs 1 through 74 above, as if fully set forth here

76. At all times relevant to this Petition for Damages, Defendants were Plaintiff's employers, and as such owed a duty of care to Plaintiff.

77. By the conduct alleged here, Defendants breached their duty by failing to exercise reasonable care, and as such, failed to perform their duty.

78. By the conduct alleged here, Defendants acted negligently, outrageously, and/or with reckless disregard, and knew or should have known of the probability of causing Plaintiff harm.

79. As a direct and proximate result of the conduct of Defendants, Plaintiff was harmed and suffered special damages including but not limited to, past and future loss of income, benefits, medical expenses, and other damages in an amount to be proven at the time of trial.

80. As a direct and proximate result of the conduct of Defendants, Plaintiff was harmed and suffered general damages including, but not limited to, shock, embarrassment, physical

distress and injury, humiliation, emotional distress, stress, and other damages in an amount to be proven at the time of trial.

81. Plaintiff further expects to suffer continuing, future loss and damages.

WHEREFORE for all the reasons stated above, Plaintiff prays for a judgment against Defendant Dealership Robert Brogden's Olathe Buick GMC, Inc. in an amount more than \$75,000.00 and sufficient to compensate Plaintiff for her injuries and damages, for her costs and disbursements incurred here, and for such other and further relief as the Court deems just and proper.

**PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL ISSUES**

Respectfully submitted,

/s/ Marcos A. Barbosa

Marcos A. Barbosa

KS #22015

**MABLAW-KC**

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