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6 Attorneys for Plaintiffs
BYRON Z. MOLDO, in his role as Receiver;
7 UNIVERSAL CITY NISSAN, INC.; GLENDALE
NISSAN/INFINITI, INC.; and WEST COVINA
8 NISSAN, LLC

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 BYRON Z. MOLDO, in his role as Receiver
for UNIVERSAL CITY NISSAN, INC., a
13 California corporation; GLENDALE
NISSAN/INFINITI, INC., a California
14 corporation; and WEST COVINA NISSAN,
LLC, a California limited liability company.

15 Plaintiffs,

16 v.

17 NISSAN NORTH AMERICA, INC., a
18 California corporation; NISSAN MOTOR
ACCEPTANCE CORPORATION, a
19 California corporation; NISSAN MOTOR
CO., LTD., a Japanese corporation; TROPHY
20 AUTOMOTIVE DEALER GROUP LLC, a
Delaware limited liability company; TROPHY
21 UNIVERSAL CITY GROUP LLC, a
California limited liability company; WEST
22 COVINA MOTOR GROUP LLC, a California
limited liability company; NASSER WATAR,
23 an individual; TIMOTHY DEVINE, an
individual; DANIEL SCOTT, an individual;
24 THOMAS AWADA, an individual; and DOES
1 through 10, inclusive,

25 Defendants.
26
27
28

CASE NO. 19STCV45899

COMPLAINT FOR:

- (1) Concealment
- (2) Concealment
- (3) Breach of Contract
- (4) Breach of the Implied Covenant of Good Faith and Fair Dealing
- (5) Tortious Interference with Contract
- (6) Breach of the Implied Covenant of Good Faith and Fair Dealing
- (7) Breach of Fiduciary Duty & Aiding and Abetting Breach of Fiduciary Duty

[DEMAND FOR JURY TRIAL]

1 Plaintiff Byron Z. Moldo (the “Receiver”) is the Court-appointed receiver for Plaintiffs
2 Universal City Nissan, Inc., West Covina Nissan, LLC and Glendale Nissan/Infiniti, Inc.
3 (collectively with the Receiver, the “Plaintiffs”). Plaintiffs allege as follows:

4 **INTRODUCTION**

5 1. Nissan is one of the largest and most profitable auto manufacturers in the world.
6 The events of the past twelve months have revealed that it is also one of the most corrupt as well.
7 Plaintiffs’ 50-year-old family business operating Nissan and other dealerships was a victim of
8 Nissan’s unethical culture and dishonest business practices.

9 2. As CEO, Carlos Ghosn ruled Nissan until his criminal indictment in Japan in
10 November 2018. During his 17 years as CEO, he transformed Nissan from a tradition-minded
11 Japanese car company into a quasi-criminal enterprise to satisfy his own greed. Nissan admitted
12 in an internal investigation that Ghosn had concealed millions of his own compensation from
13 investors; used \$27 million from a Nissan subsidiary to purchase private residences for himself;
14 awarded his sister a lucrative no-show, no-work job; and donated millions of company funds to his
15 pet charities. All of this occurred because of a total and complete lack of corporate governance—
16 and the endorsement of an unethical corporate culture—at Nissan. Nissan’s fraud and corruption
17 harmed Plaintiffs, the Nissan brand and all other Nissan dealers in the United States and around
18 the world.

19 3. Unbeknownst to Plaintiffs, the collision course between Nissan’s corruption and
20 Plaintiffs’ car dealerships began in 2008. When the financial crisis hit, Ghosn suffered personal
21 financial strain when his currency-trading options contracts went bad. He turned to Saudi
22 billionaire, Khaled al-Juffali, for help. Al-Juffali provided Ghosn millions in financial assistance
23 to cover his personal losses. In return, Ghosn arranged payment of \$14.7 million from a Nissan
24 subsidiary to a company owned by al-Juffali, and he arranged for Nissan to enter into a joint
25 venture with a company jointly owned by al-Juffali and Defendant Nasser Watar (“Watar”).

26 4. Plaintiffs are several Nissan car dealerships that were part of a larger group of
27 automobile dealerships founded by Morris Sage (collectively, the “Sage Group”) 50 years ago. In
28 1969, Nissan trusted Morris Sage with one of its first dealerships in the United States. The parties

1 enjoyed a long-term successful relationship.

2 5. But in 2017, the Sage Group was struggling. In the years after Morris' passing, his
3 sons found it difficult to share control over the company. In time, however, the Sage Group could
4 have recovered its former strength. But in the new Nissan created by Carlos Ghosn, Nissan turned
5 its back on a business partner of almost a half-century and carried out a scheme to ensure the Sage
6 Group's demise.

7 6. Nissan, headed by Ghosn, saw the Sage Group as another bounty and pay-back for
8 Ghosn's benefactor, al-Juffali. Watar and al-Juffali were actively looking to acquire dealerships in
9 the United States. Watar repeatedly boasted about—and touted—his wealthy Middle East partner,
10 al-Juffali, when seeking out new dealerships to acquire. Watar claimed that, despite his lack of
11 experience managing automobile dealerships, he was well-financed because of his partnership
12 with al-Juffali. Nissan, through its top executive Carlos Ghosn, intended to do everything in its
13 power to help them acquire Nissan dealerships.

14 7. The Sage Group had its inventory financing with Nissan's financing arm,
15 Defendant Nissan Motor Acceptance Corporation ("NMAC"), and Plaintiff dealerships had
16 franchise agreements with Defendant Nissan North America, Inc. ("NNA"). Defendant Nissan
17 Motor Co., Ltd. ("Nissan Japan") is the parent company of both NNA and NMAC.¹ Beginning in
18 January 2017, the Nissan Defendants acted in concert to prevent the Sage Group from recovering
19 its former financial strength, thereby forcing a fire-sale to al-Juffali and Watar's U.S. company,
20 Defendant Trophy Automotive Dealer Group LLC.² Unbeknownst to Plaintiffs, al-Juffali and
21 Watar had bailed out Ghosn from his personal financial troubles, and Nissan gave them an
22 exclusive Middle East distributorship as a gift for their "loyalty" to Ghosn. Nissan and Trophy
23 concealed their improper financial relationship from the Sage Group.

24 8. NMAC stopped the Sage Group from financing the purchase of new vehicles for
25

26 ¹ Nissan Japan, NNA and NMAC are collectively referred to as "Nissan" or the "Nissan
Defendants," but where the distinction between them is relevant, Plaintiffs will identify each.

27 ² Trophy Automotive Dealer Group LLC, along with Defendants Trophy Universal City Group
28 LLC ("Trophy Universal City") and West Covina Motor Group LLC ("Trophy West Covina") are
collectively referred to as "Trophy."

1 the dealerships even though the Sage Group was in compliance with all of NMAC's covenants at
2 two of its stores. Nissan used the excuse that the Sage Group was "out of trust"—i.e., taking
3 longer than NMAC's policies to repay vehicles sold—when that was a common practice for many
4 dealerships. As a result, Nissan stopped shipping new vehicles to the dealerships.

5 9. Without new vehicles to sell, the Sage Group's finances declined further. Nissan
6 was digging a grave for the Sage Group and simultaneously burying them in it. Nissan then
7 introduced the Sage Group to Trophy as a potential buyer. Trophy and Plaintiffs executed a letter
8 of intent to purchase the dealerships.

9 10. Nissan and Trophy (and Trophy's lead negotiator, Watar) concealed that they had a
10 substantial relationship, involving improper financial entanglement, dating back to 2008. They
11 also concealed that Nissan would be doing everything it could to give Trophy additional leverage
12 and drive down the sale price.

13 11. These efforts succeeded. The deal that eventually closed between Trophy and the
14 Sage Group in September 2017 was a fraction of Plaintiffs' worth. Trophy profited immensely –
15 and Plaintiffs were damaged – from Nissan's fraud and duplicity.

16 12. Making matters worse, during the sale process, Trophy secretly recruited the Sage
17 Group's high-level employees to work surreptitiously on Trophy's behalf. By the time it closed
18 the sale, Trophy had the Sage Group's CFO, Director of Finance, a General Manager, and a Used-
19 Car Manager working on its behalf—unbeknownst to the Sage Group. These executives blatantly
20 violated their fiduciary duties to the Sage Group and used their positions of trust and confidence to
21 help Trophy at their employer's expense.

22 13. After the sale to Trophy of two valuable Nissan dealerships, Universal City Nissan
23 and West Covina Nissan, the Sage Group was left with just two Nissan/Infiniti dealerships,
24 Plaintiffs Glendale Nissan and Glendale Infiniti (the "Glendale Dealerships"). The Sage Group
25 hoped to stabilize the business so that it could operate the Glendale Dealerships and sell them for a
26 fair price. But Nissan had no intention of allowing the Glendale Dealerships to stabilize.

27 14. Nissan and NMAC lied by concealing that they would not reopen the Sage Group's
28 lines of credit after the Trophy sale closed. NMAC wrongfully withheld almost \$3 million that the

1 Sage Group needed to reopen the financing.

2 15. Starved of inventory, the Sage Group had no choice but to sell the last two
3 Nissan/Infiniti dealerships, i.e., the Glendale Dealerships. Nissan again proposed a candidate,
4 Dennis Lin, a favored Nissan dealer. The Sage Group identified a candidate of its own who had a
5 more lucrative offer than Mr. Lin, but Nissan refused to approve anyone other than Lin.

6 16. Once again, the Sage Group was trapped into negotiations with a Nissan insider
7 while Nissan had its thumb on the scale. With Nissan blocking other potential buyers, Lin's low-
8 ball offer went even lower during the course of negotiations, and the Sage Group was forced to
9 sell its last two Nissan/Infiniti dealerships (Glendale Dealerships) for \$0 in franchise value, which
10 is unheard of in the auto industry. Defendants' misconduct devastated the Sage Group.

11 PARTIES & JURISDICTION

12 17. Plaintiff Byron Z. Moldo is the court-appointed Receiver of Plaintiffs Universal
13 City Nissan, Inc., Glendale Nissan/Infiniti, Inc., and West Covina Nissan, LLC, (collectively, the
14 "Sage Group," or the "Group"). The Sage Group operated, among other dealerships, four Nissan
15 dealerships (Universal City Nissan, West Covina Nissan, Glendale Nissan and Glendale Infiniti)
16 in Southern California pursuant to franchise agreements with NNA and financing by NMAC.

17 18. Defendant Nissan North America, Inc. ("NNA") is a California corporation.

18 19. Defendant Nissan Motor Acceptance Corporation ("NMAC") is a California
19 corporation.

20 20. Defendant Nissan Motor Co., Ltd. ("Nissan Japan") is a Japanese corporation.
21 NMAC and NNA are wholly-owned subsidiaries of Nissan Japan. With respect to the decisions
22 referenced herein that caused damages to the Sage Group, Nissan Japan held, and exercised,
23 decision-making authority and instructed its subsidiaries to force out the Sage Group to benefit
24 insiders of Nissan Japan's CEO, Carlos Ghosn. Nissan Japan planned, orchestrated and carried
25 out the scheme to harm the Sage Group in favor of Nissan Japan's favored dealers of choice.

26 21. Defendant Trophy Automotive Dealer Group LLC is a Delaware limited liability
27 company, with its principal place of business in Los Angeles County, California.

28 22. Defendant Trophy Universal City Group LLC is a California limited liability

1 company.

2 23. Defendant West Covina Motor Group LLC is a California limited liability
3 company.

4 24. Defendant Nasser Watar is a principal of Trophy and a business partner of al-
5 Juffali. On information and belief, he has a home in Seal Beach, California.

6 25. Defendant Timothy Devine is an individual residing in Los Angeles County,
7 California.

8 26. Defendant Daniel Scott is an individual residing in Los Angeles County, California.

9 27. Defendant Thomas Awada is an individual residing in Los Angeles County,
10 California.

11 28. At all relevant times, NNA and NMAC were acting as the agents of Nissan Japan
12 and within the course and scope of such agency and with the authorization, instruction and
13 permission of Nissan Japan.

14 29. Because NNA, NMAC and Trophy are California corporations, the individual
15 Defendants are California residents, and the wrongful conduct committed by Defendants—and the
16 harm done to Plaintiffs—occurred in Los Angeles, California, where the Sage Group is located,
17 jurisdiction and venue are proper in this Court. In addition, the Receiver was appointed by a
18 Judge in this Court, and the Receivership is currently being overseen by the Honorable Daniel J.
19 Buckley in Department 1 of the Spring Street Courthouse.

20 30. Plaintiffs are presently unaware of the true or exact names and capacities, whether
21 individual, corporate, partnership, associate, or otherwise, of Defendants Does 1 through 10,
22 inclusive (“Does”), and therefore sue such defendants by said fictitious names, and will
23 seasonably amend this complaint to allege their true names and capacities after they have been
24 ascertained. Plaintiffs are informed and believe and on that basis allege herein that Does, and each
25 of them, are responsible or liable in some manner for all or some of the injuries, damages, and/or
26 liabilities that have been suffered, or may possibly be suffered in the future, by Plaintiffs, as
27 alleged more particularly hereinbelow. Plaintiffs are further informed and believe and on that
28 basis allege herein that Does, and each of them, were or are the agents, employees, fiduciaries,

1 representatives, shareholders, parents, subsidiaries, partners, successors-in-interest, or co-venturers
2 of one another or of one or more of the named defendants, and with respect to the actions and/or
3 omissions alleged hereinbelow, were acting for the purpose of and within the course, scope, or
4 authority of any such agency, employment, fiduciary, shareholder, parent, subsidiary, partnership,
5 successor-in-interest, and/or co-venturer relationship.

6 **FACTUAL ALLEGATIONS**

7 **A. The Sage Group's Deep Roots With Nissan**

8 31. The Sage Group was founded by Morris Schrage. Morris was born in 1930 to a
9 Jewish family in Poland. In 1939, when Nazi Germany invaded Poland, Morris' immediate family
10 fled to Cuba. In Cuba, his father operated a shoe factory. Calamity found the Schrage family
11 again when Fidel Castro's 26th of July Movement took power during the Cuban Revolution.
12 Once again, the family fled a brutal authoritarian regime and resettled in the United States. Morris
13 moved to Los Angeles.

14 32. In 1955, Morris began his career in the auto industry selling Fords. He worked his
15 way up the ranks in the car business; and in 1962, he became a minority owner of one of the
16 largest Ford dealerships in the region.

17 33. A few years later, Nissan asked Morris to form one of its first dealerships in the
18 United States. At the time, Nissan used the Datsun brand for its cars produced for the export
19 market. In 1969, Morris founded Universal City Datsun. In 1970, Morris moved Universal City
20 Datsun to its current location adjacent to the Hollywood Freeway. University City Datsun was
21 renamed Universal City Nissan when Nissan retired the Datsun brand name.

22 34. The Group grew to include eight dealerships. As of 2017, the Group included four
23 Nissan/Infiniti dealerships: Universal City Nissan, West Covina Nissan, Glendale Nissan, and
24 Glendale Infiniti (the "Dealerships"). Morris' three sons—Leonard, Michael, and Joseph—joined
25 him in the business.

26 35. For almost 50 years, the Sage Group, Nissan and NMAC were close partners.
27 NNA facilitated the growth of the Sage Group by helping it acquire dealerships and expand its
28 operations. The Group valued its relationship with NMAC, which financed the Sage Group's

1 inventory, real estate and other expansions.

2 **B. Business Trouble Weakens The Sage Group**

3 36. Morris died in 2011. His three sons inherited the Sage Group in equal shares.
4 Despite Morris' desire that his three sons run the business jointly, Michael and Joseph pushed
5 Leonard out of the Group and prevented him from having any control over its operations.

6 37. In 2014, Michael and Joseph began mismanaging the Sage Group dealerships. In
7 2015, Leonard filed a lawsuit against his brothers.

8 38. In July 2017, the Court enjoined Michael and Joseph from managing the Group and
9 gave them the option to purchase Leonard's interests at a set price. When they failed to do so, the
10 Court appointed Plaintiff Byron Moldo as a receiver to manage the Group.

11 39. Michael and Joseph had weakened the Group. The Group was well positioned,
12 however, to recover its financial strength. It had operated successful Nissan dealerships in
13 Southern California's robust car market for decades. But Nissan saw the Sage Group as a juicy
14 prize to award to an insider. Nissan took advantage of the Sage Group's weakened position and
15 made sure that it could not recover and would be forced to sell to Nissan's dealers of choice.

16 **C. Ghosn Gets Financially Bailed Out By Al-Juffali And Watar**

17 40. By 2017, Nissan was no longer the same company that awarded Morris Sage a
18 dealership back in 1969. Under the leadership of its CEO, Carlos Ghosn, Nissan transformed into
19 an enterprise ruled by corruption and self-dealing. That corruption had reached U.S. shores.

20 41. Ghosn joined Nissan as an executive in 1999, and became CEO of Nissan Japan in
21 2001. At the time he joined the company, Nissan was losing money and under heavy debt
22 obligations. Analysts at the time believed that turnaround was nearly impossible.

23 42. Ghosn announced a three-year turnaround plan that would dramatically change
24 Nissan's culture. At the time, Nissan was organized as a *keiretsu*, a Japanese term for a
25 manufacturing supply chain consisting of a sprawling web of partially-related entities with
26 complicated, interlocking relationships. This left Nissan more entangled with its suppliers than a
27 typical car manufacturer. Ghosn dismantled Nissan's *keiretsu*, reduced its number of suppliers,
28 and cut costs. He also changed Nissan's labor culture. Nissan previously offered employees

1 guaranteed lifetime employment. Ghosn ended that practice and eliminated tens of thousands of
2 jobs.

3 43. Ghosn's efforts succeeded. Within the first 12 months of the turnaround plan,
4 Nissan returned to profitability. Nissan turned a \$6.46 billion loss in 1999 into a \$2.7 billion
5 profit in 2000. By the end of the three-year plan, Nissan was one of the most profitable
6 automakers and had dramatically reduced its debt obligations. Ghosn's success brought him wide
7 recognition. In 2003, Japan's Emperor Akihito awarded a Blue Ribbon Medal of Honor to Ghosn,
8 making him the first foreign business leader to receive the award. His home country of Lebanon
9 honored him with a commemorative postage stamp.

10 44. But Ghosn also changed Nissan's culture in other ways. He implemented a culture
11 of corruption and self-dealing. During the 2008 financial crisis, Ghosn personally suffered heavy
12 losses trading foreign exchange option contracts. The financial crisis caused the Yen to
13 appreciate, and Ghosn suffered an unrealized \$15 million loss. This loss led Ghosn's bank to
14 demand additional collateral. To buy some time, Ghosn transferred the contracts to Nissan,
15 making the losses its responsibility.

16 45. In desperate need of cash to cover his losses, he sought help from Saudi
17 businessman Khaled al-Juffali who agreed and provided Ghosn a \$27.6 million debt guarantee in
18 October 2008. Later, with al-Juffali's help, Ghosn reversed the transfer of the options contracts
19 after Japanese authorities flagged the transaction in 2009.

20 46. Al-Juffali (and his partner Watar) was richly rewarded for helping Ghosn. Nissan
21 entered into a joint venture with a company in the Middle East that al-Juffali jointly owns with
22 Defendant Watar. Watar and al-Juffali's company in the Middle East, Al-Dahana, owns 50% of
23 Nissan Gulf FZCO, a joint venture with Nissan that acts as regional distributor for Nissan in
24 several countries in the Middle East. Later in 2008, Ghosn sent \$14.7 million from Nissan to Al-
25 Dahana. He made that transfer from a "CEO reserve fund" of Nissan Japan that he exercised
26 control over. As al-Juffali's business partner, Watar was involved in and benefited from these
27 improper transactions with Nissan.

28 47. In November 2018, Ghosn's private jet was met by Japanese prosecutors when it

1 landed in Japan. He was arrested and charged with underreporting his compensation in violation
2 of securities law. One month later, prosecutors added new charges arising out of Ghosn's
3 connections with al-Juffali and the company he jointly owned with Watar.

4 48. In October 2019, Nissan released a summary report from its internal investigation.
5 Among other misconduct, Nissan admitted that Ghosn had made improper payments from the
6 company to a dealer (al-Juffali and Watar) that had given him personal financial assistance to
7 cover his losses in the options contracts.

8 49. As a result of Nissan Japan and Ghosn's gross misconduct, Nissan Japan harmed
9 the Sage Group. In addition to the Sage Group, Nissan Japan and Ghosn's wrongdoing
10 diminished the value of the brand and harmed thousands of other dealers in the United States and
11 abroad. Business at Nissan has become so bleak that the company recently announced a forced
12 two-day furlough on all of its U.S. employees in January 2020. Nissan and Ghosn have also been
13 fined \$16 million by the United States Securities and Exchange Commission and are facing an
14 even larger fine from Japan's financial regulator.

15 **D. Nissan's "Black Ops" Team In The United States Uses Its Control Over The**
16 **Dealership Approval Process To Gift Dealerships To Favorites**

17 50. Nissan's culture of corruption extended to its U.S. operation. Executives at NNA,
18 who reported to Ghosn, used the dealer selection process to deliver dealerships to favored dealers.
19 Nissan picked and chose winners and losers among its dealers in its effort to place preferred
20 dealers in certain markets. Dealers were favored based on their improper financial connections to
21 Nissan insiders, not their merit as dealers. Under Nissan Japan's direction, NNA and NMAC
22 coordinated this effort by offering extraordinary financial assistance to favored dealers that made
23 other non-preferred dealers unable to compete on a level playing field. In doing so, the Nissan
24 Defendants trampled on the Sage Group's (and other dealers') franchise rights.

25 51. NNA has a form Dealer Sales & Service Agreement (the "Dealer Agreement") with
26 all of its dealers. The Dealer Agreement is a form contract setting out a Nissan dealer's
27 obligations to NNA and vice-versa. One provision provides that NNA must approve any changes
28 in ownership to a Nissan dealership. The evaluation of potential dealers is called the dealer

1 selection process.

2 52. Nissan uses its power to reward favored dealers at the expense of other dealers.
3 The dealer selection process was controlled by NNA's National Dealer Network Team, which
4 reports to—and follows the instructions of—Nissan Japan. Within Nissan, that group is known as
5 the “Black Ops Team.” The Black Ops Team was overseen by NNA executive David Kershaw.
6 Kershaw reported directly to NNA's then-Chairman, José Muñoz, who, in turn, reported directly
7 to Ghosn, Nissan Japan's CEO. Muñoz was Ghosn's closest ally and right-hand man in the
8 United States. Muñoz took directions from Ghosn.

9 53. The Black Ops Team, working under the direction of Ghosn and Nissan Japan,
10 manipulated the dealer selection process to deliver valuable dealerships at cut-rate prices to
11 favored dealers.

12 54. That is what happened here. Muñoz, Kershaw and other NNA executives acted at
13 the behest of—and were under instructions from—Ghosn and Nissan Japan. Nissan Japan,
14 through Ghosn, authorized and instructed NNA to push out the Sage Group and force them to sell
15 their Nissan dealerships to a dealer (Trophy) owned by individuals (al-Juffali and Watar) who
16 helped bail out Ghosn. Muñoz, NNA's then-Chairman, carried out Ghosn's orders.

17 55. Nissan uses a combination of tactics, including favorable financial terms, to
18 provide preferential treatment to certain dealers, to the detriment of other dealers. Nissan also puts
19 financial pressure on dealerships targeted for adverse treatment and forced sale. Almost every car
20 dealer requires financing to purchase inventory. In the car industry, this is known as a “floor-
21 plan.” Nissan provides floor-plan financing for its dealerships through its affiliate NMAC. Floor-
22 plan financing is essential for dealerships. Without floor-plan financing, a dealership is unable to
23 purchase new vehicle inventory and operate successfully.

24 56. Many dealerships rely on Nissan's captive financing arm, NMAC, for their floor-
25 plan financing. Nissan uses NMAC to conduct its targeted pressure campaigns. NMAC can
26 declare defaults, withhold funds “in suspense” (NMAC's term) owed to the dealer, manipulate the
27 use of “out of trust” and refuse to extend credit, massively disrupting the business operations of
28 the dealership. Without an active floor-plan line, a dealer cannot operate profitably. Suspended

1 floor-plan financing is the death knell of a dealer.

2 57. Nissan then uses its financial pressure and control to steer the dealership to a
3 connected buyer. Under the Dealer Agreement, “any change in the ownership” of the dealership
4 requires NNA’s “prior written consent.” NNA wields this power to ensure that the dealership is
5 forced to “choose” Nissan’s dealer of choice.

6 58. NNA, with Nissan Japan’s input and consent, will readily approve dealers who are
7 connected to Ghosn and Muñoz, while denying, frustrating, or slow-walking the applications of
8 non-connected candidates. Dealers who are targeted by this scheme are forced to sell to a
9 connected dealer at a cut-rate price, because Nissan will not approve any other dealers. Like
10 Ghosn, in January 2019, Muñoz was forced to resign his position at Nissan, after being put on a
11 leave of absence. Muñoz’s resignation came at a time when Nissan itself began scrutinizing the
12 awarding of the Sage Group’s Nissan franchises to Trophy, because of the improper financial
13 entanglement between Ghosn and Nissan Japan, on the one hand, and al-Juffali and Watar, on the
14 other hand.

15 **E. Nissan Delivers The Sage Group To Trophy And Its Owners**

16 59. In 2017, Nissan turned its sights on the Sage Group. The Group’s four Nissan
17 dealerships in the Southern California market would be a valuable prize for a Ghosn-connected
18 dealer. Nissan Japan coordinated its subsidiaries, NNA and NMAC, to induce and coerce the
19 Sage Group to sell to Nissan Japan’s hand-picked buyer, the al-Juffali and Watar controlled
20 Trophy. Ghosn made sure that he “paid back” al-Juffali and Watar’s financial favor by obtaining
21 a discounted price for several of the Sage Group’s Nissan dealerships. Nissan’s nefarious scheme
22 to oust the Sage Group and award the franchises to Trophy was ultimately successful, causing the
23 Sage Group millions in damages.

24 60. NMAC provided floor-plan financing to the Plaintiff Dealerships. In the
25 automotive industry, after a dealership sells a floor-planned vehicle, it repays the financing for that
26 particular car. In this case, NNA was the manufacturer, and NMAC provided the floor-plan
27 financing.

28 61. If a dealership does not timely (i.e., within ten days) remit payment on its floor-

1 plan after a vehicle is sold, it is considered “out of trust.” The amount owed by a dealership for
2 vehicles that are sold and unpaid to the floor-plan financing company are commonly referred to as
3 sale out of trust amounts (“SOT”).

4 62. In 2017, NMAC sent a “Demand for Payment” letter to the Sage group, claiming
5 that, while West Covina and Universal City Nissan were in compliance with their agreement,
6 Glendale Nissan and Glendale Infiniti were SOT. At the time NMAC sent the Demand for
7 Payment letter, NMAC alleged that Glendale Nissan and Glendale Infiniti were \$2.2 million SOT.

8 63. During this same period, Nissan introduced Trophy to the Sage Group as a
9 potential buyer of the Dealerships. Nissan stated that Trophy was the owner of a Mercedes Benz
10 dealership in Encino, California, and was looking to expand its footprint. The Sage Group
11 believed that Nissan had made this introduction in good faith.

12 64. The Sage Group was unaware of Trophy’s corrupt relationship with Nissan and
13 Ghosn, and Nissan did not disclose this fact. Nor did Trophy. Nissan did not disclose that
14 Trophy’s principals had provided financial assistance to Nissan CEO Carlos Ghosn, or that Nissan
15 Japan had sent money to al-Juffali and Watar’s Middle East company, or that Nissan had entered
16 into a lucrative joint venture with Trophy’s affiliate in the Middle East to “pay back” al-Juffali and
17 Watar’s “loyalty.”

18 65. The Sage Group was also unaware that the Nissan Defendants would use their
19 power over the Dealerships to make it more difficult for them to operate, and force them to sell for
20 bottom dollar to Trophy. Trophy, through its CEO and chief negotiator, Watar, also concealed
21 this information from the Sage Group.

22 66. The Sage Group and Trophy discussed the terms of a sale, and in March 2017 they
23 signed a letter of intent (the “Letter of Intent”). Trophy was set to purchase eight dealerships from
24 the Sage Group, including the four Dealerships. The Letter of Intent would have had Trophy
25 purchase the franchises for more than \$200 million.

26 67. But Nissan and Trophy had no intention of Trophy purchasing the Dealerships for
27 the Letter of Intent price. Nissan ramped up their pressure tactics and diminished the value of the
28 Dealerships, crippling their operations and ensuring that the Sage Group had no choice but to sell

1 at a depressed price, which was a fraction of the original agreed price.

2 68. Meanwhile, the Sage Group was open and transparent with NMAC about what it
3 was doing to resolve the SOT amount. The Sage Group told NMAC that it expected to complete a
4 bridge loan in early March that would provide it with needed capital. A few weeks later, the Sage
5 Group, as promised, obtained the bridge loan and paid off the SOT.

6 69. But Nissan had other plans. In April 2017, NMAC falsely claimed that the Sage
7 Group, even after paying the \$2.2 million SOT balance by wire transfer, had a \$4 million SOT
8 balance.

9 70. When NMAC froze the Sage Group's floor-plan lines, it started holding payments
10 due to the Sage Group in "suspense." Of the \$4 million claimed SOT balance, at least \$2.7
11 million NMAC was holding in suspense. These suspense funds should have been credited against
12 the outstanding amounts.

13 71. Moreover, the Sage Group was not out of trust for any amount. The supposed SOT
14 balance was based on units that had been sold but for which the dealership had yet to be paid.
15 NMAC was not going to reopen the Sage Group's floor-plan; it was acting to cripple the
16 Dealerships and help Nissan deliver them to Trophy.

17 72. NMAC's conduct prevented the Dealerships from operating normally and gave
18 Trophy substantial leverage over the Sage Group during negotiations. Trophy exacted substantial
19 concessions from the Sage Group as a result, which diminished the eventual sale price to Trophy.
20 Nissan intentionally and purposefully made it as difficult as possible for the Sage Group to
21 operate, while giving its hand-picked buyer, Trophy, the upper hand in negotiations.

22 73. Had the Sage Group known about Trophy's insider relationship with Nissan, it
23 would not have sold the dealerships to Trophy at the price it did. Because of the Nissan
24 Defendants' concealment, the Sage Group sold the dealerships for significantly less than it would
25 have to an independent, arm's-length buyer, causing Plaintiffs millions in damages.

26 **F. Trophy Re-Trades With Help From The Sage Group's High-Level Employees**

27 74. Trophy never had any intention of purchasing the Sage Group dealerships
28 according to the terms of the Letter of Intent. Instead, Trophy relied on Nissan's pressure

1 campaign, along with the assistance of the Sage Group's employees, to aggressively re-trade the
2 deal and drive down the price. It succeeded. The final deal between the Sage Group and Trophy
3 closed in September 2017, and it was substantially worse for the Sage Group than the Letter of
4 Intent and the true value of the Dealerships.

5 75. Instead of buying all eight dealerships in the Group, Trophy only bought four—
6 West Covina Nissan, Universal City Nissan, and two non-Nissan dealerships.³ And rather than
7 selling the real estate underlying the dealerships to Trophy, the Sage Group gave Trophy an *option*
8 to purchase the properties for \$23 million less than the Letter of Intent price. Even factoring in the
9 removal of the two Glendale Dealerships, the final deal was more than \$40 million worse for the
10 Sage Group than the Letter of Intent.

11 76. Making matters worse, during negotiations, Trophy secretly recruited several of the
12 Sage Group executives to work for it. In exchange for jobs with Trophy after the sale, these
13 executives betrayed their fiduciary duties to the Sage Group. They used their positions of trust
14 and confidence to help Trophy at the expense of the Sage Group.

15 77. Defendants Devine, Scott and Awada (collectively referred to herein as the
16 "Former Sage Executive Defendants") abused their positions at the Sage Group to harm the Sage
17 Group and benefit Trophy, the Sage Group's counterparty in negotiations.

18 **1. Timothy Devine**

19 78. Devine was the Sage Group's Chief Financial Officer. As the CFO, he was an
20 officer of the Group and had a fiduciary obligation to act on its behalf. Devine was responsible for
21 negotiating with the Sage Group's vendors before the Trophy sale closed.

22 79. Unbeknownst to the Sage Group, Trophy had recruited Devine while he was still
23 working for the Sage Group. At some point during 2017, Devine began working on behalf of
24 Trophy. While he was secretly working on Trophy's behalf, Devine was disclosing confidential
25 financial data to Trophy principal Watar, including outstanding vehicle trade pay-offs, the Sage
26 Group's cash holdings, and internal discussions related to the negotiations. This information

27 _____
28 ³ Trophy Universal City bought Universal City Nissan, and Trophy West Covina purchased West
Covina Nissan.

1 showed Trophy that Nissan's pressure campaign was putting the Sage Group at risk of collapsing.
2 Trophy used this information to re-trade the deal and pay a lower purchase price.

3 80. In addition, Devine negotiated with the Sage Group's vendors to benefit Trophy at
4 the expense of the Sage Group. One aspect of the deal was the assignment of the Sage Group's
5 Dealership Management System ("DMS") contract with Reynolds & Reynolds. A DMS is a
6 software system that car dealerships use to manage sales, finance, parts, inventory and
7 administration issues.

8 81. Devine negotiated a disastrous assignment of the Group's contract with Reynolds
9 & Reynolds to benefit Trophy. The contract only assigned certain portions of the agreement to
10 Trophy. The Sage Group was still on the hook for the parts of the contract that Trophy didn't
11 want to assume. The Group was left paying for services at dealerships it no longer owned.

12 82. Devine also helped Trophy at the Sage Group's expense when he handled issues
13 arising out of merchant service accounts. Devine was responsible for terminating the Group's
14 merchant service accounts with point of sale vendors. These vendors allowed various dealership
15 departments to accept credit card payments.

16 83. At the time of closing, Trophy was having difficulties setting up merchant service
17 accounts of its own. Instead of closing the Sage Group's accounts, Devine used the Sage Group's
18 accounts to process payments for Trophy. After payments were processed and funds were
19 deposited into Sage Group bank accounts, Devine would write checks to Trophy for payments at
20 the stores. By lending the Group's merchant service accounts to Trophy, Devine put the Sage
21 Group at risk of liability for chargebacks and credit-card fraud at the Trophy-owned stores.

22 84. Devine also made other payments from Sage Group accounts to Trophy. An audit
23 discovered hundreds of thousands of dollars of unexplained payments from the Sage Group to
24 Trophy, all authorized by Devine.

25 85. Trophy rewarded Devine with the CFO position. According to his current
26 LinkedIn page, but unbeknownst to the Sage Group at the time, Devine started working for
27 Trophy seven months *before* the Trophy sale and while he was still employed—and being paid—
28 by the Sage Group.

1 86. The Sage Group discovered Devine's secret work for Trophy by happenstance.
2 The Reynolds & Reynolds assignment he negotiated listed Devine's contact information with a
3 Trophy Automotive e-mail address—even though he was working for the Sage Group at that time.
4 This discovery led to an internal review of the Sage Group's executives and revealed other
5 individuals violating their fiduciary duties.

6 **2. Daniel Scott & Thomas Awada**

7 87. Scott was the Sage Group's Director of Finance. As an officer of the Group, he
8 had a fiduciary obligation to act in its best interests. The Sage Group's investigation revealed that
9 he was also working on behalf of Trophy during the sale. Prior to closing, Scott was working to
10 set up retail lender accounts with banks for Trophy. These accounts allow the dealership to
11 originate loans to customers, which are then sold to the bank.

12 88. Before the sale closed, and while he was still working for the Sage Group, Scott
13 was secretly negotiating with banks to establish retail lending accounts for Trophy. Scott
14 encountered difficulties, and it was not clear that these agreements would be in place when the
15 deal closed. In order to curry favor with the banks for Trophy, Scott arranged for the Sage Group
16 to repurchase retail contracts it had no obligation to purchase. By doing so, Scott damaged the
17 Sage Group and benefited Trophy.

18 89. After the deal closed, Trophy awarded Scott with the Corporate Group Director of
19 Finance position.

20 90. Trophy also used other Sage Group employees, such as Thomas Awada and Joseph
21 Jackson, to gain improper leverage during the negotiations with the Sage Group. Awada became
22 the CEO of Universal City Nissan, and Jackson became the Used Car Manager/Director.

23 91. Defendant Awada was a General Manager for the Sage Group. During the
24 negotiations, Awada was responsible for, among other things, valuing the Group's used car
25 inventory. Awada, Jackson and others violated their duties to the Sage Group and conspired with
26 Trophy and Watar to provide Trophy with confidential used car data. Because of Awada's
27 misconduct, the used-car inventory was sold to Trophy at a substantial discount.

28 ///

1 **G. Nissan Forces The Sage Group To Sell Its Last Two Nissan/Infiniti Stores To**
2 **Another Favored Dealer**

3 92. Prior to the Trophy sale, the Sage Group was in regular contact with NMAC. Sage
4 Group representatives had weekly phone calls with an executive at NMAC. During those calls, he
5 represented that NMAC would reopen the Sage Group's flooring lines for the two Glendale
6 Dealerships after the deal to Trophy closed. This would have allowed the Group to stabilize the
7 business and sell the two Glendale Dealerships for a fair price.

8 93. However, these representations were false. NMAC had no intention of allowing
9 the Sage Group to regain its stability. Less than two weeks before closing, NMAC told the Sage
10 Group that it would have to agree to new conditions in order to reopen the lines. NMAC
11 presented the Sage Group with a forbearance agreement (the "Forbearance Agreement"), which
12 included onerous terms such as depositing \$3 million cash, worse terms for the Sage Group's
13 mortgage debt, a deadline to sell the dealerships in Glendale, site control over the West Covina
14 dealership, and a direct assignments of rents from the real estate leased to Trophy. Because the
15 Sage Group could not operate the Glendale Dealerships without floor-plan financing, it agreed to
16 the Forbearance Agreement.

17 94. When the sale to Trophy closed, Nissan was paid millions directly from the
18 proceeds. All of the Sage Group's floor-plan debt to NMAC was paid in full. However, Nissan,
19 through NMAC, continued to squeeze the Sage Group. The Sage Group had planned to use the
20 proceeds of the sale to reopen the financing at Glendale Nissan and Glendale Infiniti. But after
21 closing, NMAC did not return the funds that it was holding "in suspense." At the time of closing,
22 NMAC held at least \$2.7 million in suspense, almost as much as the Sage Group needed to fund
23 the cash management account. Because of NMAC's improper conduct and withholding of
24 monies, the Group was unable to get the financing lines reopened.

25 95. After closing the sale to Trophy, the Sage Group requested an accounting from
26 NMAC for the suspense funds. NMAC refused. NMAC concealed that it was withholding
27 millions of the Sage Group's funds, which the Sage Group could have used to reopen its financing
28 lines at the Glendale Dealerships. Indeed, to date, NMAC has not provided this information to the

1 Sage Group, despite multiple requests. Since the sale, NMAC has, at random and without
2 explanation, returned various sums of money to the Sage Group from the suspense funds, but it
3 has refused to provide an accounting of the funds in suspense. All in all, NMAC improperly
4 withheld millions from the Sage Group at a critical time.

5 **H. Nissan Forces The Sale Of The Glendale Dealerships To Its Preferred Buyer**

6 96. With NMAC's pressure tactics, the court-appointed receiver determined that the
7 only viable option was to either close or sell the two Glendale Dealerships.

8 97. The Sage Group sought potential buyers and was able to identify several potential
9 buyers. One of the Sage Group's candidates was a successful dealer in the Glendale area who
10 operated a Subaru and Mitsubishi dealership. Nissan identified a different candidate. Nissan's
11 candidate was Dennis Lin, who owned Nissan franchises in Southern California.

12 98. The Group entered into discussions with James Gentry, Nissan's General Manager
13 of Dealer Development for Nissan. Gentry made it clear that Nissan would not authorize a sale to
14 anyone other than Dennis Lin, Nissan's dealer of choice.

15 99. Lin and the Sage Group's candidates made offers to buy the Glendale Dealerships.
16 Despite Lin having the lower offer, the Sage Group had no choice but to accept it because Nissan
17 refused to approve any other candidate.

18 100. Under the Dealer Agreement, the Sage Group agreed not to sell the Dealerships
19 "without the prior written consent" of NNA. NNA cannot, however, "unreasonably withhold its
20 consent to any such change." NNA acted unreasonably when it refused to accept any candidate
21 other than its preferred candidate, Lin.

22 101. Nissan also acted in bad faith by refusing to fairly evaluate the Sage Group's
23 prospective buyers. Nissan has a lengthy dealership application process that it purports to use to
24 evaluate a dealer candidate. But Nissan rejected the Sage Group's candidates *without even*
25 *considering an application* from them.

26 102. After the Sage Group accepted Lin's offer, Nissan's pressure campaign continued.
27 The Glendale Dealerships had no floor-plan financing, depriving them of inventory and preventing
28 a return to profitability. This gave Lin tremendous leverage over the Group; he took full

1 advantage. Like Trophy, Lin aggressively re-traded on the deal, seeking millions of dollars in
2 concessions from the Sage Group. The Group had no leverage of its own: the Glendale
3 Dealerships were losing hundreds of thousands per month, and Nissan had made it clear that it
4 would not accept another buyer.

5 103. Because of Nissan's pressure, Lin was able to close the deal for substantially less
6 than his offer, and the Sage Group received \$0 for the value of the franchises (aka goodwill or
7 blue-sky). Nissan's pressure campaign caused the Sage Group to lose millions.

8 **FIRST CAUSE OF ACTION**

9 **Concealment**

10 **(Against Nissan Japan, NNA and NMAC)**

11 104. Plaintiffs repeat and reallege each and every foregoing and subsequent allegation
12 contained in the Complaint, and further allege as follows:

13 105. Continuing through the Sage Group's sale to Trophy in September 2017 and the
14 Sage Group's sale of the Glendale Dealerships to Lin thereafter, Nissan Japan, NNA and NMAC
15 concealed material information and made numerous, repeated material misrepresentations to the
16 Sage Group. Specifically, the Nissan Defendants concealed: (1) the corrupt relationship between
17 Nissan and Trophy; (2) that Nissan used their power over the Sage Group to depress the value of
18 the Dealerships and secure a substantially reduced price for Trophy and Lin; (3) that it was
19 withholding millions of the Sage Group's funds even after the sale to Trophy; and (4) that it would
20 not reopen the Sage Group's floor-plan financing at the Glendale Dealerships following the sale to
21 Trophy.

22 106. Nissan had a corrupt relationship with Trophy and its principals, Khaled al-Juffali
23 and Nasser Watar. Watar and al-Juffali became Nissan insiders when al-Juffali bailed out Carlos
24 Ghosn, Nissan's CEO, from his options trading misadventures. Because of that assistance, they
25 were rewarded by Ghosn with illicit payments from Nissan's CEO reserve fund. In addition,
26 Nissan entered into a joint venture with their company, Al-Dahana, to distribute Nissan products
27 in Kuwait, Bahrain, Saudi Arabia, and Abu-Dhabi.

28 107. After NMAC terminated the Sage Group's floor-plan financing, NNA, at Nissan

1 Japan's behest, encouraged the Sage Group to sell its four Nissan Dealerships. NNA presented the
2 Sage Group with Trophy and its principal, Nasser Watar. NNA represented that he was the owner
3 of a Southern California Mercedes Benz dealership and would be approved as a Nissan operator.
4 None of the Nissan Defendants disclosed that they had a corrupt relationship with Trophy and its
5 principals; nor did they disclose that they were wielding their power over the Dealerships—and
6 taking steps—to depress the Dealerships' values for Trophy's benefit. Nissan's corrupt practices
7 and inept (or non-existent) corporate governance led to the diminution in the value of the Sage
8 Group Dealerships when they were ultimately sold.

9 108. NNA and NMAC owed the Sage Group a duty to disclose these facts because they
10 had disclosed some facts about their relationship to Trophy and Watar, namely that Watar would
11 be approved as a Nissan operator, while failing to disclose others, namely that Trophy was a
12 Nissan insider that would receive favorable treatment at the Sage Group's expense. Nissan Japan,
13 NNA and NMAC also owed the Sage Group a duty to disclose those facts because they prevented
14 the Sage Group from discovering these facts by their elaborate cover-up of Ghosn's personal
15 financial relationship with al-Juffali and Watar. And they owed a duty to disclose because they
16 intentionally failed to disclose these facts that were known only to them and that the Sage Group
17 could not have discovered. The Sage Group had no way of knowing about the nefarious
18 relationship between Trophy's principals, on the one hand, and Ghosn and Nissan, on the other
19 hand. Ghosn and Nissan Japan, along with Trophy's principals, indeed engaged in an elaborate
20 cover-up of these improper financial dealings so as not to be discovered.

21 109. The Sage Group did not know these concealed facts when it ultimately relied on
22 Nissan's fraudulent concealment by selling its Nissan Dealerships and suffering harm.

23 110. Nissan Japan, NNA and NMAC intended to deceive the Sage Group by concealing
24 these facts. They wanted the Sage Group to enter into a transaction with Trophy to sell their
25 Nissan Dealerships. Nissan Japan, NNA and NMAC knew that once the Sage Group entered into
26 exclusive negotiations with Trophy, they could disrupt the Group's business and drive the price
27 down.

28 111. Had the omitted information been disclosed by Nissan, the Sage Group reasonably

1 would have behaved differently. The Sage Group would have sought out independent buyers who
2 were not Nissan insiders like Trophy.

3 112. The Sage Group was harmed by Nissan's concealment. The Sage Group ended up
4 closing a substantially less lucrative deal with Trophy and Lin than it should have. Trophy bought
5 four dealerships from the Sage Group—West Covina Nissan, Universal City Nissan, and two non-
6 Nissan dealerships—and at substantially lower prices.

7 113. The Nissan Defendants' concealment was a substantial factor in causing damages
8 to the Sage Group, in an amount subject to proof at trial.

9 114. Moreover, the Sage Group was in regular contact with NMAC. Sage Group
10 representatives had weekly phone calls with executives at NMAC. During those calls, NMAC
11 represented that it would reopen the Sage Group's flooring lines for the two Glendale stores after
12 the deal to Trophy closed. This would have allowed the Group to stabilize the business and sell
13 the two Glendale stores for a fair price.

14 115. NMAC agreed to reopen the lines once the Sage Group placed \$3 million into a
15 cash-management account at NMAC.

16 116. That disclosure was false because NMAC failed to disclose other facts which it was
17 aware of. Namely, that NMAC was and would continue to wrongfully withhold "in suspense"
18 millions from the Sage Group. NMAC's representations were misleading because NMAC
19 deprived the Sage Group of necessary cash needed to reopen the financing for the Glendale
20 Dealerships. NMAC's concealment of millions in "suspense" funds it was withholding from the
21 Sage Group was improper. NMAC led the Sage Group to believe that it would release the funds.
22 The Sage Group could not determine how much Nissan was withholding; Nissan intentionally hid
23 that information from the Sage Group.

24 117. Had this information been disclosed, the Sage Group reasonably would have
25 behaved differently. The Sage Group would not have entered into the Forbearance Agreement and
26 would have sought financing elsewhere and/or would have borrowed against the funds being
27 improperly withheld by Nissan.

28 118. The Sage Group was harmed by NMAC's concealment. Because the two Glendale

1 dealerships had no floor-plan financing, they were unable to acquire inventory or regain
2 profitability. This undermined the Sage Group's negotiating position with Dennis Lin, and caused
3 them to sell the Glendale Dealerships at a lower price.

4 119. NMAC's concealment was a substantial factor in causing the Sage Group's harm.

5 120. Furthermore, the Nissan Defendants' conduct was committed with the intent of
6 depriving the Sage Group of right and causing it other injury. The Nissan Defendants' conduct
7 was despicable and subjected Plaintiffs to unjust hardship. Their conduct was malicious,
8 fraudulent, and oppressive, and was committed with a conscious disregard of Plaintiffs' rights.
9 Accordingly, Plaintiffs are entitled to an award of punitive or exemplary damages, based on the
10 Nissan Defendants' net worth, in an amount sufficient to punish the Nissan Defendants and make
11 an example of them.

12 **SECOND CAUSE OF ACTION**

13 **Concealment**

14 **(Against Trophy, Watar and the Former Sage Executive Defendants)**

15 121. Plaintiffs repeat and reallege each and every foregoing and subsequent allegation
16 contained in the Complaint, and further allege as follows:

17 122. As set forth above, Trophy and Watar concealed material information and made
18 numerous, repeated material misrepresentations to the Sage Group. Specifically, Trophy and
19 Watar concealed: (1) the corrupt relationship between Nissan and Trophy's owners, and (2) that
20 Nissan and NMAC would pressure the Sage Group in order to drive down the sale price to benefit
21 Trophy. In addition, the Former Sage Executive Defendants concealed from their employer, the
22 Plaintiff Dealerships, the fact that they were secretly working on behalf of Trophy during the
23 negotiations, even though they were still employed by the Sage Group.

24 123. Nissan and NMAC had an improper relationship with Trophy and its principals, al-
25 Juffali and Watar. Watar and al-Juffali became Nissan insiders when al-Juffali bailed out Carlos
26 Ghosn, Nissan's CEO, from his options trading misadventures. Because of that assistance, they
27 were rewarded with corrupt payments from Nissan's CEO reserve fund. In addition, Nissan
28 entered into a joint venture with their company, Al-Dahana, to distribute Nissan products in

1 Kuwait, Bahrain, Saudi Arabia, and Abu-Dhabi.

2 124. Trophy and Watar had a duty to disclose these facts because it had disclosed some
3 facts about its relationship to Nissan, namely that it was an approved Nissan operator, but failed to
4 disclose other facts that made that disclosure materially misleading, namely that Trophy was a
5 Nissan insider because of its connections to Nissan executives.

6 125. Trophy and Watar also had a duty to disclose these facts because they were known
7 only to Trophy, and the Sage Group could not have discovered them.

8 126. By virtue of the fiduciary duties they owed to the Sage Group and the trust and
9 confidence the Sage Group placed in them, the Former Sage Executive Defendants also had a duty
10 to disclose their surreptitious work on behalf of Trophy during the negotiations. But they failed to
11 do so.

12 127. Had this information been disclosed, the Sage Group reasonably would have
13 behaved differently. The Sage Group would not have entered into exclusive negotiations with
14 Trophy and sought an offer from an independent buyer.

15 128. The Sage Group was harmed by Trophy, Watar and the Former Sage Executive
16 Defendants' concealment. While the Sage Group was in exclusive negotiations with Trophy,
17 Nissan and NMAC used their power over the group to hamper the Dealerships and keep them
18 unprofitable. This gave Trophy substantial leverage over the negotiations and allowed it to re-
19 trade on the deal. Trophy purchased the Sage Group's dealerships at substantially reduced prices.
20 In addition, the Former Sage Executive Defendants' concealment harmed the Sage Group by
21 giving Trophy a substantial advantage in the negotiations to help drive down the price of the
22 Dealerships.

23 129. Trophy, Watar and the Former Sage Executive Defendants' concealment was a
24 substantial factor in causing the Sage Group's damages, in an amount subject to proof at trial.

25 130. Furthermore, Trophy, Watar and the Former Sage Executive Defendants'
26 concealment was committed with the intent of depriving the Sage Group of right and causing it
27 other injury. Their conduct was despicable and subjected Plaintiffs to unjust hardship. Their
28 conduct was malicious, fraudulent, and oppressive, and was committed with a conscious disregard

1 of Plaintiffs' rights. Accordingly, Plaintiffs are entitled to an award of punitive or exemplary
2 damages, based on Trophy, Watar and the Former Sage Executive Defendants' net worth, in an
3 amount sufficient to punish them and make an example of them.

4 **THIRD CAUSE OF ACTION**

5 **Breach of Contract**

6 **(Against NNA)**

7 131. Plaintiffs repeat and reallege each and every foregoing and subsequent allegation
8 contained in the Complaint, and further allege as follows:

9 132. The Dealer Agreements for Glendale Nissan and Glendale Infiniti were valid and
10 enforceable contracts that existed between the Sage Group and Nissan.

11 133. Plaintiffs performed as promised in the Dealer Agreements, and to the utmost
12 extent possible, fulfilled each and every term of these contracts, except as to any terms that they
13 were prevented or excused from performing.

14 134. However, Nissan breached these contracts by wrongfully rejecting the Sage
15 Group's prospective buyer. After the Sage Group closed the sale to Trophy, the Sage Group
16 solicited offers for its Glendale and Infiniti stores. The Group received two offers: one offer from
17 Nissan-solicited candidate Dennis Lin and another non-Nissan-solicited offer from another
18 candidate. The other buyer had made a larger offer to purchase the group than Nissan's preferred
19 buyer, Dennis Lin.

20 135. Nissan told the Sage Group that it would not approve any buyer other than Lin. In
21 doing so, it violated the Dealer Agreement, which states that Nissan "shall not, however,
22 unreasonably withhold its consent to any such change" of ownership. By refusing to consider any
23 buyer other than its preferred buyer, Nissan unreasonably withheld its consent and violated the
24 Dealer Agreement.

25 136. Because Nissan refused to consider other buyers, the Sage Group was forced to sell
26 the Glendale Dealerships to Dennis Lin at a lower price than it would have to another buyer.

27 137. As a proximate result of Nissan's conduct, the Sage Group has suffered damages in
28 an amount subject to proof at trial.

FOURTH CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing

(Against NNA)

138. Plaintiffs repeat and reallege each and every foregoing and subsequent allegation contained in the Complaint, and further allege as follows:

139. The Dealer Agreements for Glendale Nissan and Glendale Infiniti were valid and enforceable contracts that existed between the Sage Group and Nissan.

140. Plaintiffs performed as promised in the Dealer Agreements, and to the utmost extent possible, fulfilled each and every term of these contracts, except as to any terms that they were prevented or excused from performing.

141. However, Nissan breached the implied covenant of good faith and fair dealing by refusing to consider the Sage Group's proposed buyer. Nissan refused to consider the Sage Group's prospective buyer without going through its customary application process or considering any information relevant to his fitness as a Nissan dealer.

142. One of the benefits of the Dealer Agreements is that they allow a Nissan dealer to sell their dealerships for the highest price to a buyer approved by Nissan. By refusing to consider the Sage Group's prospective buyer for the Glendale stores, Nissan interfered with the Sage Group's rights to receive the benefits of the Dealer Agreements.

143. As a proximate result of Nissan's conduct, the Sage Group has suffered damages in an amount subject to proof at trial.

FIFTH CAUSE OF ACTION

Tortious Interference with Contract

(Against Nissan Japan and NMAC)

144. Plaintiffs repeat and reallege each and every foregoing and subsequent allegation contained in the Complaint, and further allege as follows:

145. Plaintiffs had valid franchise contracts with NNA.

146. Nissan Japan and NMAC knew about these contracts.

147. As set forth herein, Nissan Japan and NMAC's conduct was intended to disrupt

1 these contracts and block the Dealerships from continuing to be Nissan dealers as well as forcing
2 them to sell their Dealerships (and their rights under the franchise contracts) to Nissan insiders,
3 Trophy and Lin. Nissan Japan orchestrated its subsidiaries to pressure the Dealerships and force
4 them to sell to Nissan Japan's dealer of choice. NMAC actively participated in Nissan's scheme
5 by, among other things, financially suffocating the Dealerships, as alleged herein.

6 148. Nissan Japan and NMAC's conduct harmed Plaintiffs, inflicting damages on the
7 Dealerships by virtue of the amounts ultimately obtained for the sale of these Dealerships.

8 149. Nissan Japan and NMAC's conduct was committed with the intent of depriving the
9 Sage Group of right and causing it other injury. Nissan Japan and NMAC's conduct was
10 despicable and subjected Plaintiffs to unjust hardship. Their conduct was malicious, fraudulent,
11 and oppressive, and was committed with a conscious disregard of Plaintiffs' rights. Accordingly,
12 Plaintiffs are entitled to an award of punitive or exemplary damages, based on Nissan Japan and
13 NMAC's net worth, in an amount sufficient to punish and make an example of them.

14 **SIXTH CAUSE OF ACTION**

15 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

16 **(Against NMAC)**

17 150. Plaintiffs repeat and reallege each and every foregoing and subsequent allegation
18 contained in the Complaint, and further allege as follows:

19 151. Plaintiffs performed as promised in the Forbearance Agreement, and to the utmost
20 extent possible, fulfilled each and every term of the contract, except as to any terms that they were
21 prevented or excused from performing by NMAC's misconduct.

22 152. The benefit of the Forbearance Agreement for the Sage Group was NMAC would
23 reopen floor-plan financing for the two Glendale stores after the Trophy sale closed. After the sale
24 closed, however, NMAC wrongfully withheld almost \$3 million that the Sage Group needed to
25 meet the conditions for NMAC to reopen the floor-plan lines. Because NMAC withheld this
26 money, the Sage Group was unable to place \$3 million into a cash-management account with
27 NMAC and get the lines reopened. By wrongfully withholding this money, NMAC unfairly
28 interfered with the Sage Group's rights to receive the benefits of the Forbearance Agreement.

1 153. The Receiver requested that NMAC reopen the financing at the Glendale
2 Dealerships, but NMAC refused. Worse, NMAC engaged in misconduct that made it impossible
3 for the Sage Group to comply with the proposed terms and conditions.

4 154. As a proximate result of NMAC's conduct, the Sage Group has suffered damages
5 in an amount subject to proof at trial.

6 155. The Forbearance Agreement also entitles the Sage Group to recover its attorneys'
7 fees and costs.

8 **SEVENTH CAUSE OF ACTION**

9 **Breach of Fiduciary Duty & Aiding and Abetting Breach of Fiduciary Duty**

10 **(Against Devine, Scott, Awada, Trophy, and Watar)**

11 156. Plaintiffs repeat and reallege each and every foregoing and subsequent allegation
12 contained in the Complaint, and further allege as follows:

13 157. The Former Sage Executive Defendants were officers of the Sage Group and owed
14 it a duty of undivided loyalty.

15 158. As set forth above, the Former Sage Executive Defendants acted against the Sage
16 Group's interests in connection with the sale of Group assets to Trophy.

17 159. Devine acted against the Sage Group's interests and on behalf of Trophy's when he
18 was secretly working on Trophy's behalf before the sale closed. Devine negotiated the assignment
19 of the Group's DMS contract with Reynold & Reynolds. He arranged for Trophy to assume only
20 the portions of the contract that it wanted to assume, while leaving the Sage Group with
21 expensive, ongoing obligations for stores that it no longer owned. Devine also allowed Trophy to
22 use the Sage Group's accounts, causing the Group to incur liability for chargebacks and credit-
23 card fraud associated with Trophy's store. Devine also acted against the Sage Group's interests by
24 writing checks for hundreds of thousands of dollars from Sage to Trophy with no explanation.
25 Devine also acted against the Sage Group's interest by advising Trophy to purchase certain used
26 cars and not purchase other cars.

27 160. Devine also violated his fiduciary duties to the Sage Group by disclosing its
28 confidential information to Trophy. In his role as CFO, Devine had access to the Group's

1 confidential information that was not general knowledge, including outstanding vehicle trade pay-
2 offs, the Sage Group's cash holdings, and internal discussions related to the negotiations. Devine
3 communicated this information to Trophy without the Group's consent.

4 161. Scott acted against the Sage Group's interests and on behalf of Trophy's when he
5 was secretly working on its behalf before the sale closed. Prior to the close of the transaction,
6 Scott was making arrangements with retail lenders on behalf of Trophy. In order to curry favor for
7 Trophy with these lenders, Scott arranged for the Sage Group to assume additional liabilities with
8 these lenders.

9 162. Awada was a General Manager for the Sage Group who was responsible for,
10 among other things, negotiations of the value of the used-car inventory in connection with the sale
11 to Trophy. Awada took advantage of his high-level position in the Sage Group to help its counter-
12 party during the negotiations, Trophy.

13 163. The Sage Group did not give informed consent to the Former Sage Executive
14 Defendants' conduct.

15 164. The Sage Group was harmed by their breaches of fiduciary duty.

16 165. The Former Sage Executive Defendants' conduct was a substantial factor in
17 causing the Sage Group's harm.

18 166. Because the Former Sage Executive Defendants committed these wrongful acts
19 while surreptitiously acting as employees and agents for Trophy in the ordinary course of its
20 business, Trophy is vicariously liable for their conduct.

21 167. In addition, Trophy and Watar are liable for Devine, Scott and Awada's wrongful
22 acts because they aided and abetted their breach of fiduciary duty.

23 168. Trophy and Watar knew that the Former Sage Executive Defendants were
24 betraying their fiduciary duties to the Sage Group during the sale.

25 169. Trophy and Watar gave the Former Sage Executive Defendants substantial
26 assistance and encouragement to commit these wrongful acts by secretly communicating with—
27 and obtaining information from—they and offering them jobs at Trophy.

28 170. Trophy and Watar's conduct was a substantial factor in causing harm to the Sage

1 Group.

2 171. Furthermore, Devine, Scott, Awada, Trophy and Watar's conduct was committed
3 with the intent of depriving the Sage Group of right and causing it other injury. Their conduct was
4 despicable and subjected Plaintiffs to unjust hardship. Their conduct was malicious, fraudulent,
5 and oppressive, and was committed with a conscious disregard of Plaintiffs' rights. Accordingly,
6 Plaintiffs are entitled to an award of punitive or exemplary damages, based on Devine, Scott,
7 Awada, Trophy and Watar's net worth, in an amount sufficient to punish them and make an
8 example of them.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, and each of them,
11 jointly and severally, as follows:

- 12 (1) For damages in an amount to be proven at trial;
13 (2) For prejudgment interest;
14 (3) For punitive and exemplary damages;
15 (4) For declaratory relief as to Trophy;
16 (5) For attorneys' fees and costs of suit incurred herein; and
17 (6) For such other relief that the Court deems proper.

18
19 DATED: December 19, 2019

MILLER BARONDESS, LLP

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21 By: 

22 AMNON Z. SIEGEL
23 Attorneys for Plaintiffs
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

DATED: Demcember 19, 2019

MILLER BARONDESS, LLP

By:



AMNON Z. SIEGEL
Attorneys for Plaintiffs