

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

LANCE COTTEN, ALEX VAVAS and ERIC MOLBEGAT,

Plaintiffs,

- against -

GPB CAPITAL HOLDINGS, LLC, AUTOMILE HOLDINGS  
LLC D/B/A PRIME AUTOMOTIVE GROUP, DAVID  
GENTILE, DAVID ROSENBERG, PHILIP DELZOTTA,  
JOSEPH DELZOTTA, any other related entities,

Defendants.

**Index No.:**

\_\_\_\_\_/2020

**COMPLAINT**

**Jury Trial Demanded**

The Named Plaintiffs LANCE COTTEN, ALEX VAVAS, and ERIC MOLBEGAT (the “Named Plaintiffs”), by their attorneys, Leeds Brown Law, P.C., allege upon knowledge to themselves and upon information and belief as to all other matters as follows:

**PRELIMINARY STATEMENT**

1. This action is brought pursuant to New York Labor Law (“Labor Law”) § 740 and Executive Law § 296 et seq., to recover for damages due to Defendants’ retaliatory actions. Named Plaintiffs damages include, *inter alia*, compensation for lost wages, benefits, and other remuneration as well as other damages and penalties owed to the Named Plaintiffs as a result of the retaliatory actions, including dismissal, by Defendants GPB CAPITAL HOLDINGS, LLC, AUTOMILE HOLDINGS LLC D/B/A PRIME AUTOMOTIVE GROUP, DAVID GENTILE, DAVID ROSENBERG, PHILIP DELZOTTA, JOSEPH DELZOTTA and any other related entities, (hereinafter collectively referred to as “GPB” and “Defendants”).

2. Defendants engaged in systematic fraudulent and discriminatory schemes against customers, including one scheme whereby Defendants retailed their vehicles as “Nissan Certified”

when they had in fact not completed the necessary repairs and reconditioning as directed by Nissan Motor Acceptance Corporation Certified Pre-Owned Vehicle Qualification Guidelines. By not completing the necessary repairs, consumers were purchasing vehicles that failed to meet Nissan's standard, thus presenting a public health and safety issue to the consumer and the public at large.

3. Defendants failed to disclose that "certified used cars" did not actually qualify as "certified" under the manufacturer's specifications. Therefore, customers purchased automobiles that they believed to be certified when those cars were not actually certified. Thus, those automobiles were less valuable, more prone to repairs, and more dangerous to drivers, passengers, and the public as a whole. Additionally, Defendants' false "certification" of used vehicles presents a substantial and specific danger to the public health and safety.

4. In other schemes perpetuated by Defendants, Defendants targeted and discriminated against African-American and Hispanic customers during the credit and financing processes to inflate the dealership profits without disclosing the true nature of the financial transactions. For example, Defendants failed to disclose to minority customers that Defendants would increase the interest rates for minority customers by 2% above what those customers had been approved by the financing institution for. Additionally, Defendants would pack or load the deals with aftermarket productions without the minority customers' knowledge. In other schemes, Defendants would target minorities through the Special Finance Department including luring them falsely into voluntary repossessions, kicking trades, falsifying trade-ins or financial information, or by grossly inflating the transportation and preparation fees.

5. The Named Plaintiffs not only complained about these deceptive business practices, the Named Plaintiffs took affirmative steps to investigate and uncover the full scope of these schemes at the Garden City Nissan location. The Named Plaintiffs also took affirmative steps

to remove those individuals that perpetuated these schemes from Defendants' dealership and then alerted Defendants' management to such actions.

6. Because of these acts by the Named Plaintiffs, Defendants terminated the Named Plaintiffs from their employment and otherwise harmed them.

7. The Named Plaintiffs have initiated this action seeking for themselves all compensation, including recovering compensation which they were deprived of, as well as the damages they suffered as a result of Defendants' retaliatory actions, plus interest, attorneys' fees, and costs.

### **THE PARTIES**

8. Plaintiff Lance Cotten ("Cotten") is an individual who is a resident of the County of Suffolk. Cotten was employed by Defendants as a General Manager during 2016 to 2019 at several of Defendants' dealerships, including the Garden City Nissan location, and Market Director for the New York Region during 2019.

9. Plaintiff Alex Vavas ("Vavas") is an individual who is a resident of the County of Suffolk. Vavas was employed by Defendants as a Finance Manager at Garden City Nissan during 2019.

10. Plaintiff Eric Molbegat ("Molbegat") is an individual who is currently a resident of the County of Nassau. Molbegat was employed by Defendants as a Sales Manager and Pre-Owned Cars Director during 2019 at Garden City Nissan.

11. Prior to joining Defendants' Garden City Nissan location during 2019, the Named Plaintiffs accumulated decades worth of experience in the car industry and at prominent car dealerships and corporate entities related to automobile groups in the New York City metro area.

12. Defendants jointly operate, own, and manage the dealership commonly known as Garden City Nissan during the relevant period. Each Defendant exercised considerable control over the business decisions and financial transactions that occurred between the corporate entities and the customers during the relevant period of time.

13. Upon information and belief, Defendants GPB Capital Holdings, LLC is a foreign limited liability company with a principal place of business in New York at 535 West 24<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, NY 10011.

14. Upon information and belief, Defendants David Gentile is the owner, CEO, and operator of Defendants GPB Capital Holdings, LLC, and his principal business address is 535 West 24<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, NY 10011.

15. Upon information and belief and during the relevant period of time, Defendants David Gentile and GPB Capital Holdings, LLC jointly operated and managed Defendants Automile Holdings LLC d/b/a Prime Automotive Group.

16. Upon information and belief, Defendants Automile Holdings LLC d/b/a Prime Automotive Group is a foreign limited liability company with a principal place of business at 375 Providence Highway, Westwood, Massachusetts, 02090.

17. Upon information and belief, Defendants David Rosenberg is the owner, CEO, and operator of Defendants Automile Holdings LLC d/b/a Prime Automotive Group and his principal business address is 375 Providence Highway, Westwood, Massachusetts, 02090.

18. Upon information and belief, Defendants David Gentile, Defendants GPB Capital Holdings, LLC, Defendants Automile Holdings LLC d/b/a Prime Automotive Group, Defendants David Rosenberg, Defendants Philip Delzotta, and Defendants Joseph Delzotta jointly owned, operated, and managed the dealership known as Garden City Nissan, located at 316 North Franklin

St., Hempstead, New York 11550.

19. Defendants collective and separately operated other car dealerships in New York State during the relevant period of time including Tower Ford, White Plains Buick GMC, Huntington Nissan, and other locations.

20. Upon information and belief, each Defendants had knowledge of the illegal schemes and acts as detailed in this Complaint but failed to take any appropriate action to cease their ongoing violations.

21. During the summer and fall of 2019, all of Defendants were made aware of the ongoing and systematic fraudulent schemes being perpetrated against Defendants' customers and Defendants failed to take meaningful affirmative steps to cease the ongoing violations of consumer fraud law.

22. Upon information and belief, Defendants took affirmative steps to conceal and hide the existence and scope of numerous violations that were ongoing at its Garden City Nissan location and present a substantial and specific danger to the public health and safety.

23. Despite the knowledge of these schemes as reported by its employees and third parties, Defendants failed to advise customers of the illegal acts made against them and thereby perpetuated additional interest, fees, and damages to Plaintiffs.

### **FACTS**

24. Car dealerships typically operate out of three primary departments: (1) the sales department, (2) the finance department, and the (3) maintenance department.

25. Traditionally, the sales department negotiates pricing, availability, and packages related to a specific car purchase or lease, and the finance department handles interest rates, loans,

credit applications, and rebates.

26. Dealerships typically sell and lease new cars obtained through manufacturers.

27. Dealerships also sell used cars, as either traditional used cars (as is) or certified used cars that fit certain criteria established by the manufacturer and include warranties extended through the manufacturer.

28. Customers generally desire certified used cars because certified used cars are significant less expensive than new cars but still maintain warranties from manufacturers and are safer, better preserved, and have lower mileages.

29. Here, Defendants marketed and sold used cars at increased prices but omitted that those cars had not passed the manufacturer's qualifications for being deemed "certified."

30. Defendants falsified documents including the Certified Pre-Owned Warranty Certificate to increase the profitability of its used car sales.

31. Defendants provided the manufacturer and other parties with documents that identified automobiles sold by Defendants as "certified" when those automobiles did not properly qualify as certified under the manufacturer's requirements.

32. Customers purchased automobiles that they believed to be certified and paid an increased price but received a used automobile that had service or maintenance issues that prevented it from being certified.

33. Therefore, customers purchased automobiles that they believed to be certified when those cars were not actually certified. Thus, those automobiles were less valuable, more prone to repairs, and more dangerous to drivers, their passengers, and the public as a whole.

**Plaintiff Lance Cotten**

34. Defendants have employed Plaintiff Lance Cotten in numerous roles during the

relevant period at several dealerships in the Tri-State area, but most relevant here, Plaintiff Cotten is tasked with a role by Defendants at the Garden City Nissan location to identify potential consumer fraud and deceptive business practice issues.

35. By the summer of 2019, Plaintiff Cotten has been assigned to the Garden City Nissan location and authorized to bring in the necessary personnel to deal with the consumer fraud and deceptive business practices occurring at the dealership.

36. During his employment tenure, Defendants agreed to pay Plaintiff Cotten a monthly salary of \$15,000 plus bonuses with the agreement that his compensation was guaranteed to be at least \$25,000 per month through February 2020 for becoming the General Manager at Garden City Nissan.

37. Plaintiff Cotten officially becomes the General Manager at Garden City Nissan on Aug. 21, 2019.

38. Shortly after, and as a result of, alerting his supervisor regarding Defendants' fraudulent conduct with respect to, among other things, the sale of their purported certified cars, Plaintiff Cotten was terminated from his position with Defendants.

39. During September 2019, Plaintiff Cotten working with Plaintiff Molbegat and Plaintiff Vavas alerted Defendants' National Used Car Director Nasir Uddin regarding the certified used car scheme, including that the dealership was not completing all necessary repairs before certifying the cars as "certified used cars" through Nissan Corp.

40. During September and October 2019, Plaintiff Cotten – with the assistance of Plaintiff Vavas and Molbegat – investigated and then terminates individuals perpetuating the deceptive acts at Garden City Nissan.

41. On October 11, 2019, Plaintiff Cotten, Plaintiff Vavas, and Plaintiff Molbegat were

terminated from employment, and the bad actors are rehired by Defendants to continue Defendants' operation as it was prior to those decisions by Plaintiff Cotten.

42. Plaintiff Cotten, Plaintiff Vevas, and Plaintiff Molbegat were terminated from their employment for investigating, complaining about, and attempt to end the deceptive business practices of Defendants, including those related to the public health and safety of used cars being sold as certified.

43. Pursuant to Labor Law Article 20 § 740 "An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following: (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud; (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or (c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

**Plaintiff Alex Vavas**

44. Defendants employed Plaintiff Vavas as a Finance Manager during 2019.

45. During his employment tenure, Defendants paid Vavas a weekly salary of \$1,000 plus 20% commissions based on gross profits and 10% of finance reserve profits.

46. During September 2019, Plaintiff Vavas working with Plaintiff Cotten and Plaintiff Molbegat to alert Nasir Uddin regarding the certified used car scheme, including that the dealership was not completing all necessary repairs before certifying the cars as "certified used cars" through

Nissan Corp.

47. During September and October 2019, Plaintiff Vavas Plaintiff Cotten, and Plaintiff Molbegat investigated and then Plaintiff Cotten terminated individuals perpetuating the deceptive acts at Garden City Nissan.

48. On October 11, 2019, Plaintiff Cotten, Plaintiff Vavas, and Plaintiff Molbegat were terminated from employment, and the bad actors are rehired by Defendants to continue Defendants' operation as it was prior to those decisions by Plaintiff Cotten.

49. Plaintiff Cotten, Plaintiff Vavas, and Plaintiff Molbegat were terminated from their employment for investigating, complaining about, and attempt to end the deceptive business practices of Defendants, including those related to the public health and safety of used cars being sold as certified.

50. Shortly after, as a result of alerting his supervisor regarding Defendants' fraudulent conduct with respect to, among other things, the sale of their purported certified cars, Plaintiff Vavas was terminated from his position with Defendants.

51. Additionally, pursuant to Labor Law Article 20 § 740 "An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following: (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud; (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or (c) objects to, or refuses to participate in any such activity, policy or practice

in violation of a law, rule or regulation.

**Plaintiff Eric Molbegat**

52. Defendants employed Plaintiff Eric Molbegat as a Sales Manager and Pre-Owned Cars Director during 2019.

53. During his employment tenure, Defendants paid Molbegat a weekly salary of \$2,500.

54. During September 2019, Plaintiff Molbegat – with the assistance of Plaintiff Cotten and Plaintiff Vavas – complains to Nasir Uddin about the certified used car scheme that is being perpetrated against customers at the Garden City Nissan location. Specifically, Plaintiff Molbegat directs that all pre-owned cars were to be re-inspected by the maintenance department for necessary repairs to ensure compliance with any CPO Warranties attached to such cars.

55. Plaintiff Molbegat raises his concerns about the certified used car scheme with Plaintiff Cotten and Plaintiff Vavas, who are also speaking to David Rosenberg and Tom Bury about deceptive business practices at Garden City Nissan.

56. Shortly after, as a result of alerting his supervisor regarding Defendants' fraudulent conduct with respect to, among other things, the sale of their purported certified cars, Plaintiff Molbegat was terminated from his position with Defendants.

57. Pursuant to Labor Law Article 20 § 740 "An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following: (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud; (b) provides information to, or testifies before, any public body conducting an investigation,

hearing or inquiry into any such violation of a law, rule or regulation by such employer; or (c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation. discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud; (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or (c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

**FIRST CAUSE OF ACTION  
(Whistleblower Retaliation in Violation of Labor Law § 740)  
Against All Defendants**

58. Plaintiffs hereby repeat, reiterate and re-allege each and every allegation in each of the preceding paragraphs, as though fully set forth herein.

59. Plaintiffs are employees as that term is defined by the Labor Law and case law interpreting the same.

60. Defendants are employers as that term is defined by the Labor Law and case law interpreting the same.

61. All Defendants exercised control over Plaintiffs in the performance of their job duties and responsibilities for Defendants' dealerships and related corporate entities.

62. As detailed above, Defendants subjected Plaintiffs to multiple adverse employment actions because Plaintiffs disclosed and/or objected to an activity, policy or practice of Defendants that in violation of a law, rule or regulation that creates a substantial and specific danger to the public health or safety.

63. Upon information and belief, Defendants engaged in a systematic fraudulent scheme whereby Defendants were retailing Defendants' vehicles listed as "Nissan Certified" when they had in fact not completed the necessary repairs and reconditioning as directed by Nissan Motor Acceptance Corporation Certified Pre-Owned Vehicle Qualification Guidelines. By not completing the necessary repairs, consumers were purchasing vehicles that didn't meet Nissan's standard, thus presenting a safety issue to the consumer.

64. Further, the Company's subsequent statements regarding the safety of their certified cars were material misrepresentations and/or omissions, made with the required level of scienter, that would have altered the perception of a reasonable customer.

65. Defendants retaliated against Plaintiffs by, inter alia, terminating Plaintiffs' employment because they made complaints to management regarding Defendants' deceptive "certified" Pre-Owned Vehicle program, refused to participate in such a scheme and took affirmative steps to stop the scheme from being perpetuated. Plaintiffs further complained that Defendants' "certified" Pre-Owned Vehicle program created a substantial and specific danger to the public health or safety.

66. As a direct and proximate result of Defendants' willful and unlawful conduct in violation of the NYLL, Plaintiffs have suffered, and continues to suffer, harm for which they are entitled to an award of damages, to the greatest extent permitted by law.

**SECOND CAUSE OF ACTION  
(Whistleblower Retaliation in Violation of Executive Law § 296)  
Against All Defendants**

67. Plaintiffs hereby repeat, reiterate and re-allege each and every allegation as contained in each of the preceding paragraphs, as though fully set forth herein.

68. New York State Executive Law § 296(1)(e) states that, "For any employer ... to

discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified, or assisted in any proceedings under this article.”

69. Plaintiff Cotten, Plaintiff Vavas, and Plaintiff Molbegat opposed Defendants’ practices of perpetrating deceptive business schemes upon minorities, especially as it related to the credit processing and financing processes for minority customers when those customers purchased, sold, or leased automobiles from Defendants’ dealerships.

70. Plaintiff Cotten, Plaintiff Vavas, and Plaintiff Molbegat opposed at least five deceptive business schemes that were being perpetuated against minority customers at a disproportionately higher rate than non-minority customers.

71. For example, Defendants regularly failed to disclose to minority customers that Defendants were inflating the interest rate on loans by as much as 2% above what the customer was approved at – in order for the dealership to obtain greater profits.

72. Plaintiff Cotten, Plaintiff Vavas, and Plaintiff Molbegat also raised concerns about Defendants’ financing tactics as it related to the “Special Finance Department” which was used as code for minority purchasers.

73. Plaintiff Cotten, Plaintiff Vavas, and Plaintiff Molbegat’s investigations uncovered that the Special Finance Department was utilizing “packing” or “loading” schemes onto monthly installment payments for minority customers only to then inflate those deals with aftermarket productions (like tire protections, protectants, wheel protections, car wash programs, and other highly profitable add-ons) to increase the profits without the minority customer knowing.

74. Plaintiff Cotten, Plaintiff Vavas, and Plaintiff Molbegat had a good-faith basis to believe that Defendants’ actions and schemes violated the law as to minority customers.

75. Plaintiff Cotten, Plaintiff Vavas, and Plaintiff Molbegat not only complained about those actions and schemes, they took affirmative steps to stop the perpetuation of such schemes – only to be terminated from their employment when Defendants reinstated the bad actors.

76. Defendants’ acts have significantly harmed Plaintiffs in lost wages, lost benefits, harm to their reputations, and other damages that occurred as a direct result of Defendants’ actions to terminate Plaintiffs for validly raising concerns about Defendants’ credit and sales processes for minority customers.

77. Plaintiffs believed in good faith that Defendants’ deceptive “certified” Pre-Owned Vehicle program was in violation of the law, as Defendants were retailing Defendants’ vehicles listed as “Nissan Certified” when they had in fact not completed the necessary repairs and reconditioning as directed by Nissan Motor Acceptance Corporation Certified Pre-Owned Vehicle Qualification Guidelines.

78. Plaintiffs complained to Defendants based upon their good faith belief that their failure to make the necessary repairs pursuant to Nissan Motor Acceptance Corporation Certified Pre-Owned Vehicle Qualification Guidelines was unlawful and potentially threatened public health and welfare.

79. In response to Plaintiffs complaints made in good faith, Defendants retaliated against Plaintiffs by, inter alia, terminating their employment and subjecting them to the adverse employment actions described herein.

80. As a direct and proximate result of Defendants’ unlawful conduct in violation of the NYLL, Plaintiff has suffered, and continues to suffer, harm for which he is entitled reinstatement with the same seniority status as he would have had but for the retaliation, an award of damages in an amount to be determined at trial, liquidated damages, prejudgment interest and

reasonable attorneys' fees and costs.

**THIRD AND FOURTH CAUSES OF ACTION  
LABOR LAW VIOLATIONS AND BREACH OF CONTRACT CLAIMS  
AS TO PLAINTIFF COTTEN  
Against All Defendants**

81. Plaintiffs hereby repeat, reiterate and re-allege each and every allegation as contained in each of the preceding paragraphs, as though fully set forth herein.

82. Plaintiff Cotten entered into a compensation agreement that guaranteed his income for a prescribed period of time, including through February 2020.

83. Plaintiff Cotten entered into his job position and accepted the job responsibilities based on that compensation agreement.

84. When Defendants terminated Plaintiff Cotten, Defendants stopped compensating him as his agreed upon rate and ceased providing commissions and all earned wages in accordance with that compensation agreement.

85. By failing to provide Plaintiff Cotten with all earned wages and commissions, Defendants have breached the contract as detailed in the compensation agreement and violated Labor Law § 190 et seq. including §§ 191, 191-b, 191-c, 193, 195, and 198.

86. Labor Law § 190 et seq. and its implementing regulations, including the Wage Orders, protects workers when they fail to receive all earned wages and all unpaid commissions by underpayments by their employers.

87. In accordance with the case law and statutory protections, Plaintiff Cotten was protected from wage and commission theft during and after his employment with Defendants.

88. Plaintiff Cotten was harmed by Defendants' actions in an amount to be determined at trial, plus damages, interest, attorney's fees, and costs.

**WHEREFORE**, the Named Plaintiffs seek the following relief:

(1) on the first cause of action, against Defendants in an amount to be determined at trial, plus interest, damages, attorneys' fees and costs, pursuant to the cited Labor Law and regulatory provisions;

(2) on the second cause of action, against Defendants in an amount to be determined at trial; plus interest, damages, attorneys' fees and costs, pursuant to the cited Labor Law and regulatory provisions;

(3) on the second and third causes of action, against Defendants in an amount to be determined at trial, plus damages, interest, attorney's fees, costs, and other relief due under the law.

(4) together with such other and further relief the Court may deem appropriate.

Dated: Carle Place, New York  
May 28, 2020

**LEEDS BROWN LAW, P.C.**

\_\_\_\_\_/s/\_\_\_\_\_  
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