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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

NISSAN NORTH AMERICA, INC.,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	**NO. 16-117-BC**
	)	
TUSTIN IMPORT AUTO SALES, LLC, d/b/a TUSTIN NISSAN; RICKY RAYMOND ENRIQUEZ; MARIA VILLEGAS; and DOES 1 through 25,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER OF FINDINGS OF FACT AND CONCLUSIONS OF LAW FROM APRIL 27, 2017 DAMAGES HEARING AGAINST DEFENDANT ENRIQUEZ

This lawsuit was filed by an importer of Nissan automobiles who distributes the vehicles to dealers throughout the United States for sale to the public. Part of that operation is that the Plaintiff enters into a Nissan Dealer Term Sales & Service Agreement ("Dealer Agreement") with dealerships. One aspect of the Dealer Agreement is that the dealership performs customer warranty repair work for which the dealer submits a claim to the Plaintiff for payment for the work. In issue in this case is warranty repair work performed by the Defendant, LLC ("Tustin"). Defendant Enriquez is the former Parts and Service Director at Tustin.

In this case the Plaintiff has sued to recover compensatory, and punitive or treble damages for millions of dollars which the Plaintiff alleges it paid on false, fictitious and fabricated warranty repair claims submitted from the Tustin Dealership beginning in June of 2014 for repairs either not performed or not needed. The fraud and deception took the form of "ghost vehicles" which were never at Tustin, fictitious repair visits, actual visits where a repair did not occur, and actual visits where the repair occurred but was not needed.

On July 18, 2016, the Plaintiff entered a voluntary nonsuit as to the Defendant Villegas, and the Plaintiff and Defendant Tustin Import Auto Sales, LLC ("Tustin") entered into a settlement agreement. The only remaining claims are those asserted against Defendant Enriquez.

The Plaintiff asserts three causes of action against Defendant Enriquez: violation of the Tennessee Consumer Protection Act, fraud, and negligent misrepresentation. A default judgment was entered against Defendant Enriquez on March 31, 2017. A damages hearing was conducted on April 27, 2017. Defendant Enriquez did not appear to defend. The award of damages was taken under advisement.

After considering the law, the allegations of the Complaint admitted by virtue of the default judgment, the evidence presented at the damages hearing, and argument of Counsel, it is ORDERED that for Defendant Enriquez' violation of the Tennessee Consumer Protection Act and commission of fraud, the Plaintiff is awarded compensatory

damages of $6,448,088 for the 21-month period extending from August 2013 through April 2015, when the Defendant was employed at Tustin.

Further, interest in the amount of 8% in the amount of $1,480,481.00 is awarded.

Additionally, the Court awards, against Defendant Enriquez under the Tennessee Consumer Protection Act section 47-18-109(a)(4) (treble damages statute), two times the compensatory damages for a total of $12,896,176.00; or, **alternatively**, punitive damages of two (2) times the compensatory damages for a total of $12,896,176.00. As required in *Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901 (Tenn. 1999), at the conclusion of this Memorandum is an order for the Plaintiff to file its election, under Tennessee Code Annotated section 47-18-109 or section 29-39-104(a)(5), of enhanced damages under the Tennessee Consumer Protection Act or punitive damages.

This is a very large recovery against Defendant Enriquez. The Court does not award this sum lightly or reactively. After careful deliberation, the Court finds that, as provided below, the recovery is justified because the evidence of record is clear and convincing in establishing a brazen, intentional, and malicious multi-million dollar scheme of fraud and deception in which Defendant Enriquez was an active and controlling participant whose position and actions at Tustin enabled the scheme to be perpetrated on the Plaintiff.

The findings of fact and conclusions of law on which this award is based are as follows.

Admitted Facts Excerpted From the Complaint

First, there are the facts alleged by the Plaintiff in the Complaint. These are established as true as the consequence of the entry of default judgment against Defendant Enriquez. "When a default judgment is entered against a defendant, he or she 'impliedly confesses all of the material allegations of fact contained in the plaintiff's declaration *except the amount of the plaintiff's unliquidated damages*. [citations omitted].'" *Burnett v. Sundeen*, 152 S.W.3d 1, 4 (Tenn. App. 2004).

In pertinent part the Complaint establishes the following.

— Under Section 5 of the Standard Provisions of the Dealer Agreement, Tustin agreed, in accordance with bulletins issued from time to time by the Plaintiff, to perform both warranty and customer-paid maintenance and service on Nissan vehicles.

— Pursuant to Section 5 of the Standard Provisions, the Plaintiff pays Tustin for all warranty repairs it performs on Nissan vehicles, including payment for labor, diagnostics, and parts used in making such repairs, in accordance with a specified process.

— Pursuant to this process under Section 5 of the Standard Provisions, Tustin submits written warranty claims to the Plaintiff seeking payment for necessary warranty repairs made on customer-owned Nissan vehicles, and the Plaintiff compensates Tustin for warranty service provided to customers, as well as Nissan parts used for that purpose, in reliance on the information submitted by Tustin's employees and agents on behalf of Tustin.

— It is the Plaintiff that pays for such services and, as such, functions as the true "customer" of the warranty repairs performed on its products by its dealers, including Tustin, in accordance with the terms as set forth in Plaintiff's warranties, policies, and procedures.

— Because the Plaintiff does not perform warranty repairs itself, it must rely on its authorized dealers to do so. Tustin is one of approximately

1,200 authorized Nissan dealers in the United States. Based on the significant warranty repair operations that these approximately 1,200 dealers perform annually (a number easily estimated to exceed one million repairs), it is neither practicable nor reasonable for the Plaintiff to monitor, audit, and/or verify each and every warranty repair operation claimed to be performed by every one of its dealers every year. The Plaintiff must rely upon its dealers, including Tustin, therefore, to submit reimbursement claims that are fully substantiated for repair operations that have been actually and properly performed.

— Defendant Enriquez, as the former Parts and Service Director, was formerly employed at Tustin during the time for which the audit reviewed warranty claims. As a Parts and Service Director, Enriquez was responsible for overseeing vehicle service and repairs for Nissan retail customers at Tustin. He also managed employees who were responsible for the ordering and stocking of Genuine Nissan parts.

— An audit commenced by the Plaintiff in March 2015 revealed that during the period in issue, Tustin, Enriquez, and Villegas submitted more than 250 claims for reimbursement on repairs allegedly performed on cars that were not even present at the Dealership Premises at the stated time of the alleged repair, many times being located in other states across the country.

— The audit also identified the following, including but not limited to:

- Work orders generated where the named customer was later discovered to be a fictitious or invalid business, i.e., no business license has been granted to the "entity" and the business address documented on the work order either does not exist or a completely different type of business is located there; additionally, the California Bureau of Automotive Repair website and other public records were consulted to determine the validity of each said business.

- Work order customer addresses that were incomplete or inaccurate, e.g., addresses are simply noted as "O," "30," CSANTA ANA, etc.;

- The names of the service advisor and technician on the initial work order were changed to other individuals at time of

payment submission; in some cases, the service advisor and technician are the same;

- Otherwise indistinguishable customer signatures appearing to be consistent between differing businesses and customers, and which often only consisted of initials, so Plaintiff was unable to discern whether an actual individual acknowledged approval of the work to be performed;

- Generic, free customer service lines (e.g., for a car wash) were added and later changed to a Plaintiff-funded claimed repair. For example, the Customer Copy for work order 337290 invoiced on August 22. 20l4, notes line "E" as a no-charge car wash. The line was altered five days later (August 27, 2014), noting a customer concern, "Upon inspect tech found fluid leaking," which resulted in a Plaintiff-funded differential side oil seal repair.

— The Audit found the Tustin technician comments on work orders appeared to be "scripted." i.e., virtually identical comments appear to have been copied from the same source document in order to provide language for various types of repairs. These comments also often contain more diagnostic information than is needed, and beyond what is normally seen.

— The Audit also revealed, among other irregularities, that Tustin employees, who function as repair technicians at Tustin, consistently have overlapping and concurrent time punches on the work orders. Overlapping and concurrent time punching means that each technician was either recording labor hours for different repairs on the same vehicle ("lines") and/or on different vehicles at the same time. The time records for one Tustin technician, for example, purport to indicate that the technician was performing repairs on no fewer than twenty-two (22) different vehicles simultaneously, which is neither physically possible nor permitted by the Plaintiff's policies and procedures. Comparing multiple work orders on which Defendant Tustin employees were assigned to perform repairs, the same overlapping occurrences were revealed.

— The Audit also found that technician time clocking and total hours worked were inconsistent with Tustin's payroll records, reported

work order open and close dates, and in some instances, the technician was claimed to be clocked on when the dealership service department was closed, e.g., on Sundays, or while the technician was marked out for the lunch hour on other dealership records. The Audit further discovered that certain service technicians billed 300-400 hours during a two-week time period.

— These time punches by Defendant Tustin employees either should have been reviewed by Tustin's management, including Defendant Enriquez, and/or should have been known to be false as part of their responsibilities for Tustin and prior to and in order to submit warranty claims to the Plaintiff.

— The submissions of false, fictitious, or fabricated claims were made with the intent to induce the Plaintiff to believe the identified warranty or campaign work had been performed as represented, to have the Plaintiff rely on the claim and representations made, and to pay Tustin compensation for completing the purported repair, which had not been performed.

— As a result of these intentional and egregious acts of Defendants, the Plaintiff has incurred damages including payment of false and fraudulent warranty claims, cost of auditing Tustin, reputational injury, and loss of goodwill with the Plaintiff's customers.

Findings of Fact From Deposition Testimony

In addition to the admitted allegations of the Complaint, eight depositions were admitted into evidence at the damages hearing. These have been marked as trials exhibits. These depositions amply demonstrate the extensiveness and deception of the scheme.

The depositions can be divided into two categories. One category of deponents consisted of used car dealers who were listed on the bogus warranty repair orders submitted to the Plaintiff from the Tustin Dealership where Defendant Enriquez was the

Parts and Service Director. This first category of deponents was listed as the originator/ customer who allegedly owned the car and had requested the work from Tustin.

The second category of deponents was the actual owners of vehicles which were listed on the fraudulent warranty repair orders Tustin submitted to the Plaintiff. The depositions established that part of the scheme was that VINs of vehicles listed on the repair order stated an originator/customer as the vehicle owner, but it was later determined the originator/customer did not own the vehicle.

The first category of deponents testified that they had never sent repair work to Tustin. Secondly, one of these deponents (Mario's Auto Sales) spent nine hours reviewing their records and reviewed over 458 cars on which warranty repair claims had been submitted to the Plaintiff from the Tustin Dealership. This deponent found only one of the vehicles in Mario's inventory. Another deponent in this category testified that his used car business was not even operating during the time it was listed as an originator/customer on numerous fraudulent repair orders submitted from the Tustin Dealership to the Plaintiff. This deponent ceased operations in 2012. The time of Defendant Enriquez' participation at Tustin in the fraudulent scheme was August 2013 through April 2015. The deponent testified that his signature seeking the repairs was forged.

As to the second category of deponents, they testified that they owned the vehicles whose VINs appeared on the invoices submitted by the Tustin Dealership to the Plaintiff and which had been attributed to used car places who did not own the vehicles. Additionally, the testimony established that at the time the work for the repairs was

allegedly done by the Tustin Dealership, as stated on the repair orders submitted to the Plaintiff, a number of the vehicles were not even located in California, where Tustin's business in located. The vehicles were located in Nevada, Oregon, Illinois, Arizona, Kansas, and Texas. In the second category of deponents, they testified that VINs for their automobiles could be obtained off websites where the automobiles had been advertised.

The totality of the testimony from these eight deponents established that invoices submitted to the Plaintiff for reimbursement for warranty repair work by the Tustin Dealership was not done because the customers who allegedly requested the repair work testified that they had never sent vehicles to be repaired at Tustin, and the owners of the vehicles whose VINs appeared on the warranty repair orders were either not the customer listed as originating the repair, and/or the vehicles were not sent to Tustin and were in fact located in another place.

The testimony of these deponents demonstrated clearly and completely that the brazen, extensive, massive fraudulent repair scheme averred in the Complaint had occurred.

Findings of Fact of Defendant Enriquez As a Key Participant In Fraud and Deception

The Court additionally finds that the evidence is clear and convincing that Defendant Enriquez was a significant participant in the fraud. Paragraphs 39-42 of the

Complaint are confessed by virtue of the default judgment. The undisputed facts of those paragraphs are as follows:

> 39. On information and belief, Defendants ENRIQUEZ, VILLEGAS, and DOES 1 through 25, acting on behalf of TUSTIN, either directly submitted or directed others to submit numerous warranty repair claims to NNA that were either not performed, not requested to be performed, or not necessary to be performed.
>
> 40. A summary of the Audit findings by violation category is attached hereto as Exhibit B.
>
> 41. The submissions of false, fictitious, or fabricated claims were made with the intent to induce NNA to believe the identified warranty or campaign work had been performed as represented, to have NNA rely on the claim and representations made, and to pay TUSTIN compensation for completing the purported repair, which had not been performed.
>
> 42. As a result of these intentional and egregious acts of Defendants, NNA has incurred damages including payment of false and fraudulent warranty claims, cost of auditing TUSTIN, reputational injury, and loss of goodwill with NNA's customers.

Additionally, there is Trial Exhibit 4, the deposition of Brad Calvert of Mossy Nissan Kearney Mesa. In this deposition, there is testimony that Defendant Enriquez opened a repair order which shows Mario Car Sales was the owner when actually the car was an inventory vehicle of Mossy Nissan. The Bates number is 032393 of the document identified in the deposition and was viewed by the Court in the damages hearing and when the case was taken under advisement.

Further there is discovery Exhibit 123 which is the list of 164 work orders where Mario's Car Sales is listed as the owner but, as established in the Mario Sales

Representative's deposition, was not the owner. On a number of these work orders, Defendant Enriquez himself wrote the repair order and signed it.

That Defendant Enriquez' deception was brazen, intentional and deliberate is underscored by the deposition testimony that the vehicles listed on the repair orders were not owned by the customers listed, were not even located in California, and that the VINs clearly had been taken from websites or other means to draft a bogus repair order.

Further evidence that Defendant Enriquez was a key participant in the scheme is that he held the title and was employed as the Parts and Service Director during part of the time the fraudulent scheme was operating at Tustin. The expert testimony report of Glen Purdue established that there was the greatest spike of warranty claims at Tustin during the 21 months Defendant Enriquez was the Parts and Service Director.

From this evidence specific to Defendant Enriquez, the Court finds that there is clear and convincing testimony that Defendant Enriquez was a knowing and willing key participant in the fraudulent scheme, that the evidence is clear and convincing of the fact of damage to the Plaintiff, and that Defendant Enriquez caused harm to Nissan.

Findings of Fact and Conclusions of Law On Calculating Compensatory Damages and Prejudgment Interest

With respect to quantifying the damage Defendant Enriquez caused the Plaintiff, the standard the Court must apply is that "courts inevitably operate within a margin of error when calculating damages: we have oft recognized that such awards may not be

determined with 'mathematical precision'. [citations omitted] A party seeking damages, however, must prove damages within a reasonable degree of certainty. While mere conjecture and speculation are no basis for an award of damages, uncertain or speculative damages are prohibited only if the existence of damages is uncertain or the plaintiff has failed to present enough evidence to allow the fact finder to fairly and reasonably assess damages." *Poole v. Union Planters Bank, N.A.*, 337 S.W.3d 771 (2010).

In quantifying the damages awarded in this case, the Court relies upon and accredits the testimony of Glen Purdue, a valuation expert. Mr. Perdue's qualifications include that he holds a BBA with a concentration in Finance from Middle Tennessee State University and an MBA from Vanderbilt University. He is a Certified Valuation Analyst (CVA), a Master Analyst in Financial Forensics (MAFF), and a Certified Licensing Professional (CLP). His practice focuses upon the assessment of liability, causation and damages in commercial disputes; business and intangible asset valuation; transaction advisory services; and other forms of economic analysis for businesses. He began his professional career in the venture capital industry and later became the president of a technology company. Prior to joining his current firm, Mr. Perdue was with Crowe Chizek and Company, a top-ten accounting and consulting firm, where he led the intellectual property practice. Prior to that, he was a principal with LECG, an international economics and finance consulting firm.

Mr. Perdue testified that Tustin's wrongfully obtained reimbursements are equivalent to Nissan's compensatory damages (before prejudgment interest), and that there

is a direct relationship between the alleged wrongful actions of Tustin, Tustin's resulting gains and Plaintiff's resulting loss. Mr. Perdue, therefore, testified that the conduct complained of in this action can be reasonably viewed as the primary cause of Plaintiff's economic harm. The Court adopts this opinion.

Mr. Perdue further testified that through warranty repair orders, the Plaintiff reimburses dealers for four types of claims:

i. Factory Warranty (FW) – Repairs covered by the vehicle's Nissan warranty.

ii. Factory Goodwill (FG) – These claims are covered by Nissan based on more subjective factors than a warranty claim, such as a customer's loyalty to the Nissan brand based on past purchasing history. Goodwill-based reimbursements exist to reward and retain good customers.

iii. Service Contract (SC) – This type of claim is for repairs covered by NESNA, which stands for Nissan Extended Services North America, not third-party service contracts.

iv. Campaign (CM) – These covered repairs include safety-related recalls (government-mandated and voluntary) along with service campaigns that are not safety-related.

The method Mr. Perdue used to quantify damages was not to have the Plaintiff prove every instance of fraud and total the damage. Mr. Perdue testified that such a method is not practical—or even possible—because of the:

— deceptive nature of the alleged activity which seeks to distort and conceal information;

— lack of reliable information available through dealership records, including information maintained in the DMS, which logically could have been manipulated to perpetrate the alleged fraud;

— lack of surveillance video, eyewitness accounts, or other available means to support all vehicles that actually visited the dealership and all repairs that actually were necessary and did occur for which a claim was submitted to Nissan; and

— passage of time which makes obtaining such proof even more problematic due to the fact that the alleged wrongful conduct may have started in January 2012, over 5-years prior to the damages hearing.

The method Mr. Perdue used to quantify damages was that he requested and was provided monthly claim amounts for Tustin and a "Peer Group." Mr. Perdue performed an independent analysis of Tustin's claims based on comparison of Tustin to peer dealers which had not been detected by the Plaintiff in its Anomalous Repair Control ("ARC") program for identifying potentially fraudulent claims. The peer group was selected based on comparable Retained VIN counts. Mr. Perdue testified that it is necessary to compare Tustin to non-ARC dealers so that the peer group is not contaminated with other dealers that might also be perpetrating fraud against the Plaintiff as this could distort peer group values in a manner that improperly benefits the damage calculation in Defendant Enriquez' favor. Nevertheless, Mr. Perdue testified that despite his intent to compare Tustin to a truly "clean" peer group, it is likely that some fraudulent activity among the selected peer group occurred during the period of examination. As a result, the comparative statistics Mr. Perdue derived for the peer group likely reflect some level of fraud that artificially inflates the "normal" range in a manner that benefits Defendant Enriquez.

The Court concludes that Mr. Perdue's methodology of identifying dealers comparable to Tustin to determine their average warranty repair claims to determine a level of repair claims that could have been reasonably expected had Tustin not engaged in the alleged fraudulent conduct is reasonable. Using comparables is a tried and true method in valuation.

After performing analysis and calculations, Mr. Perdue determined that, after adjustments for labor rates and other factors, it is reasonable to expect that Tustin would present valid claims to the Plaintiff that fall within the middle half of dollar values observed for a clean group of peer dealers.

Mr. Perdue considered certain calculations based on Retained VIN as a size adjustment factor, but it was ultimately not necessary to use this approach given the tight range of Retained VIN values in the peer group. Avoiding an approach based on Retained VIN also helped avoid potential reliability issues associated with Tustin's Retained VIN counts being inflated due to the alleged fraudulent activity.

Mr. Perdue then focused on the 21-month period (August 2013—April 2015) when Defendant Enriquez was employed as the Parts and Service Director for the Plaintiff.

Mr. Perdue's method, he testified, simply put, is that damages equal the difference between what Tustin was actually paid and what it should have been paid at this *but-for* level.

Mr. Perdue next developed three different damage calculation approaches for that period. The range was from $6,448,088 to $7,348,905.

Mr. Perdue also calculated prejudgment interest at different rates to provide optional calculations to the Court.

Based upon Mr. Perdue's qualifications, that his methodology uses customary approaches, that the Court finds his assumptions are valid, and that his expertise renders his statistical and other calculations and decisions credible, the Court adopts Mr. Perdue's opinions and results, and awards the Plaintiff compensatory damages against Defendant Enriquez of $6,448,088; and prejudgment interest at 8% (an April 25, 2017 formula rate published by the State of Tennessee) totaling $1,480,481 for the 2.87 year period the fraudulent scheme was in operation when Defendant Enriquez was employed by Tustin. Compensatory damages plus prejudgment interest total $7,928,569.00.

Findings of Fact and Conclusions of Law On Enhanced Damages Under Tennessee Consumer Protection Act

With respect to Plaintiff's claim for treble damages, Tennessee Code Annotated section 47-18-109(a)(4) provides the following:

> (a)(4) In determining whether treble damages should be awarded, the trial court may consider, among other things:
>
> (A) The competence of the consumer or other person;
>
> (B) The nature of the deception or coercion practiced upon the consumer or other person;
>
> (C) The damage to the consumer or other person; and
>
> (D) The good faith of the person found to have violated this part.

Upon applying the foregoing to the evidence, the Court concludes that two times the $6,448,088 compensatory damages amount shall be awarded. The Court realizes the enormity of this sum. Yet, the Court finds the award is proportionate to and commensurate with the wrongful conduct of Defendant Enriquez. Even though Defendant Enriquez is not the Dealership, he was the Parts and Service Director during the time period for which damages have been calculated. The proof is clear Defendant Enriquez directed and actually engaged in preparing false claims. Defendant Enriquez led and fabricated the elaborate scheme, for the 21-month period he was employed at Tustin. Defendant Enriquez used his position of authority and his relationship with the Plaintiff to brazenly lie and defraud and carry out a multi-million dollar deception. Such conduct in the business world is intolerable which is reflected in this award of section 47-18-109 damages. As asserted in the Complaint, "Because the Plaintiff does not perform warranty repairs itself, it must rely on its authorized dealers to do so. Tustin is one of approximately 1,200 authorized Nissan dealers in the United States. Based on the significant warranty repair operations that these approximately 1,200 dealers perform annually (a number easily estimated to exceed one million repairs), it is neither practicable nor reasonable for the Plaintiff to monitor, audit, and/or verify each and every warranty repair operation claimed to be performed by every one of its dealers every year. The Plaintiff must rely upon its dealers, including Tustin, therefore, to submit reimbursement claims that are fully substantiated for repair operations that have been actually and properly performed."

Findings of Fact and Conclusions of Law On Punitive Damages

With respect to punitive damages, Tennessee Code Annotated section 29-39-104(a)(1), (4) and (5) provides as follows:

> (a) In a civil action in which punitive damages are sought:
>
> > (1) Punitive damages may only be awarded if the claimant proves by clear and convincing evidence that the defendant against whom punitive damages are sought acted maliciously, intentionally, fraudulently or recklessly;
> >
> > * * *
> >
> > (4) In all cases involving an award of punitive damages, the trier of fact, in determining the amount of punitive damages, shall consider, to the extent relevant, the following: the defendant's financial condition and net worth; the nature and reprehensibility of the defendant's wrongdoing; the impact of the defendant's conduct on the plaintiff; the relationship of the defendant to the plaintiff; the defendant's awareness of the amount of harm being caused and the defendant's motivation in causing such harm; the duration of the defendant's misconduct and whether the defendant attempted to conceal such misconduct; the expense plaintiff has borne in attempts to recover the losses; whether the defendant profited from the activity, and if defendant did profit, whether the punitive award should be in excess of the profit in order to deter similar future behavior; whether, and the extent to which, defendant has been subjected to previous punitive damage awards based upon the same wrongful act; whether, once the misconduct became known to defendant, defendant took remedial action or attempted to make amends by offering a prompt and fair settlement for actual harm caused; and any other circumstances shown by the evidence that bear on determining a proper amount of punitive damages. The trier of fact shall be instructed that the primary purpose of punitive damages is to punish the wrongdoer and deter similar misconduct in the future by the defendant and others while the purpose of compensatory damages is to make the plaintiff whole;

> (5) Punitive or exemplary damages shall not exceed an amount equal to the greater of:
>
> > (A) Two (2) times the total amount of compensatory damages awarded; or
> >
> > (B) Five hundred thousand dollars ($500,000). . . .

See, e.g., Overton v. Westgate Resorts, Ltd., L.P., No. E2014-00303-COAR3CV, 2015 WL 399218 (Tenn. Ct. App. Jan. 30, 2015), *appeal denied* (June 15, 2015), *cert. denied,* 136 S. Ct. 486, 193 L. Ed. 2d 350 (2015); *Kutite, LLC v. Excell Petroleum, LLC*, No. 2:13-CV-2106-JTF-CGC, 2016 WL 7495877 (W.D. Tenn. Aug. 24, 2016).

Applying the foregoing to this case, because Defendant Enriquez has failed to defend this action, and the Plaintiff has not been able to conduct asset discovery, Defendant's financial worth and condition is unknown. As to the other section 29-39-104(a)94) factors, the Court incorporates the reasoning and facts stated above for the alternative damages award under Tennessee Code Annotated section 47-18-109. The Court awards punitive damages of two (2) times the compensatory damages of $6,448,088.00 for a total of $12,896,176.00, as provided in Tennessee Code Annotated section 29-39-104(a)(5). The Court finds that the evidence is clear and convincing that Defendant Enriquez' conduct was intentional, malicious, fraudulent and egregious. Punitive damages are awarded to punish Defendant Enriquez and to deter others from committing similar wrongs. This last purpose is significant in this case because businesses have to rely upon and trust their dealers.

Plaintiff's Election

Now that the Court has decided all the issues surrounding liability and the entitlement and amount of enhanced damages, the Plaintiff shall file with the Court, by June 2, 2017, its election between punitive damages and damages under the Tennessee Consumer Protection Act. *See Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901, 909 (Tenn. 1999). Upon the filing of that notice of election, judgment against Defendant Enriquez shall be entered.

/s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

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