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FEB 27 2013
NEW MOTOR VEHICLE BOARD

Denise L. Rosen- Kendrick  
 G.F.L., Inc  
 689 Fourth Street  
 Oakland, California 94607  
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In Pro-Per

FILED
NEW MOTOR VEHICLE BOARD
DATE <u>2-27-13</u>
BY <u>EO</u>

PROTEST  
 3060 Termination ( 60 day notice )

STATE OF CALIFORNIA  
 NEW MOTOR VEHICLE BOARD

In the matter of the protest of:

Protest No. PR-2361-13

Guarantee Fork Lift, Inc.  
 Db, GFL, Inc.  
 Protestant

Protest  
 (Vehicle Code 3060)

v.

Capacity of Texas, Inc  
 Respondant

Protestant, Guarantee Forklift, Inc ( Db, GFL, Inc. ) thru it's President, Denise Rosen- Kendrick, files this protest under provisions of California Vehicle code section 3060 and alleges as follows:

1. Protestant is a new motor vehicle dealer selling Capacity Yard Trucks and Capacity yard truck products for over 16 years and is located at 689 Fourth street, Oakland, California. Protestant's phone number is 510-834-2494.

2. Respondent distributes/manufactures Capacity Yard trucks and it's products and is the franchisor of Protestant.
3. Protestant is represented in this matter by, Denise Rosen-Kendrick (Proper), located at 689 Fourth Street, Oakland, California. Current telephone number is 510-205-8050.
4. On or about February 14, 2013, Protestant received from Respondent a notice that the respondent intends to terminate it's existing franchise agreement effective 60 days from Protestant's receipt of said notice.
5. Protestant generally denies each and every allegation contained in the written notice of termination.
6. Respondent does not have good cause to terminate the franchise by reason of the following facts:
  - (A) Protestant has made a substantial and permanent investment in the dealership for over 16 years.
  - (B) Protestant has transacted and is transacting a substantial amount of business compared to the business available to it especially when the protestant's main competitor is the Respondent. The Respondent claims that all accounts in the Protestant's area are national accounts and that they handle all of these directly. The respondent even discounts account's the same as their Authorized Dealer's.
  - (C) Protestant has fulfilled the warranty obligations to be performed even when the Respondent has failed to notify the protestant of all new sales that have been sold directly by the respondent in the protestants dealership territory. In 16 years, the Respondent has never notified the Protestant of any sale that they have completed in the Dealer's area.
  - (D) The extent of any failure of Protestant to comply with the terms of the franchise agreement is immaterial.
  - (E) Protestant has adequate motor vehicle sales and vehicle parts facilities. The protestant has exceptional and qualified technical service personnel to

reasonably provide for the needs of all Trailer Jockey buyers and owner's in the market area. The protestant has written recommendations from the buyer's and owners rendering above average and adequate services to the public.

(F) It would be disastrous and extremely injurious to the public welfare for the franchise to be terminated or for respondent to refuse to continue the existing franchise.

7. Protestant and it's representative in pro per desire to appear before the Board and estimate that the hearing in this matter will take two (2) days to complete.

8. A Pre-hearing Conference is requested.

WHEREFORE, Protestants prays as follows:

1. That the Board sustain this protest and order Respondent not to terminate Protestant's franchise.
2. That pending the hearing in this matter, the Board or it's authorized representatives immediately order Respondent not to terminate Protestant's franchise until such time as respondent has established good cause for such actions under the provisions of vehicle code sections 3060 and 3061.
3. That pending this hearing that the respondent restore the protestants ability to operate the franchise, including but not limited to the dealership's web access which has been restricted for over 45 days prior to any termination notice. This has caused severe undue hardship. That pending this hearing that the respondent allow the protestant to purchase products on the protestant's open account which has been established for over 15 years. The respondent closed the protestant's open account the day that they served the protestant notice to terminate causing undue hardship.
4. That the Respondent recognizes that they must stop discriminating against their only female dealer operating in the United States.

DATED: February 27, 2013

By: Denise Rosen Kendrick  
Denise Rosen Kendrick, President

# NEW MOTOR VEHICLE BOARD

## PROOF OF SERVICE

### San Joaquin COUNTY

### STATE OF CALIFORNIA

In the Matter of the Protest of  
 Guarantee Forklift, Inc  
 Dba: GFL, Inc.  
  
 Protestant,  
  
 v.  
 Capacity of Texas, Inc  
  
 Respondent.

**Protest No. (fill in)**

I, Ardie W. Kendrick declare:

I am a citizen of the United States, a resident of San Joaquin County, California, and over 18 years of age. I am not a party to the above-entitled action. My business/residence address is 9812 Hickock Drive, Stockton, California 95209  
Stockton, California, California.

On February 28, 2013 in the above-entitled action, I served a copy of the attached document(s): Protest 3060 Termination ( 60 day notice ) and Application for Fee Waiver

**(Identify documents and select one or more of the following methods:)**

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Stockton, California addressed as set forth below. I am readily familiar with the business' practice for collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

Capacity of Texas, Inc  
 401 Capacity Drive  
 Longview, Texas 75604  
 Attn: Phillip Ford

Wait, Brownlee, Berger & Dewoskin  
 401 West 89<sup>th</sup> Street  
 Kansas City, Missouri 64114  
 Attn: Tony V. Jones

by following ordinary business practices, the envelope was sealed and placed for collection by \_\_\_\_\_ on this date, and would, in the ordinary course of business, be retrieved by \_\_\_\_\_ for overnight delivery on this date, addressed as set forth below.

by transmitting via electronic mail the document(s) listed above to the person(s) at the e-mail address(es), as set forth below on this date before 5:00 p.m. (Pacific Time) and the transmission was reported as complete and without error.

by transmitting via facsimile the document(s) listed above to the person(s) at the fax number(s), as set forth below on this date before 5:00 p.m. (Pacific Time) and the transmission was reported as complete and without error.

New Motor Vehicles Board, Capacity of Texas & Waits, Brownlee, Berger & Dewonskin, Atty's  
Fax# 916-323-1632 Fax# 903-759-3209 Fax # 816-333-1205

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date FEBRUARY 27, 2013

*Ardie Kendrick*  
Signature

ARDIE KENDRICK  
Type or Print Full Name