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U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SAAB 1 ENTERPRISES, INC.; *Plaintiff*	**C.A. NO.:** CA 13- 599 S
vs.	**JURY TRIAL DEMANDED**
COLBEA ENTERPRISES, LLC; MOTIVA ENTERPRISES, LLC; and, EASTSIDE ENTERPRISES, LLC *Defendants.*	

VERIFIED COMPLAINT

Introduction

Plaintiff, Saab 1 Enterprises, Inc. (hereinafter "Saab" and/or "Plaintiff"), hereby asserts this Complaint against Defendants, Colbea Enterprises, LLC (hereinafter "Colbea"), Motiva Enterprises, LLC (hereinafter "Motiva"), and East Side Enterprises, LLC (hereinafter "East Side") (hereinafter collectively known as "Defendants"), for damages related to Defendants' Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, and other causes of action.

Parties

1. Plaintiff, Saab 1 Enterprises, Inc., is a Massachusetts Corporation with a principal office located at 1280 Belmont Street, Suite 2, Brockton, Massachusetts 02301.

2. Defendant, Colbea Enterprises, LLC, is a Delaware limited liability company registered to do business in the States of Rhode Island and Massachusetts with a principal office located at 2050 Plainfield Pike, Cranston, Rhode Island. Upon

information and belief, Defendant Colbea is a joint venture formed by Motiva Enterprises, LLC and East Side Enterprises, LLC.

3. Defendant, East Side Enterprises, LLC, is a Rhode Island limited liability company maintaining a principal office located at 2050 Plainfield Pike, Cranston, Rhode Island.

4. Defendant, Motiva Enterprises, LLC, is a Delaware limited liability company registered to do business in the States of Rhode Island and Massachusetts. Upon information and belief, Motiva Enterprises, LLC is a joint venture comprised of Shell Oil Company, Inc. and Saudi Refining. Inc., both of which are Delaware Corporations.

Jurisdiction

5. This Honorable Court has Diversity jurisdiction over the instant matter as required under 28 USC §1332 and 28 USC §1367.

6. Venue is proper as Defendants Colbea and East Side maintain their principal places of business within the State of Rhode Island and regularly conduct business within and from the State of Rhode Island.

General Allegations

7. Plaintiff is a gasoline station operator, who, under leases with the Defendant, operates, or did operate, "Shell" branded gasoline stations/mini marts at the following locations:

- 1315 Park Ave, Cranston, Rhode Island
- 7380 Post Rd., North Kingstown Rhode Island
- 731 Washington St., Canton, Massachusetts
- 130 Central St., Stoughton, Massachusetts
- 253 E. Ashland St., Brockton, Massachusetts
- 962 Main St., Waltham, Massachusetts
- 140 Sharon St., Stoughton, Massachusetts
- 945 Belmont St., Brockton, Massachusetts
- 1154 W.T. Morrissey Blvd., Dorchester, Massachusetts

8. Upon information and belief, Defendant markets its gasoline bound for retail sale primarily through three arrangements: franchisee leases and supply contracts, jobber contracts, and company operated retail stores ("CORS").

9. A franchisee leases or rents Shell-branded gas stations and enters into a sales contract for the purchase of Shell-brand gas. The contract sets the monthly minimum quantity of gas the franchisee must purchase and allows Colbea to set the price the franchisee must pay. The franchisee pays the dealer price ("Dealer price") and takes delivery of the gas at its station.

10. Franchisees are often required to pay substantial "key fees" to the previous franchisees upon entering into a lease, which at times, can be as much as hundreds of thousands of dollars. Plaintiff here has paid in excess of $700,000 for "keys" to 4 of the above listed locations. In addition to purchasing the "keys", franchisees must also invest substantial amounts of their own capital for equipment, improvements and inventory for the locations.

11. A jobber contract requires the jobber (Colbea) to supply gasoline to independently owned and operated gasoline retailers, or to sub-jobbers. The jobber pays "rack price," which is lower than the price charged to franchisees, and marks that price up for delivery costs upon sale.

12. Upon information and belief, Defendant Colbea has assumed roles in all three types of Shell marketing arrangements in the RI and Massachusetts region: Colbea enters into franchisee contracts, Colbea also acts as a jobber, and Colbea also directly operates CORS under the name of Colbea or East Side.

13. Each and every lease executed by Plaintiff and Defendant contained a Retail Sales Agreement (hereinafter known as an "RSA"), by which Plaintiff became

contracted to purchase gasoline and diesel fuel exclusively from Defendant under an open price term.

14. After Colbea took over as Lessor of Plaintiff's locations and as supplier of gasoline and fuel to those locations in 2008, rents for Plaintiff's locations were increased. Prior to the expiration of those leases, Plaintiff faced an unwinnable dilemma: Either renew the leases under Defendant's terms, or lose his businesses and the substantial amounts of his capital invested.

15. Under the leases, lessees were obligated to pay for, and perform, maintenance, pay ad valorem taxes, pay VSAT fees and procure and pay for insurance for each respective property, in addition to the payment of rent. The leases also specified that any physical additions by the lessee become the property of the lessor.

16. In addition to the nine (9) leased gasoline stations, Plaintiff also independently owns two (2) gasoline stations/mini marts, which are also subject to RSA's, and by which Plaintiff also became contracted to purchase gasoline and diesel fuel exclusively from Defendant acting as a jobber.

17. All RSAs specified a minimum number of gallons of gasoline and diesel fuel to be purchased by Plaintiff each and every month, unilaterally fixed by the Defendant, with the amounts specific to each separate location.

18. Although obligating Plaintiff to purchase gasoline and diesel fuel exclusively from Defendant, the RSA's do not contain price terms for the gasoline and diesel fuel which Plaintiff was obligated to purchase.

19. Because the price term of the RSA's was left open, Defendant fixed the Dealer price per gallon paid by the Defendant.

20. Defendant purchased gasoline and fuel at "rack" prices and arranged transportation of the gasoline and fuel to Plaintiff's locations.

21. Defendant's per gallon Dealer prices charged to Saab were marked up from "rack" price to account for transportation costs and profit.

22. By way of example, the mark up by Defendants, at times, exceeded 30 cents per gallon:

- May 14, 2011 - Rack Price $3.61 – Colbea Dealer price $3.87
- May 18, 2011 - Rack Price $3.43 – Colbea Dealer price $3.79
- May 26, 2011 - Rack Price $3.47 – Colbea Dealer price $3.74
- October 23, 2011 - Rack Price $3.26 – Colbea Dealer price $3.60

23. Defendants' per gallon Dealer prices charged to Plaintiff were consistently at or higher than Plaintiff's competitors' retail selling prices, including Colbea itself.

24. To illustrate the preceding paragraph:

- 140 Sharon St., Canton, MA – (Plaintiff operated)
  731 Washington St., Canton, MA - (Plaintiff operated)
  as compared to
  2760 Washington St., Canton, MA - (Colbea operated COR)

  - March 2, 2011 – Colbea Retail $3.36 – Colbea Dealer price $3.40
  - February 22, 2011 - Colbea Retail $3.18 – Colbea Dealer price $3.18
  - March 31, 2011 – Colbea Retail $3.54 – Colbea Dealer price $3.53
  - April 22, 2011 – Colbea Retail $3.86 – Colbea Dealer price $3.84

- 962 Main St., Waltham, MA – (Plaintiff operated)
  as compared to
  65 Main St., Waltham, MA – (Colbea operated COR)

  - February 3, 2011 – Colbea Retail $3.14 – Colbea Dealer price $3.30
  - February 26, 2011 – Colbea Retail $3.28 – Colbea Dealer price $3.29
  - March 2, 2011 – Colbea Retail $3.36 – Colbea Dealer price $3.38
  - March 6, 2011 – Colbea Retail $3.42 – Colbea Dealer price $3.44

- 130 Central St., Stoughton, MA (Plaintiff operated)
  as compared to
  86 Mazzeo Dr., Stoughton, MA (Colbea operated COR)

- April 12, 2011 – Colbea Retail $3.70 – Colbea Dealer price $3.93
- April 29, 2011 – Colbea Retail $3.92 – Colbea Dealer price $3.92
- July 14, 2011 – Colbea Retail $3.70 – Colbea Dealer price $3.76
- October 16, 2011 – Colbea Retail $3.46 – Colbea Dealer price $3.47

- 253 E. Ashland St., Brockton MA (Plaintiff)
  945 Belmont St. Brockton, MA (Plaintiff)
  as compared to
  Prime Energy, 570 N. Montello St., Brockton

  - February 24, 2011 – Prime Retail $3.12 – Colbea Dealer price $3.28
  - March 3, 2011 – Prime Retail $3.28 – Colbea Dealer price $3.42
  - March 31, 2011 – Prime Retail $3.41 – Colbea Dealer price $3.53
  - October 23, 2011 – Prime Retail $3.35 – Colbea Dealer price $3.60

25. Defendant's pricing and selling practices ensured that Plaintiff would make little to no profit, factoring in rent costs and other expenses, Plaintiff would have to operate at a significant loss in order to compete with neighboring gasoline stations.

26. In fact, when it was communicated to Defendant's wholesale manager that Colbea was retailing gasoline at one of its Colbea-operated stations at less than one cent over the price being charged to its jobber-contracted independent Shell sites within a close geographical area, the blunt reply from Colbea was that Plaintiff can choose to price "negatively": meaning to operate at a loss.

27. Defendant rebuffed all approaches by Plaintiff to either adjust the gasoline prices and/or rent amounts to allow the stations to be competitive in the market; employees of the Defendant told Saab that eventually there would be no more dealer network and eventually the only Shell stations in the area would be Colbea-operated.

28. As a result of Defendant's intent and refusal to adjust gasoline prices and/or rent to make operation of the stations economically viable, Plaintiff could no longer remain competitive in the market, could no longer pay the necessary business expenses, and could no longer operate the stations, all based on the stations' revenues;

because of this, Plaintiff was forced to relinquish the two (2) R.I. leased sites in Cranston and North Kingstown back to the Defendants.

29. When Plaintiff's tender of rents for the remaining sites was refused by Defendant Colbea in September 2012, the issue over pricing came to a head; negotiations to resolve the dispute ensued.

30. As part of the proposed negotiated resolution, and resulting from the November 30, 2012 Settlement Agreement, four (4) of the remaining seven (7) leased sites would be returned to Defendant, and Plaintiff would lease the remaining three (3) sites as operable gasoline stations from the Defendant, and Defendant would pay the discounted amount of $200,000 for Plaintiff's equipment located at the 4 returned sites. It was also represented by Defendant Colbea that "Houston", meaning Motiva, would have to approve of the resolution.

31. Plaintiff's valuation of the equipment contained in the four (4) sites that Plaintiff returned to the Defendant is in excess of $300,000.00.

32. Although Plaintiff returned the four (4) sites to the Defendant per the settlement agreement and allowed Defendant Colbea to take possession of its equipment there, the negotiated resolution did not ultimately come to fruition as Defendant Colbea breached material terms of the settlement by not delivering the remaining three (3) leased stations in operable condition – Colbea refused to activate credit card terminals and remove dumpsters blocking access; Defendant Colbea also refused to pay Plaintiff the $200,000 for Plaintiff's equipment located at the 4 returned sites.

33. Defendant remains in possession of Plaintiff's equipment including car wash equipment, coolers, vacuum machines, store shelving, etc. and has not made the

equipment available for removal by Plaintiff within a reasonable amount of time nor has Defendant purchased the equipment from or paid Plaintiff for such equipment.

34. Upon information and belief, Defendant has re-opened some of the properties for business and is either using, allowing the use of, or will allow the use of Plaintiff's equipment.

COUNT I

(Breach of Contract/Violation of R.I. Gen. Laws §6A-2-305 & M.G.L. c. 106 § 2-305)

35. The Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. Defendant exercised unilateral control over the mark-up over rack price when determining the wholesale per gallon gasoline and diesel fuel prices charged to Plaintiff.

37. As competing Defendant-operated stations' retail prices were consistently equal to or less than the wholesale prices charged by Defendant to Plaintiff, the wholesale prices were unreasonable and were not set in good faith by Defendant.

38. Rack prices paid by Defendant were significantly lower than the wholesale prices charged by Defendant to Saab.

39. Per the Petroleum Marketing Practices Act (PMPA) 15 U.S.C. §2801-2806, Section 2802(a) prohibits termination or nonrenewal of franchises except as provided for in the PMPA.

40. 15 U.S.C § 2802(b) provides that a failure by the franchisee to comply with any provision of the franchise or a failure by the franchisee to exert good faith efforts to carry out the provisions of the franchise are grounds for termination of the franchise.

41. 15 U.S.C § 2802(b) also provides that it is ***not*** valid grounds for a nonrenewal of a franchise if the franchisor and the franchisee fail to agree on terms of the renewal, if such failure is not the result of the franchisor's insistence upon such changes or additions for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for the benefit of the franchisor or otherwise preventing the renewal of the franchise relationship.

42. Therefore, there are two ways for a franchisor to regain a site from a franchisee – either to re-lease it to a different franchisee, to shut it down, or to operate it directly – and those are to either to buy the "keys" from the franchisee or terminate due to a violation of the franchise agreement.

43. Upon information and belief, in the past, Motiva has been held civilly liable for violations of the Uniform Commercial Code for using unreasonable and bad faith "Dealer price" setting as a means of forcing franchisees into breaching their own franchise agreement, and in turn, using this induced breach as a vehicle to regain sites from dealers/lessees and to stifle competition; Colbea is now following that same course of conduct.

44. Certain leases between the Plaintiff and Defendant were renewed in 2012.

45. The fixing of unreasonable wholesale per gallon Dealer gasoline prices by Defendant was intended to deprive Plaintiff of the ability to sell gasoline at a profit margin such that Plaintiff could not satisfy other obligations it owed to Defendant, including, but not limited to, the payment of rent. Employees of the Defendant told Plaintiff that the intent behind this price setting scheme was to create a network of only Colbea-operated Shell stations.

46. The fixing of unreasonable wholesale per gallon Dealer gasoline prices by Defendant was intended to drive Plaintiff out of business so that Defendant could either take over and operate the gasoline stations directly and at considerable profit to the Defendants, or to eliminate competition for other Defendant-operated sites.

47. Defendant's fixing of unreasonable wholesale per gallon gasoline prices constitutes bad faith, a breach of the RSA's and a violation of law, and has caused substantial damage, and lost business opportunities, to Plaintiff.

WHEREFORE, the Plaintiff seeks a judgment from this Honorable Court ordering as follows:

a. Award the Plaintiff compensatory damages against Defendant in an amount adequate to compensate for the damage to Plaintiff, plus attorneys' fees, costs and expenses incurred in prosecuting the instant action;

b. Rescission of any and all Agreements between Plaintiff and Defendant as a result of Defendant's breaches of same; and

c. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT II
(Breach of Covenant of Good Faith and Fair Dealing)

48. The Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. Defendants exercised unilateral control over the wholesale per gallon gasoline prices charged to Plaintiff.

50. As competing Defendant-operated stations' retail prices were consistently equal to or less than the wholesale prices charged by Defendant to Plaintiff, the wholesale prices were unreasonable and were not set in good faith by Defendant.

51. Rack prices paid by Defendant were significantly lower than the wholesale prices charged by Defendant to Saab.

52. The fixing of unreasonable wholesale per gallon Dealer gasoline prices by Defendant was intended to deprive Plaintiff of the ability to sell gasoline at a profit margin such that Plaintiff could not satisfy other obligations it owed to Defendant, including, but not limited to, the payment of rent. Employees of the Defendant told Plaintiff that the intent behind this price setting scheme was to create a network of only Colbea-operated Shell stations.

53. The fixing of unreasonable wholesale per gallon Dealer gasoline prices by Defendant was intended to drive Plaintiff out of business so that Defendant could either take over and operate the gasoline stations directly and at considerable profit to the Defendant, or to eliminate competition for Defendant-operated sites.

54. The fixing of unreasonable wholesale per gallon gasoline prices by Defendant was intended to drive Plaintiff out of business, so that Defendant could take over and operate the leased gasoline stations directly.

55. Defendant's fixing of unreasonable wholesale per gallon gasoline prices in order to drive Plaintiff out of business constitutes a breach of the covenant of good faith and fair dealing.

WHEREFORE, the Plaintiff seeks a judgment from this Honorable Court ordering as follows:

a. Award the Plaintiff compensatory damages against Defendant Colbea in an amount adequate to compensate for the damage to Plaintiff, plus attorneys' fees, costs and expenses incurred in prosecuting the instant action;

b. Rescission of any and all Agreements between Plaintiff and Defendant as a result of Defendant's breaches of same; and

c. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT III
(Violation of M.G.L. c. 93A)

56. The Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 55 of this Complaint as if fully set forth herein.

57. At all times material hereto, Plaintiff and Defendant were engaged in the conduct of trade and commerce, as defined in M.G.L. c. 93A, §§ 2 and 11, within the Commonwealth of Massachusetts.

58. Defendant has committed unfair and deceptive acts and practices declared unlawful under the provisions of M.G.L. c. 93A, §§ 2 and 11 and the interpretive regulations and case law related thereto. The actions of Defendant, which constitute violations of Chapter 93A, and were conducted within the Commonwealth of Massachusetts, include without limitation, its

- fixing of unreasonable wholesale per gallon Dealer gasoline prices so as to deprive Plaintiff of the ability to sell gasoline at a profit margin such that Plaintiff could not satisfy other obligations it owed to Defendant, including, but not limited to, the payment of rent; and
- fixing of unreasonable wholesale per gallon gasoline prices with the intention to drive Plaintiff out of business.

59. As a result of Defendant's actions, Plaintiff has suffered, and continues to suffer, damages.

WHEREFORE, the Plaintiff seeks a judgment from this Honorable Court ordering as follows:

a. Award the Plaintiff compensatory damages, doubled or trebled, against Defendant Colbea in an amount adequate to compensate for the damage to Plaintiff, plus attorneys' fees, costs and expenses incurred in prosecuting the instant action; and

b. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT IV
(Violation of R.I. Gen. Laws §§ 6-13-1, et seq.)

60. The Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 59 of this Complaint as if fully set forth herein.

61. At all times material hereto, Defendants were engaged in the conduct of wholesale and retail sales within the State of Rhode Island.

62. Defendants have committed unfair sales practices declared unlawful under the provisions of R .I. Gen. Laws §§ 6-13-1, *et seq.*; the actions of the Defendants which constitute violations include, without limitation:

- the setting of retail prices at Defendants' COR sites at or lower than prices charged by Defendant to franchisees for the same products;
- the fixing of unreasonable wholesale per gallon Dealer gasoline prices intended to drive Plaintiff and other Dealers out of business, so that Defendant could either take over and operate the gasoline stations directly at considerable profit to the Defendants, or to alternatively eliminate competition for other Defendant-operated sites; and
- fixing of unreasonable wholesale per gallon Dealer gasoline prices so as to deprive Plaintiff of the ability to sell gasoline at a profit margin such that Plaintiff could not satisfy other obligations it owed to Defendant, including, but not limited to, the payment of rent.

63. As a result of Defendant's actions, Plaintiff has suffered, and continues to suffer, damages.

WHEREFORE, the Plaintiff seeks a judgment from this Honorable Court ordering as follows:

a. Award the Plaintiff compensatory damages against Defendants in an amount adequate to compensate for the damage to Plaintiff, plus attorneys' fees, costs and expenses incurred in prosecuting the instant action; and

b. Such other and further relief at law and in equity as this Court deems appropriate.

COUNT V
(Conversion)

64. Plaintiff hereby re-alleges and incorporates by reference Paragraphs 1 through 63 of this complaint as if fully set forth herein.

65. Defendant has neither purchased from Plaintiff, nor paid Plaintiff a reasonable value for, the equipment located at the Properties.

66. Defendant has neither purchased from Plaintiff, nor paid Plaintiff a reasonable value for, the gasoline located at the Properties.

67. Defendant has treated Plaintiff's property as its own without the permission of or the authority of Plaintiff.

68. Defendant has exercised dominion and control over the property of the Plaintiff without the permission of or the authority of Plaintiff.

WHEREFORE, the Plaintiff demands judgment against Defendant for all damages resulting from Defendant's conversion of Plaintiff's equipment, which will make Plaintiff whole, as well as attorneys' fees, costs and expenses incurred in prosecuting this instant action; and award such other further relief as this Court may deem fair and just.

COUNT VI

(Temporary, Preliminary & Permanent Injunctive Relief)

69. The Plaintiff re-alleges and incorporates by reference paragraphs 1 through 68 of this complaint as if fully set forth herein.

70. The Plaintiff has a reasonable likelihood of success on the merits because the Defendant has converted Plaintiff's Equipment and Gasoline.

71. The Plaintiff has a reasonable likelihood of success on the merits because the Defendant has and continues to exercise dominion and control over Plaintiff's equipment and gasoline without the permission of or the authority of Plaintiff.

72. The Plaintiff has a reasonable likelihood of success on the merits because upon information and belief, Defendant has re-opened the properties for business and is either using, or allowing use of, Plaintiff's equipment.

73. The Plaintiff has and will continue to lose business opportunities as a result of the Defendants' actions, for which there is no adequate remedy at law.

74. Defendant's breaches of contract, covenant of good faith and fair dealing, violations of M.G.L. c. 93A and R.I. Gen. Laws §§ 6-31-1, *et seq*. have caused, and continues to cause Plaintiff incalculable losses of future business opportunities.

75. Such losses of future business opportunity are without adequate remedy at law.

76. There is a need to maintain the status quo in the instant case, as any collateral action, legal or otherwise, by Defendant during the pendency of this case that affects any of the gasoline stations involved, may render Plaintiff without adequate remedy at law if successful.

77. In the instant action, the balancing of the equities, including public interest, weigh heavily in favor of injunctive relief.

WHEREFORE, the Plaintiff seeks equitable relief from this Honorable Court as follows:

a. Temporary and preliminary injunctive relief preventing Defendant, or any of its parent companies, subsidiaries, or affiliates, from taking physical possession of, causing physical effects to, re-leasing, or operating the gasoline stations involved, unless or until further order of this court;

b. Temporary and preliminary injunctive relief preventing Defendant from pursuing eviction proceedings concerning any of the gasoline stations involved unless or until further order of this court;

c. Temporary, preliminary and permanent injunctive relief against the Defendant prohibiting the Defendant from, directly or indirectly, using, selling, transferring, altering, removal of, and disposal of, in any way, any of Plaintiff's Equipment;

d. Temporary, preliminary and permanent injunctive relief against the Defendants ordering the Defendants to relinquish possession of Plaintiff's Equipment located at the Property; and

e. Any and all such other and further equitable relief as this Court deems appropriate.

COUNT VII
(Declaratory Relief)

78. Plaintiff hereby re-alleges and incorporates by reference Paragraphs 1 through 77 of this complaint as if fully set forth herein.

79. On November 2, 2012, a meeting was held between the Plaintiff and Defendants, including counsel, where Defendants' practice of using unreasonable and bad faith "Dealer price" setting was discussed, along resolution of lease disputes.

80. After the November 2, 2012 meeting, the Defendant drafted a settlement package that included release language.

81. On November 30, 2012, Plaintiff executed the Settlement Package consisting of Letter Agreements, Settlement Agreements, a Bill of Sale, Termination Agreements, Leases and Retail Sales Agreements (collectively the "Settlement Package"); Upon information and belief, Defendant Colbea did not execute the settlement until December 4, 2012 and Plaintiff was never directly furnished copies of Defendant executed documents.

82. Pursuant to the Settlement:

a. All existing contracts would be terminated as of November 8, 2012;

b. All monetary obligations to the effective date were discharged and forgiven.

c. Plaintiff would surrender the following sites to the Defendant:

i. 1154 W. Morrissey Blvd, Dorchester, MA;
ii. 253 E. Ashland, Brockton, MA;
iii. 945 Belmont, Brockton, MA; and
iv. 130 Central, Stoughton, MA.

d. Plaintiff would convey all equipment at the 4 surrendered locations to Defendant and Defendant would pay Plaintiff $200,000 for the equipment transferred.

e. Plaintiff would lease the following operable gasoline stations from Defendant:

i. 731 Washington St, Canton;
ii. 962 Main St, Waltham; and
iii. 140 Sharon St, Stoughton.

83. The Plaintiff surrendered the four (4) locations in Dorchester, Brockton and Stoughton to the Defendant.

84. Plaintiff executed leases for the three (3) sites pursuant to the agreement; however, Defendant did not deliver three (3) operable gasoline stations to the Plaintiff. Defendants rendered the stations unusable by failing to activate the electronic credit terminals for the sites – Plaintiff was informed repeatedly by Motiva that there had been a "dealer change" initiated by Colbea.

85. Defendant Colbea then refused Plaintiff's tender of rents for the three (3) sites; and, on December 27, 2012, Defendant Colbea demanded a change in the material terms of the settlement, thereby repudiating the executed settlement; the very next day, Defendant Colbea attempted to initiate eviction proceedings in regard to the three (3) sites.

86. Defendant did not compensate Plaintiff for the equipment or gasoline at the four (4) sites Plaintiff surrendered to Defendant.

87. The Plaintiff was permanently deprived of all benefits it was due to receive under the Settlement Package.

88. The Plaintiff cannot be adequately compensated for the benefit of which it has been deprived because it has been irreparably harmed by lost business opportunities and divested of unique real estate.

89. Plaintiff complied with its material obligations under the terms of the settlement, however, Defendant failed to do so.

90. The Defendant, who has failed to perform its obligations under the Settlement Package, has benefited by way of obtaining four (4) stores from the Plaintiff, inclusive of the equipment and gasoline at those store sites.

91. The Defendant, who has failed to perform its obligations under the Settlement Package, is unlikely to cure its failure to perform under the Settlement

Package; despite demands that the Defendant comply with the terms of the Settlement Package, it did not, and instead initiated litigation against the Plaintiff in Massachusetts District Court.

92. At all times relevant here to the Defendant failed to deal in good faith with the Plaintiff as it failed to comply with the terms of the Settlement Package.

93. To this end, the Defendant never had any intention of honoring the terms of the settlement, and fraudulently induced Plaintiff into executing the settlement by agreeing, both orally and in writing, that it would comply with the terms of the Settlement Package when in fact the Defendant had no intention of complying. Defendant's false promises made in the settlement were made solely for the purposes of obtaining a release from the Plaintiff because of Plaintiff's complaints regarding Defendants' unreasonable and bad faith "Dealer price" setting and violations of 15 U.S.C. §2801-2806.

WHEREFORE, Plaintiff seeks a declaration from this Honorable Court ordering as follows:

a. Due to a total failure of consideration and material breaches on the part of the Defendant, the November 30, 2012 Settlement, and all related and incorporated Agreements, are void and of no legal force and effect; and

b. All Agreements existing between Plaintiff and Defendant prior to November 8, 2012 are reinstated, along with Plaintiff's rights under the Petroleum Marketing Practices Act (PMPA) 15 U.S.C. §2801-2806.

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Verification

I, Ghazi B. Saab, President of the Plaintiff in this action, hereby verifies and affirms the factual statements set forth herein.

By: Ghazi B. Saab
Ghazi B. Saab
President, Saab 1 Enterprises, Inc.

Plaintiff hereby requests a trial by jury on all counts so triable and designates Michael A. Kelly, Esquire (#2116) as Lead Trial Attorney.

Respectfully submitted,

SAAB 1 ENTERPRISES, INC.,

By and through its attorney,

Michael A. Kelly, Esquire (#2116)
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Dated: August 16, 2013

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