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## MLG Creates New “Dealer Law” in California

MLG Automotive Law’s team of lawyers have successfully expanded the protections afforded to all California dealerships by creating a new, expansive law that holds manufacturers liable for their violations of the California Vehicle Code. On May 2, 2017, the California Court of Appeal, decided the matter of Guarantee Forklift, Inc., dba GFL, Inc. v. Capacity of Texas, Inc., Case No. A147954, holding that dealerships do not have to be licensed by the California DMV to have standing to sue manufacturers for their violations of the Vehicle Code.

In the action, MLG represented GFL, a family-owned tractor-trailer business in Alameda County. GFL had been a long-standing dealer of Capacity, the manufacturer of tractors. When Capacity abruptly terminated GFL as a dealer, GFL filed a protest before the New Motor Vehicle Board.

Under Vehicle Code § 3066, when a protest is filed, the manufacturer’s termination notice is stayed until the Board determines whether good cause exists to terminate the dealer. After being served with the NMVB protest (and being informed of the stay), Capacity proceeded with termination proceedings anyway, and refused to recognize GFL as a dealer.

GFL sued Capacity in Superior Court, claiming that the manufacturer violated the Vehicle Code by continuing with the termination after the NMVB protest was filed; Capacity claimed that because GFL did

not have an occupational license by the DMV, it was not a “licensee” under the Vehicle Code entitled to damages.

The Superior Court ruled in Capacity’s favor, dismissing the case. MLG appealed, claiming that the legislative intent in enacting the Vehicle Code was to hold manufacturers to a standard of performance, not to serve as a shield to dealers who failed to maintain their licensing. The First District Court of Appeal agreed, creating new law in California that an unlicensed dealer still has standing to bring a claim for damages against a manufacturer for alleged violations of the Vehicle Code.

The ruling is significant for dealers throughout the state. In any instance in which a dealer no longer enjoys an occupational license, yet has a claim against a manufacturer for damages, it will now be able to pursue the claim, in addition to being entitled to its attorneys’ fees Vehicle Code § 11726.

The ruling of GFL v. Capacity is a watershed moment for California’s automotive community. If MLG can be of assistance in a claim you have against a manufacturer, please contact us for a free evaluation.



**By Jonathan Michaels**  
jmichaels@mlgautomotivelaw.com

## E-Signing the Way to Increased Profits

In the mobile era, signing a contract is as simple as a swipe, click and tap. Unless you are a dealer. Federal law authorizes electronic contracts and signatures; yet the California Uniform Electronic Transactions Act prohibits electronic signatures on new or used auto sales and lease agreements, making California the only state to where dealers – and customers – cannot enjoy the convenience of electronic signing.

Yet, times are about to change. California is in the process of removing this legal impediment, and the change in the law will lead to increased dealer profits and a simplified car-buying experience for customers. The new law, scheduled to be approved by the Senate Judiciary Committee this Summer, deletes the dealer exemption from the UETA for conditional sale and lease contracts for vehicles, and authorizes dealers to choose to offer buyers and lessees the option of signing their respective contracts and agreements electronically.

The benefits of utilizing electronic signature solutions are countless. First, as smartphones and tablets have begun to dominate the completion of daily tasks, presenting contracts and financials in the same recognizable form will make customers more comfortable, improving the overall car-buying experience. If the car buying experience becomes as familiar as an online purchase, the experience will be likewise enjoyable.

Second, despite the initial expense in transitioning to a digital system, an e-signature platform will cut dealership costs. Printing documents gets expensive quickly. Electronic signatures and the documents they validate, on the other hand, are stored digitally, so contracts cannot be lost or accidentally destroyed. The comfort of knowing a reliable record of actions is always available will be of upmost comfort to dealers. Given that very few documents need to be retained in paper form, dealers that transition to electronic signature solutions can position themselves to reduce costs dramatically over time.

Third, an electronic signature platform will simplify the paperwork process. The traditional process is overwhelming and complex, requiring customers to make sense of a mountain of documents, understand the distinctions between the different types of forms, and identify all the correct places to sign.

An electronic signature platform can present critical information to customers in a more intuitive way, capturing their intent without overwhelming them with complex paperwork. All told, moving to electronic signatures will make buying or leasing a car more accessible for the consumer, creating a simpler sales environment for the auto retailer, resulting in more sales and profits.

And the benefits do not stop there. Unlike traditional signatures, electronic signatures can also provide dealers with legal protection in instances where a customer repudiates a sale or contract. All it takes to forge a signature is a pen and one opposable thumb. But electronic signatures from reputable companies like Adobe carry a lot of information about a signer. Identification, authentication, and attribution are built into most electronic signature technologies, recording information such as the signer's IP address, GPS location, and even how long they spent reviewing the document.

Should a customer ever deny signing a document or claim a document was edited after he signed it, the digital information associated with an electronic signature contains proof of both a signer's identity and the document's integrity. This evidence is admissible in litigation under federal law and state laws that designate electronic signature as legally enforceable, like California.

Given the imminent change in the law and the benefits of implementing an electronic signature platform, dealers should begin to familiarize themselves with the initial steps in making the transition. A first experience with electronic signatures doesn't have to be all or nothing even implementing the technology in a limited way on a low-risk project is a great first step.



**By Kristen Rodriguez**  
krodriguez@mlgautomotivelaw.com

“Nothing great in the world has been accomplished without passion.”

— Georg Wilhelm Friedrich Hegel

# DEALER SPOTLIGHT

## Fletcher Jones Motorcars Kirk Dawson | Leasing Manager

If relationship-building were a currency, Kirk Dawson would undoubtedly be the richest man in the world. With a heart the size of Texas, and a sense of ethics that would make a nun blush, Dawson has helped Fletcher Jones Motorcars of Newport Beach become one of the most dominant forces in the automotive industry.

Originally a bull-riding Southern boy, and still carrying a charming hint of that Louisiana drawl, Dawson has built a legacy in the automotive industry that is duplicated by few. His start in the industry was selling exotics, but that merely set the tone for a lifetime of pursuit into all things automotive. In his tenure, he has been the number one Rolls Royce salesperson in the nation, and he owned an internationally-based classic Jaguar restoration business, before finding a home at Fletcher Jones Motorcars some 26 years ago.

Fletcher Jones is not just the number one Mercedes dealer in the nation, it is the number one *dealer*, beating out every other franchisee in the land, coast-to-coast. WardsAuto reports that the store generated \$622 million in sales in 2016, making it a larger economic engine than most U.S. cities. To put it into perspective, Fletcher Jones generates more than three times the amount of revenue of Newport Beach, the city in which it sits.

Dawson's official title is Leasing Manager, and to be sure, with approximately 90 percent of the dealership's new car transactions being leases, his days are far from dull. Yet Dawson is as collected as they come, offering nothing but tranquility in a sea of bustling commerce. His calmness is a priceless gift.



By **Jonathan Michaels**  
jmichaels@mlgautomotivelaw.com



While Dawson can move iron like the best, his true talent is offering heartfelt concern for his clients, dotted with wide-eyed enthusiasm for the product he endorses. Spend five minutes with him, and you will start to embrace his love for cars, as you begin to justify your need for a new one. His grasp is just too infectious – and too authentic – to escape.

In an industry where people often times try to make a quick nickel, Dawson focuses his efforts on making a slow dollar, and only after a relationship is built, nourished and harvested with genuine curiosity. Dawson is as good as they come; the consummate gentleman who is much too humble to pronounce the accolades he deserves.

## Submit Your Dealer Story

If you would like to share your story, and have it read by thousands, send your submission to [jmichaels@mlgautomotivelaw.com](mailto:jmichaels@mlgautomotivelaw.com)

## MLG's Historic "Takings" Case — Update

As first reported in the last issue of the Dealer's Voice, MLG Automotive Law is currently engaged in a historic lawsuit against the United States on behalf of Chrysler dealers who were terminated as part of the federal government's 2009 bailout of automobile industry. The case, *Spitzer Motor City v. U.S.*, has been consolidated with two other dealership "takings" cases, and seeks to obtain justice for 307 of the 789 dealers who had their franchises taken from them on only 22 days' notice.

The Spitzer parties continue to be embroiled in a tactical discovery battle. Thus far, the government has produced millions of pages of documents, all of which are being carefully reviewed. Additionally, the dealers have filed a Motion to Compel to force the government to produce another 11,000 documents that it is attempting to hide from the dealers.

Depositions of the 10 model dealership plaintiffs will also start this month. The depositions, which will take place throughout the country, will offer those dealers whose livelihood were taken from them virtually overnight their first opportunity to tell their stories on the record.



**By M. Todd Ratay**  
tratay@mlgautomotivelaw.com

## California New Motor Vehicle Board — Update

The California New Motor Vehicle Board offers California new car dealers a fair, fast and efficient means of resolving disputes with their respective manufacturers. The NMVB meets several times a year to hear dealership disputes which usually center on franchise terminations, add points, forced moves, and other franchise modifications.

In May, the NMVB held a special meeting to rule on a dispute between the California New Car Dealers Association and Jaguar Land Rover North America, LLC, related to Jaguar's luxury export policy. The dispute began when the CNCDA, which seeks to protect the rights of new car dealers in California, filed a protest alleging that Jaguar's export and sale-for-resale prohibition policy violated California Vehicle Code.

After a two-day hearing on the matter, the NMVB upheld the CNCDA's protest in part, declaring that Jaguar's export policy wrongfully threatens "adverse action" against dealers, in violation of California code. Following this, Jaguar acknowledged that it would be amending its export policy to comply with California law.

MLG Automotive Law thanks the California New Car Dealers Association for its continued efforts to protect the rights of dealers throughout California.



**By Kathryn Harvey**  
kharvey@mlgautomotivelaw.com

**MLG**  
AUTOMOTIVE LAW

2801 W. Coast Highway, Suite 370  
Newport Beach, CA 92663  
T: 949.581.6900 • F: 949.581.6908  
mlgautomotivelaw.com

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