

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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COX AUTOMOTIVE, INC.;  
AUTOTRADER.COM, INC.; DEALER  
DOT COM, INC.; DEALERTRACK, INC.;  
HOMENET, INC.; KELLEY BLUE BOOK  
CO., INC.; VAUTO, INC.; VINSOLUTIONS,  
INC.; and XTIME, INC.,

Plaintiffs,

vs.

CDK GLOBAL, LLC,

Defendant.

Case No. 17-cv-925

Jury Trial Demanded

**PUBLIC REDACTED  
VERSION**

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**COMPLAINT**

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## INTRODUCTION

1. Plaintiff Cox Automotive, Inc. (“Cox Automotive”), along with its subsidiaries Autotrader.com, Inc., Dealer Dot Com, Inc. (“Dealer.com”), Dealertrack, Inc., HomeNet, Inc., Kelley Blue Book Co., Inc., vAuto, Inc., VinSolutions, Inc., and Xtime, Inc. (collectively, “Cox Automotive” or “Plaintiffs”), bring this action to remedy and enjoin ongoing antitrust and state law violations by CDK Global, LLC (“CDK”). Cox Automotive’s allegations stem in part from the evidence of unlawful anticompetitive conduct uncovered in other lawsuits against CDK. Separate and apart from those claims, Cox Automotive also brings other claims to redress misconduct by CDK directed specifically at Cox Automotive.

2. As alleged herein, and supported by extensive evidence even prior to discovery, CDK and its non-party co-conspirator The Reynolds and Reynolds Company (“Reynolds”) have committed flagrant antitrust violations and inflicted widespread harm on automotive dealers, vendors of software products and services (like Cox Automotive), and the automotive industry as a whole. Specifically, CDK and Reynolds have conspired to eliminate competition for providing integration with dealer data – an extremely valuable asset that belongs to dealers, but over which CDK and Reynolds have seized control. Where there was once a robust market for providing data integration services, CDK and Reynolds – through their coordinated conduct – have destroyed that competition. Where CDK and Reynolds once themselves competed in that market, they have now entered into a written covenant not to compete. Moreover, where CDK and Reynolds once offered data integration services on a level-playing field, they now place artificial and

anticompetitive restrictions on dealer data in order to maintain their dominance over the Dealer Management Systems (“DMS”) market, favor their own products and services, and injure competing products and services such as those offered by Cox Automotive. The resulting harm to vendors and dealers has been immense.

3. Vendors like Cox Automotive are direct targets of CDK’s and Reynolds’ conspiracy for a simple reason: CDK and Reynolds offer products and services that compete with Cox Automotive’s solutions. That is, CDK and its co-conspirator Reynolds are seeking not only to destroy and impair competition for data integration services, but, even more directly, they are seeking to impair and destroy competition for the products and services that vendors offer, and upon which dealers rely. By eliminating competition for data integration services, CDK and Reynolds have seized control over dealer data. They have thwarted dealers’ ability to control access to and the usage of the dealers’ own data, with no lawful or legitimate purpose. The only purposes are anticompetitive: to eliminate competition for integration services and injure competing solution providers like Cox Automotive. The result is that the competitive playing field is not only uneven, but, as CDK itself has described it in internal presentations to its executive team, “tilted” in the extreme in favor of CDK.

4. CDK and Reynolds entered into their illegal conspiracy – a conspiracy that eliminated competition for data integration services and imposed myriad restrictions on vendor access to and use of dealer data – for multiple anticompetitive reasons. First, the conspiracy is an effort to protect their duopoly in

the market for DMSs and ensure that the DMS remains central to dealers, choking off the natural progression of dealer operations to more efficient and less expensive vendor software solutions. Second, having eliminated competition for providing access to dealer data, CDK and Reynolds have imposed enormously inflated fees for access to and use of that data, reaping financial windfalls to the detriment of both dealers and vendors. These enormously “bloated” fees – as one court has described them – injure vendors like Cox Automotive not only because they must pay them, but also because the fees make vendors’ products and services less attractive to dealers because those dealers must ultimately bear much of the added costs. CDK’s and Reynolds’ own competing products and services, by contrast, do not have to pay integration fees, bloated or otherwise. Finally, as noted above, CDK and Reynolds conspired to control data integration so they could place artificial restrictions on vendors’ access to and use of dealer data in order to “tilt the table” in favor of CDK’s and Reynolds’ own solutions, leaving competing products and services (like those offered by Cox Automotive) at a disadvantage.

5. The damage to the automotive industry has been immense, with the damage to Cox Automotive alone from its antitrust claims exceeding \$200 million – before the automatic trebling provided for by the nation’s antitrust laws. Cox Automotive brings this action to recover those damages, enjoin CDK’s illegal conduct, and stave off further harm to vendors, dealers, and other participants in the automotive industry. The industry and market can no longer endure such

abuses. Cox Automotive also brings this action to recover damages for CDK's unlawful conduct aimed specifically at Cox Automotive.

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6. Cox Automotive is one of the world's largest automotive software products and services companies, providing a comprehensive set of solutions for dealers, manufacturers, lenders, and other businesses in the automotive industry in the United States, and other countries. Cox Automotive's products and services have revolutionized wholesale and retail transactions and have made sourcing, selling, and servicing cars easier and more efficient for dealers and consumers than ever before.

7. For example:

- (a) Autotrader is the leading online destination for buying and selling new, certified, and used cars and trucks. For more than 20 years, Autotrader has helped consumers in the United States decide which vehicle to buy, where to buy it, and what deals are available for it. Autotrader has more than 18 million unique monthly visitors, more than 20,000 dealer clients, and averages nearly five million daily vehicle listings.
- (b) Dealer.com creates a virtual showroom with the industry's most integrated digital marketing platform. Dealer.com provides consistent websites at a manufacturer level to make shopping for a new car easier and consistent, no matter the dealer. Sixty percent of United States dealerships partner with Dealer.com.
- (c) Dealertrack Sales and Finance & Insurance ("F&I") offerings include electronic contracting, electronic menu, compliance, vehicle purchase and lease management solutions (known in the automotive industry as "desking"), along with a credit application portal that connects more than 22,000 dealer clients to approximately 1,700 lender partners. The automotive industry's first and largest financing network, Dealertrack's credit application portal, includes captive lenders of original

equipment manufacturers of motor vehicles (“OEMs”), national banks, regional banks, subprime lenders, and credit unions.

- (d) Xtime provides an all-in-one service and maintenance software solution, offering dealer clients the ability to: (i) visualize their unsold shop capacity and target it using vehicle service promotions; (ii) enable the scheduling of service appointments; (iii) check-in customers in the service line; and (iv) perform multi-point digital inspections with interactive customer approval. It processes more than 44 million service appointments each year for more than 8,000 dealer clients, accounting for \$9 billion in yearly revenue for dealers.

8. For Cox Automotive’s products and services to function, they need access to data from their dealer clients. This dealer data is the lifeblood of the automotive industry. It includes, but is not limited to, vehicle and parts inventory, customer name and contact information, customer leads, completed and pending sales information, vehicle F&I information, vehicle pricing information, and service and repair information.

9. Dealers have traditionally stored a significant portion of their data on a database within their DMS, which is software that dealers use to help manage their businesses (*e.g.*, accounting, sales, service, and human resources).

10. CDK and Reynolds are duopolists in the DMS market. Together, they control approximately 75 percent of the United States market by number of dealers and at least 90 percent when measured by vehicles sold. CDK controls approximately 45 percent of the DMS market, and Reynolds controls approximately 30 percent. On May 24, 2017, CDK announced that it was acquiring Auto/Mate, Inc., a company that has approximately eight percent of the DMS market, in a move that would further strengthen CDK’s market power.



11. In addition to their DMSs, CDK and Reynolds offer standalone software solutions that compete directly with solutions offered by Cox Automotive and other third-party vendors. The first two letters of CDK's name emphasize this point quite well: the "C" in CDK stands for "Cobalt," which competes directly with Dealer.com; and the "D" in CDK stands for "Dealer Services," which includes Service Edge, F&I, and customer relationship management solutions – direct competitors of Cox Automotive's Xtime, Dealertrack Sales and F&I, and VinSolutions solutions, respectively.

12. Even though certain dealer data is stored on the DMS database, that data belongs to the dealers – as CDK and Reynolds have repeatedly admitted. Accordingly, DMS providers, including CDK, have historically allowed dealers to provide third parties (including vendors) with automated access to the dealer data stored on the DMS. Data integration service providers are companies that collect and standardize data from a dealer's DMS and provide it to the dealer's chosen third-party vendors of software products and services. Data integration services enable dealers to have their data integrated with vendor products and services. Such integration involves providing access to certain data elements, in addition to bi-directional "read" and "write" capabilities. Certain integrations offer near-real-time access to and use of dealer data, while other integrations enable periodic flow of dealer data.

13. CDK and Reynolds each provide data integration services for their respective DMSs. CDK's service is known as Third Party Access ("3PA"), while

Reynolds' service is known as the Reynolds Certified Interface ("RCI"). Third parties have also provided competing data integration services. CDK owns two such third-party data integrators – Digital Motorworks, Inc. ("DMI") and IntegraLink. Other third-party data integrators have included Authenticom, Inc. ("Authenticom") and Superior Integrated Solutions, Inc. ("SIS").

14. At one time, both CDK and Reynolds had "open" DMSs, meaning that neither took steps to prevent dealer clients from authorizing third-party access to the dealers' own data or to place anticompetitive restrictions on rights with respect to that data. During this time, the competition between data integration services made access to dealer data cost effective – an application vendor would pay an integrator on the order of \$50 per dealer per month. With dealers in control of access to and use of their data, vendors created an array of innovative software products and services to help dealerships market, sell, lease, and service cars. These solutions became pervasive. Today, an average dealership uses ten to fifteen different software solutions.

15. Over time, Reynolds began to "close" its DMS by selectively blocking third-party data integrators from accessing dealer data stored on the Reynolds DMS. As Reynolds reduced competition for data integration services through its blocking activities, Reynolds increased the fees it charged for data integration through RCI. CDK continued to differentiate itself as an "open" DMS. As CDK's chief marketing officer publicly touted, "We don't tell the dealer, if someone wants access to their data, they have to come to [CDK] to gain access to the data. It's

ultimately the dealer's data. If he wants to give that data to somebody, for us to try to charge a toll doesn't seem like the right thing to do. So we're not going to go down this path." And at the same time, CDK's own data integration business provided vendors with access to dealer data on the Reynolds DMS. CDK's open-access policy allowed it to gain (very slowly) DMS customers at Reynolds' expense and sign those dealers to long-term contracts.

16. That competition between CDK and Reynolds halted abruptly in early 2015 when CDK began blocking dealers from granting third parties access to dealer data and, at the same time, agreed to shut down its data integration business for dealers using a Reynolds DMS. CDK's sudden about-face came as a complete surprise to the market. As it turned out, CDK's about-face was the result of a horizontal agreement with Reynolds.

17. Specifically, CDK and Reynolds colluded to block third-party access to their DMSs – eliminating competition to their respective 3PA and RCI data access programs – thereby forcing third-party solution providers like Cox Automotive to use CDK and Reynolds for data integration services. Executives from both CDK and Reynolds have admitted that the companies agreed to block and thereby destroy third-party data integrators. CDK and Reynolds also agreed to no longer compete with each other for data integration services.

18. CDK and Reynolds memorialized one aspect of their agreement in writing, dated February 18, 2015, pursuant to which CDK agreed to “wind down” its data integration business for Reynolds dealers, and CDK and Reynolds both agreed

not to access each other's DMSs. Damningly, just before the written agreement was signed, CDK's internal documents stressed the need to "gain reciprocal agreements with DMS providers" such as Reynolds in order to destroy competition for data integration. Dkt. No. 163, at 145:24-25.<sup>1</sup>

19. Apart from the written agreement, and as detailed below, CDK and Reynolds executives have admitted to a broader agreement to destroy independent data integrators and therefore eliminate all competition to their own data integration products. These horizontal conspiracies to destroy competition and divide the data integration market are *per se* violations of the antitrust laws.

20. CDK has also imposed unlawful exclusive-dealing requirements on vendors like Cox Automotive. As a condition of participating in CDK's 3PA data integration service, vendors must generally agree to use 3PA exclusively for *all* of the vendors' products and services. Likewise, even though its DMS contract is to the contrary – CDK's standard DMS contract expressly allows dealers to use "agents" to access data on the DMS – after entering into its horizontal agreements with Reynolds, CDK has asserted that its dealer clients are prohibited from using any third-party data integration service and has taken steps to block dealer-approved third-party access. As a result, CDK has tied the use of its 3PA data integration service to the purchase of its DMS.

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<sup>1</sup> Citations to the Transcripts of the Hearing held June 26-28, 2017 in *Authenticom, Inc. v. CDK Global, LLC*, No. 17-318, are referred to by their respective docket numbers (Dkt. Nos. 162-165).

21. Internal CDK documents explain the motivation behind CDK's agreement with Reynolds to eliminate competition in the data integration market. First, the enormous success of third-party products and services like those offered by Cox Automotive – made possible by integration with dealer data – began to threaten CDK's and Reynolds' DMS duopoly. As dealers increasingly used these third-party products and services, they began to rely less on CDK's and Reynolds' antiquated, monolithic DMS enterprise software. The third-party products and services began to perform tasks traditionally performed by the DMS, and to do so more efficiently and while offering greater features and functionality. Dealers also began entering data directly into the third-party solutions in the first instance, bypassing the DMS completely. CDK and Reynolds knew that this would eventually make it less difficult for dealers to switch DMS providers or even to forego a DMS entirely. By seizing control over dealer data, CDK and Reynolds have sought to forestall that threat to their legacy DMS duopoly.

22. Second, CDK wanted to eliminate competition for data integration so that it could limit access to dealer data, impose restrictions on usage rights contrary to the wishes of their dealer clients, limit bi-directional integration for competing products, raise the costs of those competing products (thereby giving its own offerings artificial advantages), and attempt to drive competing solutions out of the market. CDK's own documents state – and its employees have testified – that CDK wanted to leverage its duopoly control over the DMS market to “tilt the table” in favor of its own offerings.

23. For a specific example of how CDK “tilts the table” with respect to Cox Automotive, CDK denies Dealertrack’s Sales and F&I access to certain data elements in order to prevent it from electronically contracting a lease transaction. Dealers are forced to double-enter data and endure a much less efficient workflow. There is no technological or other credible reason for CDK to withhold this functionality from Dealertrack’s Sales and F&I solutions other than for an anticompetitive reason: to favor CDK’s own F&I solutions.

24. As another example, CDK prevents Xtime’s suite of products from creating or modifying a “repair order” in the DMS even though CDK’s own Service Edge applications can create and modify repair orders – which CDK touts to potential dealer clients. Repair orders are critical to the service lane flow at a dealership. They are the primary means by which dealers communicate parts and service costs to their customers. CDK has told Cox Automotive that Xtime cannot be allowed to create or modify “repair orders,” despite dealer client and car manufacturer (“OEM”) demands for such capabilities, because that could cause data integrity issues. That is pretext. CDK’s internal documents reveal the actual reason: CDK wants “to disrupt the workflow” by preventing Xtime’s products from creating or modifying repair orders, in order to advantage CDK’s competing Service Edge product. Dkt. No. 163, at 140:3-141:13. Additionally, while CDK’s Service Edge solutions receive real-time information from the DMS (via “push” notifications whenever data changes), CDK only allows Xtime to “pull” from the DMS once every five minutes, thereby preventing Xtime from having real-time information. (Most

Cox Automotive solutions are restricted by CDK from making pull requests more than once every 15 minutes.) To make matters worse, many of Xtime's data "pull" requests fail or take minutes to return a response. Because dealer clients increasingly offer express service capabilities where the entire service visit is slated to be completed in under thirty minutes, timely access to the most up-to-date dealer data is essential. There are many other such examples.

25. Even where CDK and Reynolds grant competing applications access to data or provide a given integration, they still impose anticompetitive restrictions on the use of that data. For example, even though Cox Automotive pays CDK a per dealer per month fee for data integration for each product and service for the very same data elements, those same products and services are prohibited, contractually, by CDK from sharing the data with each other despite having paid for it multiple times over. There is no legitimate basis for CDK or Reynolds to withhold those data sharing rights – especially where dealers want and authorize such rights – except to stifle innovation and make Cox Automotive's products and services more expensive.

26. Such rights restrictions are especially nefarious because Cox Automotive already has secured the necessary rights to the data in question – whether from the dealers, consumers, or other third-party originators of the data. In many instances, much of the data in the DMS originated in Cox Automotive's own products and services.

27. Third, CDK saw an enormous financial opportunity to dramatically inflate its prices for data integration services – after it had eliminated the

competition. For example, less than nine months after it entered into the horizontal agreement with Reynolds, CDK raised the data access fees for Cox Automotive's VinSolutions from [REDACTED] per dealer per month to [REDACTED] per dealer per month – a [REDACTED] price increase without any change in the quality of service. One month, VinSolutions was paying CDK [REDACTED] per dealer per month, and the next it was paying [REDACTED] per dealer per month for the very same services. Cox Automotive's other solutions were subject to similar price increases, as were the applications of hundreds of other vendors across the automotive industry.

28. By charging monopoly prices for access to dealer data, CDK has also raised the input costs of rival solutions, including those offered by Cox Automotive. Having seen the costs of data access skyrocket – with no corresponding increase in functionality or service quality – Cox Automotive has had no choice but to pass along a portion of the additional costs to its dealer clients. Unable to afford the escalating pass-through data integration fees, many dealers have elected to reduce their use of Cox Automotive's solutions or forego them altogether, often in favor of the competing CDK offering, even though Cox Automotive's products and services are superior. Therefore, CDK's dramatic price increases after it entered into the conspiracy with Reynolds not only padded its bottom line, but also put competing solutions providers like Cox Automotive at a severe competitive disadvantage in the marketplace.

29. CDK has also engaged in other conduct that violates the common law and state statutory provisions. CDK fraudulently induced Cox Automotive to enter



into its 3PA Agreement, dated January 8, 2016, by falsely representing to and assuring Cox Automotive in November 2015 that no other product or service [REDACTED]

[REDACTED]

when in fact CDK had previously (and secretly) agreed in February 2015 to provide such services to Reynolds *for free for five years*. This conduct also violates California's Unfair Trade Practices Act, which prohibits secret discounts. It is also a breach of contract: not only did CDK fraudulently induce Cox Automotive to enter into the 3PA Agreement with an [REDACTED] but, by granting Reynolds free data integration, CDK has been in breach of that clause from the very start. CDK has likewise defamed Cox Automotive by falsely advising Cox Automotive's business partners (*e.g.*, Nissan Motor Acceptance Corporation and American Honda Finance Corporation) that Cox Automotive is the cause of ongoing deficiencies in data integrations between Dealertrack's Sales and F&I solutions and CDK's DMS. The true reason for such deficiencies, as revealed by CDK's own presentation to its executives, is that CDK continues to restrict Dealertrack's access to certain dealer data for the very purpose of perpetuating such deficiencies, thereby creating an advantage for CDK's competing solution.

30. Cox Automotive brings this action to recover the damages it has suffered at the hands of CDK's and Reynolds' anticompetitive conduct – as co-conspirators, CDK is equally liable for the damage caused by Reynolds – and to restore choice to dealers and vendors over data integration. Cox Automotive also brings this action to recover damages for separate unlawful conduct aimed directly

at Cox Automotive. As described in detail herein, CDK's and Reynolds' horizontal conspiracies to eliminate competition in the data integration market and their market division agreement (which is a covenant not to compete) are per se violations of Section 1 of the Sherman Act, *see infra* Count I; CDK's exclusive dealing arrangements with vendors and dealers are patently anticompetitive and unlawful under Section 1 of the Sherman Act, *see infra* Count II; the illegal tying of CDK's integration service to its DMS service is unlawful under Section 1 of the Sherman Act, *see infra* Count III; CDK's monopolization of its Dealer Data Integration aftermarket is unlawful under Section 2 of the Sherman Act, *see infra* Count IV; the same conduct that violates the Sherman Act also violates state antitrust and unfair competition laws, *see infra* Counts V and VI; the anticompetitive restrictions that CDK places on competing products and services with respect to access to certain data elements, usage rights, and bi-directional integration – its “title-the-table” strategy – independently violates state unfair competition laws, *see infra* Count VII; CDK's representations with respect to Cox Automotive's pricing under the 3PA program were false and intended to fraudulently induce, and did in fact induce, Cox Automotive to enter into the 3PA Agreement, *see infra* Count VIII; CDK's grant of free data integration to Reynolds without providing the same free access to Cox Automotive is a breach of CDK's contractual [REDACTED] with Cox Automotive, *see infra* Count IX; CDK's secret price discounts to Reynolds are illegal under California law, *see infra* Count X; and

CDK's knowingly false statements to Cox Automotive's business partners were defamatory, *see infra* Count XI.

### **PARTIES**

31. Plaintiff Cox Automotive is a private Delaware corporation with its corporate headquarters and principal place of business at 6205 Peachtree Dunwoody Road, Atlanta, Georgia 30328. Cox Automotive and its subsidiaries provide a comprehensive set of solutions for dealers, manufacturers, lenders and other businesses in the automotive industry, including third-party products and services to dealers throughout the United States that assist dealers in conducting their business. Cox Automotive has approximately 34,000 employees worldwide. It serves virtually all of the 17,000 franchised new car dealers in the United States.

32. Plaintiff Autotrader.com, Inc. ("Autotrader") is a Delaware corporation with its corporate headquarters and principal place of business at 3003 Summit Boulevard, Suite 200, Atlanta, Georgia 30319. It is a subsidiary of Cox Automotive. Autotrader is a website where dealers can list new and used cars for sale and lease. Autotrader drives more buyers to dealerships than any other third-party automotive website.

33. Plaintiff Dealer Dot Com, Inc. ("Dealer.com") is a Delaware corporation with its corporate headquarters and principal place of business at 1 Howard Street, Burlington, Vermont 05401. Dealer.com is a subsidiary of Cox Automotive. Dealer.com provides hosting for dealer websites and an integrated digital marketing platform for its dealer clients' digital marketing campaigns.

34. Plaintiff Dealertrack, Inc. (“Dealertrack”) is a Delaware corporation with its corporate headquarters and principal place of business at 3400 New Hyde Park Road, North Hills, New York 11042. Dealertrack is a subsidiary of Cox Automotive. Among other things, Dealertrack provides integrated software products and services designed to help dealerships provide a better buying, borrowing, leasing, and service experience, including a portal and related products and services that connect dealer clients to lending institutions to enable and facilitate car and truck sale and lease transactions.

35. Plaintiff HomeNet, Inc. (“HomeNet”) is a Delaware corporation with its corporate headquarters and principal place of business at 224 Valley Creek Boulevard, Suite 400, Exton, Pennsylvania 19341. HomeNet is a subsidiary of Cox Automotive. HomeNet allows car dealers to syndicate their car and truck inventory automatically through online services such as Autotrader, CarGurus, Craigslist, eBay Motors, and Kelley Blue Book.

36. Plaintiff Kelley Blue Book Co., Inc. (“Kelley Blue Book”) is a Delaware corporation with its corporate headquarters and principal place of business at 195 Technology Drive, Irvine, California 92618. It is a subsidiary of Cox Automotive. Kelley Blue Book provides value estimates, as well as ratings and reviews, for cars and trucks, facilitates used car trade-ins, and enables the buying and selling of new and used motor vehicles.

37. Plaintiff vAuto, Inc. (“vAuto”) is a Delaware corporation with its corporate headquarters and principal place of business at 1901 South Meyers, Suite

700, Oakbrook Terrace, Illinois 60181. vAuto is a subsidiary of Cox Automotive. vAuto offers vehicle inventory management and pricing software solutions to dealers. It gives dealers real-time, local market supply-and-demand data to enable its dealer clients to make better acquisition, appraisal, pricing, and merchandising decisions.

38. Plaintiff VinSolutions, Inc. (“VinSolutions”) is a Delaware corporation with its corporate headquarters and principal place of business at 5700 Broadmoor, Mission, Kansas 66202. VinSolutions is a subsidiary of Cox Automotive. VinSolutions provides customer relationship management software and services for car and truck dealers, providing its dealer clients with a single view of their customers across the dealership, to maintain customer relationships and enable more repeat sales.

39. Plaintiff Xtime, Inc. (“Xtime”) is a Delaware corporation with its corporate headquarters and principal place of business at 1400 Bridge Parkway, Suite 200, Redwood City, California 94065. Xtime is a subsidiary of Cox Automotive. Xtime’s suite of products and services are designed to provide an outstanding ownership experience for its dealer clients’ customers by managing the entire service experience, including marketing, scheduling, service lane check-in, digital multi-point inspections with interactive customer approvals, reporting dashboards to identify service trends, and performance management. Xtime has approximately 8,000 dealer clients and 29 OEM partners, and it processes 44 million service appointments per year.

40. Defendant CDK is a publicly traded Delaware corporation with its corporate headquarters and principal place of business at 1950 Hassell Road, Hoffman Estates, Illinois 60169. CDK provides DMS software and services to automobile dealerships throughout the United States and has more than \$2 billion in annual revenue. In 2014, CDK was spun off from ADP, LLC, and is now an independent, publicly traded company. Prior to the spin-off, CDK was referred to as ADP Dealer Services (collectively, referred to herein as “CDK”). In addition to its DMS platform, CDK also provides data integration services, and offers products and services that compete directly with Cox Automotive’s solutions, including products and services that compete with solutions offered by Plaintiffs Dealer.com, Dealertrack, HomeNet, VinSolutions, and Xtime.

41. Non-party Reynolds is an Ohio corporation with its corporate headquarters and principal place of business at One Reynolds Way, Kettering, Ohio 45430. Because Reynolds is CDK’s co-conspirator, CDK is jointly and severally liable for all harm caused by Reynolds in furtherance of the conspiracy. Like CDK, Reynolds provides DMS software and services to automobile dealerships throughout the United States. Also like CDK, Reynolds provides data integration services, as well as products and services that compete directly with Cox Automotive’s solutions, including products and services that compete with solutions offered by Plaintiffs Dealertrack, VinSolutions, and Xtime. Reynolds was acquired by Bob Brockman in 2006 in a leveraged buyout and taken private.

## JURISDICTION AND VENUE

42. This action arises under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26; and state law.

43. This Court has subject matter jurisdiction over the federal antitrust claims pursuant to 28 U.S.C. §§ 1331 and 1337 and Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 and 26. This court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367 because they are so closely related to the federal claims that they constitute part of the same constitutional case.

44. This Court has personal jurisdiction over Defendant CDK pursuant to Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 and 26, and 28 U.S.C. § 1391(b), (c), and (d) because CDK was served with process in this district. Furthermore, CDK has engaged in the unlawful acts described in this Complaint with the foreseeable or intended effects of causing substantial economic harm to Cox Automotive in Wisconsin, and CDK has purposely availed itself of the privilege of doing business in Wisconsin through the widespread promotion, sale, and distribution of their products and services in the State. Many dealers in Wisconsin use CDK's DMS and/or its applications.

45. Venue is proper in this District pursuant to Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 26, and 28 U.S.C. § 1391(b), (c), and (d). Defendant CDK is registered to do business, transacted business, was found, and had agents in this District; a substantial part of the events giving rise to Cox Automotive's claims occurred in this District; a substantial portion of the affected

interstate trade and commerce described herein has been carried out in this District. Cox Automotive serves many dealers in Wisconsin that use a CDK or Reynolds DMS.

46. CDK's unlawful conduct substantially affected interstate commerce by harming competition, increasing prices and quality and limiting output, to the detriment of Cox Automotive, dealers, and other vendors nationwide.

## **FACTUAL ALLEGATIONS**

### **I. The Relevant Product Markets**

47. The relevant product markets for Cox Automotive's claims are: (1) the DMS market in the United States; (2) the dealer data integration market in the United States; and (3) the CDK Dealer Data Integration Single-Brand Aftermarket.

#### **A. The DMS Market**

48. The DMS is enterprise software used by retail automotive dealerships to manage their business, including sales, financing, inventory management, repairs and service, accounting, payroll, human resources, and marketing.

49. The DMS also includes a database used to store certain dealer data, including vehicle and parts inventory, customer name and contact information, completed and pending sales, sales and F&I information, service and repair information, and more.

50. Over time, the DMS became the center of a dealer's retail management platform. Virtually every franchised new car dealership in the United States now uses a DMS. And while dealers generate much of their data outside of the DMS in separate software solutions, as a practical matter, a substantial portion of dealer



data is stored on the DMS, even though there is no technical reason why that must be the case.

51. The DMS market is comprised of those providers that market and sell DMS services to franchised new car dealers in the United States. There is public and industry recognition of the DMS market.

**1. CDK and Reynolds Dominate the DMS Market**

52. Defendant CDK and its co-conspirator Reynolds dominate the DMS market. About 45 percent of dealer “rooftops” (i.e., franchised stores located at a physical location) use CDK’s DMS, and about 30 percent use Reynolds’ DMS. When measured using the number of vehicles sold from franchised dealers, which is a more relevant metric, CDK and Reynolds control more than 90 percent of the DMS Market. Industry publications have described CDK and Reynolds as “the Big 2,” “the Duopoly,” “the two 400-pound gorillas,” and “the two giants of the DMS market.”

53. On May 24, 2017, CDK announced an agreement – pending regulatory approval – to buy the DMS provider Auto/Mate, Inc., which has an additional eight percent of the DMS market (as measured by dealer rooftops). If that purchase is approved, more than half of dealer rooftops would use a CDK DMS.

54. Apart from CDK and Reynolds, the DMS market is diffuse, with an array of providers dividing up the remaining market share. Cox Automotive owns and operates the third largest DMS provider. Cox Automotive’s DMS product is known as Dealertrack DMS, which is distinct from the Dealertrack Sales and F&I products and services that are the subject of this lawsuit. The remaining DMS

providers are generally small, occupy a particular niche, and serve the country's smaller car dealerships.

55. CDK's and Reynolds' DMS businesses are very lucrative. A single, small dealership pays up to \$150,000 per year for the DMS software license and services. Mid-size dealership groups (5 to 10 stores) pay \$1,500,000 or more per year, and large dealership groups can easily pay more than \$5,000,000 per year. CDK's and Reynolds' profit margins on their DMSs are estimated to exceed 40 percent.

## **2. The CDK and Reynolds Duopoly Has Proven Durable**

56. Significant barriers to entry protect CDK's and Reynolds' dominant positions in the DMS market. First, CDK and Reynolds have locked in dealers to lengthy contracts. CDK and Reynolds sell their respective DMS software and services pursuant to long-term contracts that are typically between five and seven years in length. These contracts often include automatic extensions if new services are ordered in the middle of the contract.

57. Second, switching costs are high. Switching DMS providers presents significant logistical challenges and is highly disruptive to business operations. It can take a dealership over a year of preparation, staff training, and testing before a new DMS can be put into operation, all while the dealership is trying to sell and service cars. The financial costs in terms of training and implementation are significant.

58. One industry executive stated that changing DMS providers "is akin to a heart transplant." David Barkholz, *DMS Dilemma: Why It's So Hard to Switch* –

*Upstarts Battle Big 2, But Dealers Weigh Cost vs. Comfort Zone*, Automotive News (May 10, 2010). CDK's CEO recently acknowledged that "switching DMS providers can be very difficult. It [is quite a] process [to] change and takes time, which is part of the reason that many dealers are hesitant to switch." Thomson Reuters StreetEvents, *Edited Transcript: CDK – Q1 2017 CDK Global, Inc. Earnings Conference Call*, at 3 (Nov. 2, 2016) (statement by CDK Global CEO Brian MacDonald). One large dealer publicly referred to changing DMS providers as "mission impossible." David Barkholz, *Inside 'Mission Impossible': A DMS Change – How Store Succeeded in Sign-or-Switch Situation*, Automotive News (January 13, 2014). Both Reynolds and CDK have publicly touted that their market positions are secure because of how difficult it is to switch DMS providers. As a result of the high-switching costs, the *average* DMS tenure is over twenty years.

59. CDK has recently forced many of its dealers to extend their contracts by years by threatening to terminate their DMS service. Many of these dealers were on month-to-month contracts, and had been for a long time. CDK abruptly – and without prior notice – informed these dealers that their DMS services would terminate in less than 60 days unless the dealers entered into years-long contracts. Dealers generally had no choice but to sign the lengthy extensions given the impossibility of switching DMS providers in such a short amount of time.

60. The barriers to entry are so high that even Microsoft could not compete in this market. When Microsoft tried to enter the DMS market in 2006, Reynolds' CEO Bob Brockman was not concerned, saying "there's not a chance" that Microsoft

could succeed. Indeed, Microsoft failed, prompting a company executive to publicly concede, “We kind of got ahead of ourselves” in trying to take on CDK and Reynolds. David Barkholz, *Dealers Get New Management System Option – Dominion-Microsoft Product Battles Giants ADP, Reynolds*, Automotive News (Dec. 2, 2012).

**B. The Dealer Data Integration Market**

61. Dealers use software products and services from Cox Automotive (and many other vendors) to perform important sales, servicing, marketing, and operational functions. These solutions supplement and oftentimes replace functions provided by the DMS. Cox Automotive’s products and services are used for, among other things, dealer website hosting, F&I, customer relationship management, digital marketing and lead generation, inventory management and valuation, and marketing, scheduling and performing service and repair appointments. A dealer may use 10 to 15 standalone products and services, and some use many more.

62. To function, these solutions need integration with dealer data stored on the DMS. For example, Cox Automotive’s Dealertrack’s Sales and F&I solutions connect lenders to consumers purchasing or leasing cars and trucks, which requires access to, among other things, financing or leasing information, as applicable, about the buyer and vehicle. VinSolutions is a customer relationship management tool, which requires access to, among other things, customer information, vehicle information and history, and inventory data. Xtime provides a customer relationship management tool for a dealer’s service department, which requires access to, among other things, vehicle service and repair history and customer information. vAuto offers dealer clients specialized inventory management and

pricing software solutions, which requires access to, among other things, inventory data.

63. The data needs of vendor solutions vary. Some need only periodic data extraction. However, it has become increasingly common for vendor solutions to need real-time bi-directional access to dealer data on the DMS – i.e., they need to read data from the DMS in near-real-time, as well as push data back into the DMS near-real-time in the many instances where that data is first generated within the vendor solution (i.e., outside of the DMS). For example, Dealertrack’s Sales and F&I electronic contracting solution is a point-of-sale software product that needs real-time data for a seamless consumer and lender experience. As another example, Xtime needs real-time, updated data on scheduled service and repair orders and the inventory of parts available for those appointments.

64. As described in more detail below, even though certain dealer data is stored on the DMS, that data belongs to the dealers, and dealers have the right to provide that data to third parties and to establish use and sharing rights for the data.

65. The Dealer Data Integration Market consists of services that provide access to dealer data on the DMS, including CDK’s and Reynolds’ own in-house data integration services. Data integrators may also provide value-enhancing services, such as putting data from different DMS in a uniform format, data hygiene (i.e., error correction), and granular control by dealers over which vendors receive which data.

66. Before a data integrator can access dealer data on the DMS, the data integrator must receive specific authorization from the dealer. To grant such access, dealers enter into contracts with data integrators that authorize the data integrator to access the dealer's data.

67. There is public and industry recognition of the existence of a dealer data integration market distinct from the DMS market. CDK and Reynolds have separate business units that provide data integration and DMS services. In its 2015 10-K, CDK described its data integration services as "a stand-alone product" separate from "the core Dealer Management System." CDK, Annual Report (Form 10-K) (Aug. 13, 2015), at 4. The Dealer Data Integration Market also has its own supply and demand curves. The usage of integrated vendor solutions – and hence the amount of data integration services – has fallen relative to what it would be in a competitive market in response to supra-competitive prices charged for data integration services by CDK and Reynolds because a significant portion of those costs are passed on to dealers. There are also no reasonable substitutes for services provided by data integrators, demonstrated most clearly by the fact that CDK and Reynolds, after closing their systems, have been able to impose massive price increases for their data integration services.

68. Geographically, the Dealer Data Integration Market covers the United States.

**1. The Dealer Data in the DMS Belongs to the Dealers**

69. Even though certain dealer data is stored on the DMS, that data still belongs to the dealers. The dealers therefore should decide who to authorize to

access their data. CDK and Reynolds have repeatedly admitted this fundamental fact in public statements, on their websites, and in their DMS contracts with dealers.

70. Tom Schwartz, Reynolds' chief spokesperson, publicly declared: "The data belongs to the dealers. We all agree on that." David Barkholz, *Dealers Decry Reynolds Crackdown*, Automotive News (Nov. 21, 2011). On its website, Reynolds represents to dealers: "Your Data, Your Way. You own your data. Reynolds recognizes you need to share that data outside your dealership."

71. Howard Gardner, CDK's Vice President for Data Strategy, has stated that CDK "has always understood that dealerships own their data and enjoy having choices on how best to share and utilize that data with others." CDK's website likewise states: "[D]ealerships own their data."

72. The Reynolds and CDK DMS contracts "spell out which party owns the data and there is generally little dispute: the data belongs to the dealer. This makes sense; after all, it's the dealership's customers, inventory, and transactional data that the dealership is putting into the DMS system." DrivingSalesNews, *The Hidden Data Tax That Dealers Don't Know They Are Paying*, Driving Sales (Oct. 17, 2013); see Reynolds Addenda Specific Terms and Conditions, at 3 [REDACTED]

[REDACTED]

[REDACTED]; CDK Master Services Agreement § 7.A [REDACTED]

[REDACTED]

[REDACTED].

**2. CDK Has Long Recognized that Dealers Have the Right to Control Access to, and Use of, Their Data**

73. For many years, CDK publicly recognized the fundamental principle that dealers, as owners of their data, have the right to control access to and use of that data.

74. CDK's standard DMS contract states a dealer's "employees and agents" may "have access" to the DMS. This language has existed since at least the 1990s. CDK's standard DMS contract therefore specifically permits dealers to grant their agents, including data integrators, access rights to the dealer's data stored on the DMS.

75. Consistent with this contractual language, CDK's top executives have repeatedly made public statements that dealers may grant data integrators rights to access their DMS. For example, Steve Anenen, CDK's longtime CEO, publicly stated that dealers have the right to grant third parties access to, and use of, their data. He told the industry publication *Automotive News*, "We're not going to prohibit that or get in the way of that." Ralph Kisiel, *ADP Provides Dealers 3 Options on Data Access*, *Automotive News* (Feb. 19, 2007). "I don't know how you can ever make the opinion that the data is yours to govern and to preclude others from having access to it, when in fact it's really the data belonging to the dealer. As long as they grant permission, how would you ever go against that wish?" *Id.*

76. Matt Parsons, CDK's vice president of sales and marketing, similarly stated: "We're not going to limit the ability of a dealer to give an ID to someone else to, in essence, dial into their system. That is the dealer's right. We have no right to



tell them they can't do that." Ralph Kisiel, *NADA Weigh Reynolds Data Security Debate*, Automotive News (Feb. 4, 2007). Kevin Henahan, CDK's senior vice president of product marketing, delivered the same message: "We don't tell the dealer, if someone wants access to their data, they have to come to [CDK] to gain access to the data. It's ultimately the dealer's data. If he wants to give that data to somebody, for us to try to charge a toll doesn't seem like the right thing to do. So we're not going to go down this path." Ralph Kisiel, *Dealer Security Stirs Insecurity: Vendors Wary of Reynolds Plan for Computer Systems*, Automotive News (Dec. 4, 2006).

77. CDK was also one of the first members of Open Secure Access, Inc., which described itself as "a coalition of companies that believe dealers should control access to the data they own and determine how it is used." Open Secure Access, Inc. Press Release, *Open Secure Access Releases Automotive Retail Data Security Guidelines* (June 28, 2007). The group published a set of basic principles to guide the industry, including that "dealers should control who accesses their data," "[t]hird parties that have dealer permission to utilize a dealer's data should be able to access the data through their own efforts or through the services of an independent company," and "DMS companies should facilitate interaction with all data available to a DMS user by providing technologically advanced means to interact with (read and write) that data, either through a robust set of APIs, system functionality, or direct access to the database."

78. As CDK did in the past, Cox Automotive believes dealers are in the best position to evaluate and select secure methods for accessing and utilizing their data on the DMS. Cox Automotive is intensely focused on data security and protecting the integrity of its DMS, but nonetheless offers three different ways that dealer-authorized third-party vendors may access and use dealer data on the Dealertrack DMS. First, with dealer authorization, third-parties may sign up for “Scheduled Jobs,” which provide them with access to the dealer’s data on a secure file transfer protocol (“SFTP”) server. Second, with dealer authorization, third parties may integrate with dealer data through Dealertrack’s Opentrack Application Programming Interface (“API”). Third, dealers may create login credentials for third parties that allow them to access the DMS just as the dealer’s own employees would.

### **3. Participants in the Data Integration Market**

79. At one time, there were approximately a dozen competitors in the Dealer Data Integration market, such as SIS and SelectQu. CDK’s and Reynolds’ anticompetitive behavior has driven most of them out of the market. Today, there are only three remaining commercial data integrators serving CDK’s and Reynolds’ dealers: Reynolds through RCI, CDK through 3PA, and Authenticom. Every independent data integration provider other than Authenticom has been driven from the market by CDK’s and Reynolds’ anticompetitive conduct. Subject to its own litigation against CDK and Reynolds, Authenticom’s ability to remain in business is in doubt. Therefore, vendors like Cox Automotive effectively only have

one integration option with respect to dealer data on a CDK DMS – CDK itself. It is the same with Reynolds.

**a. CDK**

80. CDK provides integration with dealer data on the CDK DMS through an interface offered by CDK under its Third Party Access (“3PA”) program. The 3PA program’s managed interface is used exclusively for data integration with the CDK DMS.

81. Prior to early 2015 – when CDK colluded with Reynolds to “close” its DMS – CDK offered several ways by which dealers could share their data. For example, CDK offered a “basic access” package where dealers supplied vendors with a user ID and password by which the vendors – or their data integrators – could access dealer data on CDK’s DMS. Before 2015, CDK also allowed dealers to use other data integrators that competed with 3PA.

82. CDK revamped the 3PA program in June 2015. Under the “refreshed” 3PA program, CDK declares that the 3PA program’s managed interface is the only CDK-approved method of integrating with a CDK DMS. It now labels any other method for accessing data “unauthorized,” and it disables login credentials that any dealer provides to a third party. Today, CDK disables login credentials used by third-party data integrators even though its own dealer contracts specifically permit access by “agents” of the dealers.

83. CDK also owns two third-party data integrators, DMI and IntegraLink. DMI and IntegraLink obtain authorization from dealers to pull data

from the dealer's DMS in the same way as other data integrators and provide that data to vendors.

84. At the time CDK acquired DMI in 2002, CDK stated: "As a result of its acquisition of Digital Motorworks, [CDK] now has the ability to extract, transform and standardize data from varied sources to client specifications." DMI claims to work with over 100 vendors and pull data from thousands of dealerships.

85. CDK acquired IntegraLink in 2010. IntegraLink "specialize[s] in the collection of data from automotive retailers' dealership management systems." IntegraLink was founded in 1998 by Kevin Distelhorst, Reynolds' former director of online services and currently a vice president at CDK.

86. For over a decade, DMI and IntegraLink provided data integration services for CDK itself and a variety of other DMS platforms, including Reynolds. Cox Automotive had used these data integration services for some of its products and services. CDK, however, largely discontinued these services once CDK and Reynolds entered into their February 2015 agreement not to compete, which is described below. Now, DMI and IntegraLink primarily provide data integration services for non-Reynolds and non-CDK DMSs. For these non-dominant DMSs, dealers provide CDK with login credentials or a secure connection for direct data transfers, such as an API. DMI and IntegraLink charge vendors only \$25 to \$50 per dealer per month.

**b. Reynolds**

87. Reynolds provides integration with dealer data on the Reynolds DMS through its RCI service, which is Reynolds' equivalent to 3PA. Like the 3PA

program, RCI is now the only means by which vendors are allowed to integrate with dealer data on Reynolds' DMS. Reynolds does not have a data integration service that works with other DMS platforms.

**c. Authenticom and Other Independent Integrators**

88. Authenticom was founded in 2002, introduced its data integration service in 2004, and has served more than 15,000 dealers.

89. Authenticom provides data integration services for all available DMS platforms – including Reynolds and CDK. Authenticom is the last significant independent data integration provider in the market.

90. Authenticom's standard pricing to pull data is \$25 per dealer per month for the first data set, and then \$50 per dealer per month for two or more. According to Authenticom, the average price a vendor pays to pull data is between \$30 and \$40 per dealer per month. For bi-directional integration, Authenticom has charged at most \$75 per dealer per month, and that price included additional services like data hygiene.

91. Apart from Authenticom, there were once many other independent integrators in the market – such as SIS, SelectQu, and others – before CDK and Reynolds drove them from the market.

**C. Single-Brand Aftermarket for Dealer Data Integration on the CDK DMS**

92. The Dealer Data Integration Market for dealers using CDK's DMS is a brand-specific aftermarket. This market is derivative of the primary DMS market.

93. When dealers purchase the CDK DMS platform, they are locked in to that purchase because of high switching costs as described above.

94. Dealers also lack information necessary to assess accurately the true cost of using CDK's DMS. CDK had historically been an "open" DMS where there were multiple competing data integration providers. Dealers could not know in advance that CDK would collude with Reynolds to "close" its DMS, thereby causing data integration prices to skyrocket, a portion of which is passed onto dealers.

95. Because of these market imperfections, CDK is profitably charging supra-competitive prices for dealer data integration on its DMS. That CDK has been able to impose such large price increases for integration services on its DMS demonstrates that there are no reasonable substitutes for that service.

## **II. CDK's Anticompetitive Conduct**

### **A. CDK's and Reynolds' Per Se Unlawful Horizontal Agreement To Eliminate Competition in the Data Integration Market**

#### **1. CDK's DMS Was "Open" Prior to 2015**

96. Third-party access was a key point of competition between CDK and Reynolds. Prior to 2015, CDK publicly touted its open system as one of the competitive advantages of its DMS. As noted above, CDK repeatedly vowed (including in public statements by its CEO and top marketing officers) that it would not block third parties, including data integrators, from accessing dealer data on its DMS. CDK issued press releases stressing that it "believes in the fair competitive environment and does not use its leverage through supply of the dealer management system to reduce competition through the restriction of data access."

By contrast, in 2009, Reynolds began selectively blocking third-party access, and increased its blocking efforts in 2013.

97. CDK was successful in marketing its “open” DMS as a competitive advantage over the Reynolds DMS, and dealers purchased DMS services from CDK based, in part, on CDK’s public representations and unchanged contractual language allowing for such access. As a result, CDK very slowly gained market share from Reynolds. Over a decade, Reynolds’ DMS market share declined from about 40 to 30 percent, with most dealers leaving Reynolds for CDK.

98. That competition between CDK and Reynolds abruptly halted in 2015, when CDK suddenly “closed” its system. Given CDK’s unequivocal public statements (and the unchanged DMS contractual language allowing for “agent” access), CDK’s abrupt about-face came as a complete surprise to Cox Automotive and to the market. Before 2015, Cox Automotive used 3PA, DMI, IntegraLink, SIS, and other commercial data integrators to access data for dealers using the CDK DMS. But after CDK elected to close its system, CDK made every effort to ensure that Cox Automotive and other vendors could only integrate with dealer data through CDK’s 3PA program. CDK’s about-face was the result of a horizontal agreement with Reynolds.

**2. CDK “Closed” Its DMS In 2015 After Entering Into an Agreement with Reynolds To Eliminate Competition in the Data Integration Market**

**a. CDK’s Internal Documents Reveal Its Motivation for Colluding with Reynolds**

99. In 2014, CDK decided that it wanted to capture more value for itself by charging dramatically increased rates for integration with dealer data. Prior to entering into its unlawful agreements with Reynolds, CDK charged on average \$70 per dealer per month for integration. Dealers could choose methods of access on a vendor-by-vendor basis, giving dealers flexibility in managing how their vendors obtained data and the costs that would be passed through to the dealers. But by closing its DMS, CDK saw an opportunity to impose huge price increases on its data integration services – increasing CDK’s profits while also advantaging its competing products and services by raising the input costs and decreasing the integration available to its rivals. Internal CDK presentations specifically recognized the “risk of vendors willing to move” to competing data integrators “instead of accept increase price” if those competing integrators were allowed to continue to provide their services. Dkt. No. 163, at 134:11-15.

100. In addition, CDK believed that destroying competition for data integration and subsequently raising prices for data integration would help address the threat posed by standalone products and services to the primacy of the DMS to a dealer’s operations. The growth of standalone solutions – especially sales and service customer relationship management applications – have threatened to reduce the importance of the DMS as dealers increasingly manage their operations through



the standalone solutions outside of the DMS. Moreover, many of those solutions are where dealers generate much of their data in the first instance – for example, customer relationship management software products are often where dealers first capture and store information about their customers and sales transactions – and, as those products are able to host and manage a dealer’s data, the DMS again loses its importance. By “closing” its DMS and raising the input costs for standalone solutions, CDK has sought to forestall the growth of those solutions, which is what would naturally occur absent the anticompetitive restraints.

101. Finally, CDK sought to advantage its own offerings that compete with products and services provided by other vendors like Cox Automotive. Destroying competition for data integration gave CDK control over competing service providers’ access to, and ability to use and update, dealer data. CDK recognized that it could “tilt the table” in favor of its own applications by withholding needed data access, imposing use restrictions, and limiting write permissions for certain data elements. CDK’s actions have disrupted the workflow of competing solutions, and denied data access completely for some competing offerings.

102. Internal CDK strategy documents reveal the specific purposes of CDK’s conspiracy with Reynolds. According to CDK, “One of the 3PA Program’s principles was to protect CDK products through a tilt-the-table approach.” Dkt. No. 163, at 140:13-15. By “tilt the table,” CDK meant it would advantage its products and services over those of third-party vendors by providing itself greater access and use rights to dealer data. CDK intended to keep an “advantage to CDK-layered

applications” as compared to third-party solutions, providing additional “margin” that could be achieved through a “closed” system. *Id.* at 139:2-7.

103. One example specifically referenced by CDK included “disrupt[ing] the workflow” of competing products and services – including Cox Automotive’s Dealertrack’s Sales and F&I electronic contracting solution and lender portal, which connect lenders with car buyers for retail vehicle purchasing and leasing. *Id.* at 141. CDK wrote internally that deals “only, pushed [in] pending, must be finalized in CDK F&I,” with the goal being to “disrupt the workflow” of those competing solutions. *Id.* Another example includes disadvantaging products that compete with CDK’s “service workflow application” (called Service Edge) by not allowing those competing offerings – such as Cox Automotive’s Xtime suite of products and services – to create or modify “repair orders.” There is no bona fide justification for that limitation other than to disadvantage competing solutions, and thereby to allow CDK to gain market share that it could not obtain on the merits of its products.

104. In order to achieve these aims, as CDK’s internal documents acknowledged, CDK needed Reynolds’ cooperation. In an October 2014 presentation, CDK stated that it needed to enter into “**reciprocal agreements with DMS providers**,” including specifically Reynolds, in order to eliminate competing data integrators. And Reynolds needed CDK to close CDK’s system to reduce the number of dealers leaving Reynolds for CDK on the basis of CDK’s previously “open” system. Moreover, with the two dominant DMS providers

agreeing to block independent integrators, it would be impossible for competing data integrators to survive. CDK thus contemplated reaching an agreement with Reynolds to reduce, and ultimately eliminate, competition for integration to dealer data.

**b. CDK and Reynolds Agreed To Divide the Market and Block Independent Integrators**

105. A few months later, in early 2015, CDK and Reynolds entered into agreements designed to eliminate competition in the provision of dealer data integration services. First, in February 2015, CDK and Reynolds entered into three written agreements in which they promised not to compete in providing data integration services and, in their capacity as providers of proprietary applications and services, not to use the services of independent integration service providers to obtain data from the other's DMS. Second, CDK and Reynolds further agreed that each would block independent integrators' access to their DMS customers' data, in an effort to drive independent integrators from the market entirely.

**i. The Market Division Agreement and Data Integration Agreements**

106. **Market Division Agreement.** Effective February 18, 2015, CDK and Reynolds entered into three written agreements. The centerpiece was a so-called "Data Exchange Agreement" – also referred to as a "wind-down" agreement – pursuant to which CDK agreed to wind down its data integration business on the Reynolds DMS, with Reynolds promising not to block CDK's access to the Reynolds system during the wind-down period, which might last as long as five years – until the year 2020. *See* Data Exchange Agreement § 1.4. During that period, Reynolds

agreed that CDK could continue to extract dealer data just as it had before, using login credentials provided by the dealer. *See id.* § 4.3. As for other independent integrators, CDK and Reynolds agreed that they would not “take any steps to assist any person that it reasonably believes to have plans to access or integrate with the other party’s DMS.” *Id.* § 4.5.

107. CDK and Reynolds also agreed that they themselves would no longer access data on each other’s DMS. *Id.* (agreeing to “[p]rohibition on . . . DMS Access”). Specifically, the agreement states: “For the avoidance of doubt, this Section 4.5 is not intended as a ‘covenant not to compete,’ but rather as a contractual restriction of access and attempted access.” *Id.* This restriction lasts forever. *See id.* § 6.1. Reynolds’ own top executive confirmed that Section 4.5 prohibits CDK and Reynolds from accessing each other’s DMS. Robert Schaefer, Reynolds’ Vice President of Data Services, has testified under oath to the following: “Q: In this contract by its plain term Section 4.5, Reynolds agreed not to access the CDK DMS; isn’t that right? A: That would be correct.” Dkt. No. 163, at 76:6-9. Mr. Schaefer offered similar sworn testimony with respect to CDK’s prohibition on access of Reynolds’ DMS. *Id.* at 73:11-16; 75:16-76:1.

108. Further, the agreement also mandated coordination between the competitors in transitioning all of CDK’s vendor clients (*i.e.*, those vendors for which CDK provided access to dealer data on the Reynolds DMS) into the Reynolds RCI program. *See Data Exchange Agreement* § 4.4. The agreement specifically required CDK to “cooperate with Reynolds” in the “transition of [CDK] customers to

the Reynolds RCI program with respect to Reynolds Dealers.” *Id.* In connection with that effort, CDK agreed to give Reynolds full information about the vendors CDK served, including their name, DMS number, store number, branch number, user login, specific data access provided by CDK, data interfaces, the frequency of the data provided, the deadlines for data delivery, the format of the data, and more. *See id.* § 4.3, Exhibit DEA-2. Absent an agreement not to compete, CDK would treat this information as a highly confidential customer trade secret and would not share it with rivals. Indeed, Mr. Schaefer of Reynolds admitted under oath that Reynolds would never share such highly sensitive information with a competitor absent an agreement with that competitor.

109. Consistent with the agreement to cooperate in transitioning customers from CDK to Reynolds, CDK sent letters to its vendor customers with a “roadmap” and “deadline” for joining Reynolds’ integration program. On March 2, 2015, CDK sent a letter to its vendor clients announcing that the vendors “will be provided with a roadmap to transition to the [RCI] program without any further risk of interruption to existing services.” CDK explained that “we are in a transition period to allow time for [DMI] clients to enroll in the RCI program in support of your [Reynolds] dealers,” and that “we will assist you to facilitate a smooth transition.” The letter noted that Reynolds had “agreed to protect the current DMI process for collecting data from [Reynolds] dealers during this transition” and promised “a more detailed letter within the next couple of weeks that outlines the transition process.”

110. On April 1, 2015, CDK sent a follow-up letter to its vendor customers. The letter began: “As announced earlier this month, the recent business agreement between CDK Global and The Reynolds and Reynolds Company (R&R) provides for the clients of Digital Motorworks, Inc. (DMI) a streamlined process to enroll in the Reynolds Certified Interface (RCI) program for their R&R dealers. We are now in the transition period to allow sufficient time for this enrollment, and R&R has agreed to provide a grace period for the existing DMI process for R&R data collection during this time.”

111. Reynolds followed up CDK’s letters with its own communications. Reynolds has also pushed vendors to use DMI and IntegraLink during the wind down, and away from other third-party providers, in order to drive competing data integration providers completely out of the market.

112. **Integration Agreements.** Two additional written agreements between CDK and Reynolds “granted reciprocal access” to each other’s data integration products – via the 3PA and RCI programs, respectively. Under the agreements, CDK’s proprietary products and services could integrate with data on Reynolds DMSs via RCI, and vice versa. Reynolds received five free years of 3PA integration from CDK, while CDK pays for the data integration services from Reynolds. Moreover, by signing up for 3PA, Reynolds agreed that it would integrate with data on CDK’s DMSs exclusively through 3PA, and not obtain data for its products and services from anywhere else. CDK agreed to the same in its integration contract with Reynolds for the RCI program.

**ii. Top Executives at CDK and Reynolds Have Admitted That They Agreed To Block Third-Party Access**

113. In addition to the written agreements, senior CDK and Reynolds executives also have admitted that they have agreed to restrict access to dealer data and destroy data integrators like Authenticom, SIS, and others. During a phone conversation with Steve Cottrell – Authenticom’s founder and CEO – in May 2015, Mr. Schaefer of Reynolds said that Reynolds had “made agreements with the other major DMS providers” – there is only CDK – “to support each other’s third-party access agreements *and* to block independent integrators such as Authenticom.” Dkt. No. 164, at 139:6-13. Mr. Schaefer said that Reynolds’ owner, Bob Brockman, was “adamant” that all third-party data integrators must be cut off. *Id.* As a result, Mr. Schaefer said that Authenticom should wind down its operations and leave the market. *Id.* at 138:3-139:19.

114. A top executive at CDK delivered the same message to Mr. Cottrell. *Id.* at 140:1-143:1. On April 3, 2016, at an industry convention in Las Vegas, Dan McCray (CDK’s former Vice President of Product Management) stopped by Authenticom’s booth to talk with Mr. Cottrell, who was occupied with a customer. *Id.* After Mr. Cottrell finished with the customer, he walked to CDK’s booth, where he saw Mr. McCray “standing off to the side” with “three other individuals.” *Id.* After cordial greetings, Mr. McCray took Mr. Cottrell by the arm and said, “Let’s take a walk.” *Id.* Mr. McCray led Mr. Cottrell off the convention floor and down a service ramp to a secluded area. *See id.* Mr. McCray then confirmed the existence of the illegal agreement, stating that CDK and Reynolds had agreed to “[l]ock you

and the other third parties out,” and that they were “working collaboratively to remove all hostile integrators from our DMS system.” *Id.* at 140:1-143:1. Mr. McCray then grew threatening: “I wanted to look you in the eye and let you know man to man, I have been mandated by our new CEO to seek you out and destroy your business on our systems.” “For god’s sake,” he concluded, “you have built a great little business, get something for it before it is destroyed otherwise I will f\*\*\*ing destroy it.” Mr. Cottrell rejected Mr. McCray’s threats, and insisted that Authenticom would continue to serve its dealer and vendor customers.

115. CDK and Reynolds even have employees actively working together to coordinate the technical aspects of blocking third-party access. In December 2016, during one particular vendor’s discussions with CDK about joining the 3PA program and leaving Authenticom, Steve French – CDK’s senior director of client and data services – told the vendor that a large portion of his job was to work with Reynolds to ensure third-party data integrators like Authenticom remain locked out. Mr. French suggested that resistance to getting dealer data from CDK and Reynolds was futile as they were working together to lock out third-party access.

116. CDK’s and Reynolds’ conspiracy was formed and implemented by top-level executives at each company. For CDK, the leading actors in the conspiracy include Robert N. Karp, the President of CDK North America and the person with oversight of CDK’s 3PA program; Howard Gardner, CDK’s Vice President and Manager of Data Strategy and the person who took the lead on the February 2015 agreement; Dan McCray, CDK’s recently retired Vice President of Product



Management; Ron Workman, CDK's Senior Vice President of Global Corporate Development, who signed the February 2015 agreement; Kevin Distelhorst, CDK's Chief Customer Officer, the founder of IntegraLink, and a former executive at Reynolds; and Malcolm Thorne, CDK's former Chief Global Strategy Officer and the person who took the lead on spearheading the changes to 3PA in 2014 and 2015.

117. For Reynolds, the leading actors in the conspiracy include Bob Brockman, Reynolds' Owner, Chairman, and CEO and the person who approved and executed the February 2015 agreement and formulated the policy to eliminate competitive data integrators through blocking; and Robert Schaefer, Reynolds' Vice President of OEM Relations, Data Services, and Security, the person in charge of the RCI program.

**iii. CDK and Reynolds Implemented the Agreement With Aggressive Blocking**

118. In the wake of their agreements, CDK and Reynolds have aggressively blocked data integrators and other third parties from accessing their DMS. By eliminating the use of other data integrators, CDK has required dealers who use CDK's DMS also to use CDK's 3PA service.

119. Dealers have repeatedly demanded that CDK and Reynolds stop blocking data integrators. Dealers have made clear that they own the data, that they control access to it, and that disrupting their preferred access methods has impaired their business operations and caused financial harm. But CDK and Reynolds have rejected or ignored the dealers' objections.

120. The dealer complaints are too numerous to fully recount here, but a few examples make the point. In November 2016, one Mercedes dealership in California wrote to CDK: “When will you stop the blocking of our user profiles? This must stop.” The dealer decried CDK’s “attempt to stop all other data access routes thereby forcing us to use [CDK’s] data monetizing scheme if we want to access our data.” As the dealer recognized, the blocking actions were intended to obtain the economic benefits of the dealers’ data. “When will CDK stop trying to monetize data owned by [us] at our expense? All being orchestrated under the guise of ‘protecting our data.’ Frankly most can see right through this propaganda smoke screen. The data could be protected by using available technology that doesn’t cut off the dealers’ access to their data using fully automated routines.”

121. One Virginia dealer asked his employees “to raise holy hell with CDK. This is really affecting our business.” And a Lexus dealership in California wrote that “[a]s a dealership owner, I believe that CDK has no right to deny me access to my own data. By extension, I also retain my rights to distribute my data to chosen vendors who meet my strict criteria for data security.”

**B. CDK’s and Reynolds’ Exclusive Dealing Provisions With Vendors and Dealers**

122. Shortly after entering into the Data Exchange Agreement, CDK began “renegotiating” its contracts with vendors for 3PA access (actually, cancelling existing contracts and forcing vendors like Cox Automotive to sign new contracts). Consistent with its decision to close its DMS, CDK imposed exclusive dealing provisions that required vendors to use 3PA alone to integrate with data on CDK

DMSs for all of their products and services. CDK also took the new position that, notwithstanding their plain language, its existing contracts with dealers prohibited allowing data integrators to access CDK DMSs.

**1. CDK's New 3PA Contract With Cox Automotive**

**a. CDK Fraudulently Induced Cox Automotive to Enter Into the New 3PA Contract By Falsely Representing That [REDACTED] In the Revamped 3PA Program**

123. On July 2, 2015, CDK gave a presentation to Cox Automotive about the new vendor contracts that CDK would require. These new contracts required Cox Automotive to use the CDK 3PA program's managed interface exclusively, imposed massive price increases, and contained price-secrecy provisions that would prohibit Cox Automotive from disclosing to dealers precisely how much Cox Automotive must pay CDK to integrate with dealer data on CDK DMSs. CDK also issued a notice of intent to terminate Cox Automotive's existing vendor contracts.

124. When Cox Automotive pushed back on these changes, CDK said there would be "little flexibility" because CDK was going to impose the same changes on every vendor.

125. By the end of September 2015, CDK and Cox Automotive had still not reached agreement on the terms of new vendor contracts. CDK began threatening publicly that it intended to terminate Cox Automotive's vAuto, VinSolutions, and Xtime from integrating with dealer data on a CDK DMS if Cox Automotive did not agree to CDK's 3PA terms.

126. As the negotiations continued, CDK represented to Cox Automotive that it was one of the first vendors being signed up to the newly “refreshed” 3PA program. CDK promised that, as a first mover and the largest vendor, Cox Automotive would receive [REDACTED]. CDK made these representations regarding best pricing repeatedly throughout the negotiations, and stated that because Cox Automotive would receive [REDACTED], Cox Automotive should sign up as a charter participant of the revamped 3PA program.

127. CDK also made these representations in writing. For example, on December 22, 2015, Malcolm Thorne emailed Cox Automotive’s Business Development executives, Brian Green and Jay Hicks, and stated that with respect to 3PA pricing, “[REDACTED].” CDK made this representation after Cox Automotive had again argued that the proposed dramatic price increases for 3PA participation were too onerous and would put it at a disadvantage compared to CDK’s competing offerings and those of other solution providers. CDK repeatedly reassured Cox Automotive, however, that Cox Automotive would obtain [REDACTED].

128. These representations were false. In the February 2015 Data Exchange Agreement, CDK had given Reynolds’ products and services free 3PA integration for five years – far lower than the tens of millions of integration fees that Cox Automotive paid for 3PA annually.

129. Because of CDK's control over integrations to dealer data on its system and CDK's public threats to disconnect such integrations – and in direct reliance upon CDK's false representations that [REDACTED] [REDACTED] – Cox Automotive agreed to CDK's terms, including, but not limited to, the exclusive dealing and price secrecy provisions. On January 8, 2016, Cox Automotive and its subsidiaries entered into an omnibus 3PA Managed Interface Agreement, and product-specific statements of work thereto, with CDK. Had Cox Automotive known that CDK had lied about the pricing provision, it would not have agreed to enter into the new 3PA Managed Interface Agreement on the terms contained therein. CDK had fraudulently induced Cox Automotive to enter into the new 3PA contract.

**b. CDK Has Breached Its 3PA Contract With Cox Automotive By Giving Reynolds [REDACTED] [REDACTED] Cox Automotive**

130. CDK memorialized its promise to grant Cox Automotive [REDACTED] pricing in Section 3(b) of the new 3PA contract, which stated: “[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]”

131. For the same reason that CDK's representations about the pricing were false when it fraudulently induced Cox Automotive to enter into the new 3PA contract, CDK has unequivocally breached this provision granting Cox Automotive

█ status with respect to pricing. Since February 2015, CDK has given Reynolds’ applications free 3PA access for five years – including Reynolds’ business development center applications, its Service Sales Kit tablet application, which is a service application substantially similar to certain Xtime products, and its Naked Lime marketing, advertising, lead generation and digital media solutions, which compete with solutions offered by Autotrader, Dealer.com, Kelley Blue Book, VinSolutions, and Xtime – all while Cox Automotive has been paying tens of millions of dollars in integration fees to CDK during that same time.

**c. CDK Imposed Exclusive Dealing and Pricing Secrecy Provisions in Cox Automotive’s 3PA Contract**

132. Cox Automotive’s 3PA contract includes an exclusive dealing provision in Section 1(f): “█

█

█

█

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█”

133. The exclusive-dealing provision purports to apply to nearly every Cox Automotive product and service, so that the use of 3PA for any one of Cox Automotive’s current offerings essentially binds Cox Automotive to use 3PA for all

existing, and future, offerings. If Cox Automotive breaches this provision by using another data integrator, CDK may terminate the entire agreement. See § 4(g)

[REDACTED]

134. These exclusive dealing provisions even prohibit Cox Automotive from sharing dealer data between its own products and services because Cox Automotive's solutions cannot receive dealer data from any source other than 3PA, even where each such Cox Automotive product or service is separately paying CDK to access the exact same data. Because Cox Automotive cannot share data between its solutions, it is essentially prohibited from having its solutions work together, and must pull dealer data from the DMS each time it is needed. That is a very inefficient and highly-anticompetitive process. It also means that CDK can charge repeatedly for access to the same data, in addition to thwarting Cox Automotive's ability to integrate its solutions.

135. The new 3PA contract also includes a price-secrecy provision in Section 8: "[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]" Internal CDK documents state the purpose of these provisions is

“to create minimal awareness to dealer” regarding CDK’s exorbitant pricing for data integration.

**2. CDK’s Standard 3PA Contract Contains Exclusive Dealing and Price Secrecy Provisions**

136. CDK also imposes exclusive dealing and price-secrecy provisions in its standard 3PA contract with other vendors. The current CDK 3PA contract template states: “ [REDACTED]

[REDACTED]” See CDK 3PA

Contract § 2(e), § 1(a)(l). The contract goes on to state that the vendor cannot

“ [REDACTED]”

*Id.*

137. The penalty for accessing dealer data other than through CDK’s 3PA interface is termination of the entire agreement: “ [REDACTED]

[REDACTED].” *Id.* § 6(g).

138. The exclusive-dealing terms in CDK’s standard form contract purportedly last forever. The contract template states: “ [REDACTED]

[REDACTED].” *Id.* § 6(j). This provision seeks to tie the vendor to the

3PA program indefinitely. Even if a vendor were to stop participating in the 3PA program, it would still be barred from obtaining data from any CDK dealer from



any other source. That gives CDK carte blanche to raise integration prices once they enter the 3PA program because vendors need integration with data on the CDK DMS.

139. [REDACTED]

[REDACTED]. *See id.* § 5(d).

140. The standard vendor contract also has a price-secrecy provision. It states that vendors “[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].” *Id.* § 10.

141. The CDK standard contract bars vendors from indicating “[REDACTED]” that an increase in the price of products or services is related to an increase in the integration fees charged by CDK: “[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].” *Id.*

### 3. CDK DMS Contracts with Dealers

142. CDK has changed its position on the meaning of its existing contracts with dealers. Those contracts allow “agents” of the dealer – such as data integrators – to access the DMS on the dealer’s behalf. Consistent with that

provision, CDK had long marketed its DMS as an “open system” that data integrators could access on the dealer’s behalf, and dealers relied upon those representations in agreeing to purchase the CDK DMS. But in 2015, CDK began insisting (contrary to the language in the standard contract itself) that its dealer contracts prohibited data integrators other than 3PA, and it began disabling the logins that dealers had provided to third-party data integrators to access the DMS. This has required dealers who are using CDK’s DMS to use CDK’s 3PA exclusively.

**4. The Vendor and Dealer Exclusive Dealing Provisions Are Anticompetitive**

143. The exclusive dealing provisions are independently anticompetitive. They foreclose all competition in the Dealer Data Integration Market for approximately 40% of dealers who use CDK DMSs (and an even greater percentage when considered in terms of the number of new cars sold). And they foreclose all competition in the Single-Brand Aftermarket for Dealer Data Integration on CDK DMS. From the perspective of vendors, the foreclosure is even more extreme. If a vendor participates in CDK’s 3PA program for even a single CDK dealer, that vendor may no longer access any CDK DMS through any means other than through 3PA for *any* CDK dealer and for *any* product or service. Reynolds also imposes similar exclusive dealing requirements.

**III. CDK’s Actions Have Harmed Competition**

144. CDK’s illegal horizontal agreement with Reynolds and its anticompetitive exclusive dealing provisions have severely harmed competition in the Dealer Data Integration Market to the detriment of solutions that rely on data

integration services. CDK and Reynolds currently have a monopoly on data integration for their respective DMSs. This monopoly has had predictable effects: prices have skyrocketed and quality has stagnated or even decreased. CDK's internal documents candidly explain that this was precisely CDK's goal. It needed to "close" its DMS because otherwise the dramatically increased prices would cause vendors "to move to [other data integrators] instead of accept increase price."

145. Even though Cox Automotive and other vendors pass through a portion of CDK's and Reynolds' inflated data integration costs to dealers, many vendors (including Cox Automotive) have no choice but to absorb some of the increased data integration fees because dealers are unable or unwilling to pay such excessive fees. This results in slashed development budgets, support, and other investments in their products and services. These cost-cutting measures ultimately reduce the quality of such products and services.

146. The increased data integration prices and reduced quality of data integration services have also "tilted the table" in favor of CDK's own offerings. CDK's products and services do not have to pay excessive data integration fees, and those solutions have near real-time, read and write integration to all necessary dealer data on the DMS.

147. Dealers are on record stating that they do not use some of their preferred vendors because of the huge pass-through data integration surcharges. For example, one dealer explained, "We would like to purchase the XTime [sic] application. The CDK data access charges make that option prohibitively

expensive. Did CDK actually think that these exorbitant data access charges levied against our third party solution providers would not get passed directly back to us?”

148. Additionally, vendors have had to scale back the functionality of their products and services or pull them off the market entirely. For example, at the Authenticom hearing, Alan Andreu of Dominion – a vendor – testified that Dominion had to shutter one application because the cost of integration fees exceeded the cost of the product itself. Likewise, Michael Korp, owner of the vendor Open Recalls, testified that he could not afford CDK’s and Reynolds’ high integration prices. He had therefore been forced to rely on Authenticom for integration, but CDK’s blocking has forced the vendor to lay off employees and halt plans for growth.

**A. Data Integration Prices Have Skyrocketed**

149. CDK and Reynolds have drastically increased the prices they charge for their data integration services (3PA and RCI) since 2015. These prices are now far higher than the prices that would exist in a competitive Dealer Data Integration Market.

150. CDK formally announced a “refreshed” 3PA program on June 22, 2015 – just a few months after its collusive agreement with Reynolds – as part of its “Security First” initiative. This initiative used data security as the pretext for “closing” the DMS and imposing massive price increases on vendors. “CDK is rolling out a new cybersecurity initiative,” *Automotive News* reported, “that will raise monthly integration fees for most of the third-party software vendors that dealerships use in addition to CDK software. It is patterned after a program at

Reynolds and Reynolds.” David Barkholz, *CDK Global Sees Earnings Boost from Cost-Cutting, Improved Efficiency*, Automotive News (Nov. 3, 2015).

151. The industry saw this for what it was. Vendors and dealers received little, if anything, in return for the dramatically higher prices. CDK’s presentation to Cox Automotive in July 2015 stated, “[REDACTED]

[REDACTED].” Industry publications likewise reported that, “Vendors briefed on CDK’s new data-security program said nothing will change in the way they get data from CDK-served DMS dealerships under SecurityFirst except for a higher price.” David Barkholz, *Dealers Will Pay Up for Vendors’ Data Access After CDK Switch*, Automotive News (July 20, 2015).

152. During the July 2, 2015 presentation to Cox Automotive regarding the proposed new vendor contracts, CDK proposed massive price increases of up to 900%:

- a) Prior to 2015, HomeNet had not participated in CDK’s 3PA program and had not been required to do so. CDK insisted that HomeNet participate in the 3PA program and begin paying [REDACTED] per dealer per month.
- b) vAuto paid [REDACTED] per dealer per month under its pre-2015 agreement; CDK insisted on an increase to [REDACTED] per dealer per month.
- c) VinSolutions paid [REDACTED] per dealer per month under its pre-2015 agreement; CDK insisted on an increase to [REDACTED] per dealer per month.
- d) Xtime paid [REDACTED] per dealer per month under its pre-2015 agreement; CDK insisted on an increase to [REDACTED] per dealer per month.

153. Cox Automotive attempted to negotiate lower prices, but CDK indicated there would be “little flexibility” and threatened publicly to block or terminate integration of Cox Automotive’s products and services to the dealer data that the solutions needed to function. Accordingly, Cox Automotive was forced to agree to drastic price increases:

- a) Autotrader and Kelley Blue Book were charged [REDACTED] per dealer per month – a [REDACTED] price increase.
- b) Dealer.com was charged [REDACTED] per dealer per month – a [REDACTED] price increase.
- c) Dealertrack was charged [REDACTED] per dealer per month for its electronic menu Sales and F&I solution and [REDACTED] per dealer per month for its desking Sales and F&I solution – compared to nothing before for either solution.<sup>2</sup>
- d) HomeNet was charged [REDACTED] per dealer per month – compared to nothing before.
- e) VinSolutions was charged [REDACTED] per dealer per month, a [REDACTED] price increase.
- f) vAuto was charged [REDACTED] per dealer per month – more than a [REDACTED] price increase.
- g) Xtime was charged [REDACTED] per dealer per month, a [REDACTED] price increase, for its scheduling and check-in products, and [REDACTED] per dealer per month in order to add integration for its inspection product – compared to nothing before for Xtime’s inspection product.<sup>2</sup>

154. CDK has continued to increase these fees since then.

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<sup>2</sup> Cox Automotive acquired Dealertrack in October 2015, which is why CDK did not initially propose a price for 3PA integration of the Sales and F&I solutions in the July 2, 2015 presentation. Similarly, Xtime’s inspection product was added via the October 2015 Dealertrack acquisition as well.

155. By increasing Cox Automotive's integration fees so dramatically, CDK has significantly raised the costs of Cox Automotive's solutions. Cox Automotive must pass on significant portions of these integration fees to the dealers who purchase these products and services, including for VinSolutions (whose integration fee jumped from [REDACTED] to [REDACTED]), for Xtime (whose scheduling and check-in product bundle's integration fee jumped from [REDACTED] to [REDACTED]), and for Dealertrack (whose Sales and F&I integration fees jumped from nothing to [REDACTED]). Cox Automotive passes on a portion of these integration fees as data integration surcharges, and such surcharges are a substantial percentage of the total monthly cost of Cox Automotive's DMS-integrated solutions.

156. After entering into the unlawful 2015 agreement with CDK, Reynolds has also increased its RCI prices far higher than it could if there were any competition. Every year, RCI prices increase by approximately [REDACTED] (and as much as [REDACTED]), which exceeds any reasonable measure like the CPI.

157. Cox Automotive is not alone in being forced to pay these extreme prices. For example, at the Authenticom hearing, a witness for vendor Dominion Enterprises testified that his company paid \$30 per dealer per month for data integration with Authenticom, but now is paying CDK [REDACTED] for the same service. At that same hearing, vendor AutoLoop testified that it had paid \$160 per dealer per month for 3PA in 2014, which increased to \$694 in 2016 and \$735 in July 2017.

158. CDK has also engaged in deceptive advertising. As part of the revamped 3PA program, CDK posted a pricing guide on its website that CDK represents as “standardized” pricing for all vendors. “Our 3PA pricing philosophy is simple,” CDK states in its program guide, “standardized pricing for all customers.” But that is false. Not only does Reynolds pay zero for 3PA integration for a five-year period, but CDK seeks to impose much higher prices on vendors than it advertises. CDK’s internal documents show that, for its biggest competitors like Dealertrack’s Sales and F&I products and services, CDK contemplates pricing far in excess of any published “standard” pricing packages. CDK told another vendor providing electronic vehicle registration and titling that the vendor would have to pay 25% of its top-line revenues to participate in the 3PA program, which is many times more than the posted “standard” pricing.

159. In addition to these monthly fees, CDK also charges vendors enormous upfront fees to initiate services. CDK charges at least [REDACTED] to join the 3PA program, with “setup” fees of around [REDACTED] (or more) per dealership rooftop. These initiation fees are much more than anything correspondingly charged by independent data integrators.

160. The current 3PA and RCI prices are much higher than the prices that were charged by competing data integrators prior to CDK’s and Reynolds’ illegal agreement in 2015. For example, between 2008 and 2016 before it was forced out of the market, SIS charged around \$40 per dealer per month for pulling data and \$70 per dealer per month for bi-directional, read-write integration. Similarly,



Authenticom charged vendors \$25 per dealer per month for one data feed and \$50 per dealer per month for two or more (up to seven). On average, Authenticom charged vendors between \$30 and \$40 per dealer per month, and \$75 per dealer per month for bi-directional, read-write integration.

161. CDK's prices for the 3PA program stand in stark contrast to the prices CDK charges for data integration services for non-CDK and non-Reynolds DMSs. DMI and IntegraLink charge between \$25 and \$50 per dealer per month for non-CDK and non-Reynolds DMSs.

**B. CDK's and Reynolds' Anticompetitive Conduct Has Tilted the Table in Favor of Their Applications to the Detriment of Competing Applications**

162. As of 2015, third-party solutions, like those offered by Cox Automotive, had been growing steadily due, in part, to reliable integration to dealer data. CDK and Reynolds have attempted to stop that by providing their own products and services with preferential data access and ubiquitous read-write permissions through a "tilt-the-table" approach. Malcolm Thorne, CDK's former chief strategy officer, has admitted under oath that 3PA "protect[ed] CDK products through a tilt-the-table approach." Dkt. No. 163, at 140:11-25. And CDK's internal documents state that one of the "3PA Program Principles" is to "[p]rotect CDK Products through a 'tilt-the-table' approach" and to "[k]eep value add advantage to CDK layers applications." *Id.* at 139:2-140:25.

163. CDK commonly restricts Cox Automotive's access to and rights regarding dealer data on the DMS for no reason other than to make Cox Automotive's offerings more difficult to use or to reduce the features and

functionality of those solutions, thereby harming Cox Automotive, and providing an artificial advantage to CDK's own competing products and services.

164. For example, Cox Automotive's popular Xtime Inspect product enables dealer clients to perform digital multi-point inspections for vehicles at the dealership for service and maintenance appointments, and interact with vehicle owners in real time to obtain approvals for required repairs. To operate as designed and requested by dealers, Xtime Inspect needs to be able to modify repair orders. Real-time modifications to repair orders ensure that all dealer personnel are receiving the most current information about maintenance and repair jobs. Without this data integration, dealer clients are unable to optimize use of their personnel and vehicle service bays, and vehicle owner experience is impacted negatively.

165. CDK affirmatively disables repair order write capability for Xtime. CDK has told Cox Automotive that it prohibits Xtime from creating or modifying repair orders for the purported reason that doing so could cause "data integrity" issues. That is a pretext. CDK's own documents reveal the real reason – CDK wants "to disrupt [Xtime's] workflow" by preventing Cox Automotive from creating or modifying "repair order[s]." Dkt. No. 163, at 140:3-141:13. CDK also allows the Xtime integration to pull dealer data elements only once every five minutes. CDK's competing application – Service Edge – faces none of these restrictions.

166. In fact, CDK uses Service Edge's ability to seamlessly create and modify repair orders, not pay integration fees, and other "tilt-the-table" features,

when it markets the product to dealers. For example, one CDK marketing presentation depicts the following:

## Missing Features Compared to CDK Service Edge

<b>2</b> Bi-directional integration to DMS. Read and Write-back data	CDK Service Edge workflow is written into DMS. No need to do the same work twice.
<i>Repair Order Creation</i>	Service Edge is the only solution that can open a Repair Order outside of the DMS
<i>Electronic payments posted directly to accounting G/L (competitor requires additional manual processing to DMS)</i>	Non-CDK solutions require additional manual step
<b>9</b> Cost	CDK bundles appointments, lane inspection, electronic MPI and electronic payments into one affordable payment. Also eliminates any 3rd party integration charges. Nissan Newport News bundle is much less than 3rd party pricing.

167. Another example is Cox Automotive’s popular Dealertrack’s Sales and F&I offerings that link dealers and their customers to lenders for vehicle sale and lease transactions. CDK prevents Dealertrack from accessing dealer data elements required to finalize lease transactions in Dealertrack’s Sales and F&I product, instead requiring that the transactions be finalized in CDK’s DMS and F&I offering. As a result of CDK’s refusal to allow access to lease-related financial data elements, dealer client personnel are required to re-enter all lease-related financial data elements into Dealertrack in order to populate the required fields and transmit the data to the applicable lender. Again, CDK’s “goal [was] to disrupt workflow” by requiring that lease transactions “must be finalized in CDK.” Dkt. No. 163, at 141:1-13. The purpose is purely anticompetitive.

168. When lenders like Nissan Motor Acceptance Corp. and American Honda Finance Corporation complained to CDK and Cox Automotive about the clunky workflow – which required switching between the applicable Dealertrack Sales and F&I solutions and CDK’s DMS and F&I solutions – CDK unabashedly lied to these lenders, claiming that Cox Automotive had refused to cooperate with CDK, when it was CDK imposing the anticompetitive impediments.

169. These actions not only cause Cox Automotive significant harm but they also leave dealers with fewer and lower quality options.

#### **IV. CDK’s Anticompetitive Conduct Has No Pro-Competitive Justification**

170. There are no pro-competitive justifications for CDK’s anticompetitive behavior. CDK has claimed that “closing” the DMS is necessary to protect “data security” because, it asserts, other data integrators are “unsecure.” But that is simply not true.

171. First, there is nothing unusual or unsecure about third parties integrating with the DMS on the dealer’s behalf. CDK itself owns two data integrators (DMI and IntegraLink) that interact with and syndicate data in the same way as other data integrators. Malcolm Thorne – CDK’s then chief strategy officer – told *Automotive News* in March 2015 that “the pull process of extracting data is as safe as pushing out.” Indeed, until they entered their agreement in February 2015, CDK pulled data using login credentials from Reynolds dealers (and still does today pursuant to the “wind down” agreement). And Reynolds for over a decade consistently allowed third-party access to its DMS. It was only after Mr.

Brockman acquired Reynolds in 2006 that it changed its position with respect to competitors' access. Similarly, a top-level CDK executive admitted in private conversation with a vendor that the rhetoric around "security" has "little credibility" and is primarily designed to force vendors to use CDK for data integration.

172. Significantly, while CDK's own Security First initiative itself recommended improving third-party integration practices and retiring "certain integration that risks data security," it did not recommend terminating all third-party integration.

173. Using independent integrators to enable data flow between parties is standard across industries, including in banking and healthcare, where the data is much more sensitive than anything accessible from dealers. Taking the banking industry as an example, thousands of third party products and services – from well-established companies like PayPal, Mint, Square, and Quicken to new startups like Even – require access to a customer's banking data. There are large data integrators like Intuit and Yodlee that pull data from the consumers' bank accounts and provide that data to the third-party solutions. As the Consumer Financial Protection Bureau stated, "the availability of consumer financial account data . . . has made possible a range of benefits to consumers." *Consumer Access to Financial Records*, Request for Information, Bureau of Consumer Financial Protection, Docket No.: CFPB-2016-0048, at 7 (Nov. 17, 2016).

174. At the Authenticom hearing, CDK was unable to offer a single example of a data-security incident involving any independent data integrator. *See Op. &*

Order, *Authenticom, Inc. v. CDK Global, LLC*, No. 17-318, 2017 WL 3017048, at \*2 n.2 (July 14, 2017). Reynolds could cite only a single incident (not involving data security) in which a query became stalled, but the problem was quickly and easily resolved. This is not surprising given that the methods used by third parties to integrate with the DMS are standard methods employed by integrators in multiple industries. CDK has never explained why the standard methods that work in other industries do not work here.

175. CDK also actually uses third-party integration to non-CDK DMS to pull data for *their own standalone products and services*. For example, CDK and Reynolds pay Authenticom to pull data from dealerships using their DMSs and to distribute that data to their applications. And DMI continues to screen scrape data from the Reynolds DMS during the five-year wind-down period pursuant to the February 2015 Agreement. The fact that Reynolds and CDK actually use third-party access themselves proves there is nothing inherently “unsecure” about it.

176. In fact, CDK’s insistence that vendors integrate with dealer data only through the 3PA program actually imposes unnecessary burdens on the underlying systems. Instead of querying the DMS once, and syndicating any data that is pulled to all vendors that need it, CDK requires every product and service to impose upon the network for the exact same data. That serves no purpose other than to allow CDK to reap a financial windfall by charging each vendor for integration with the same underlying data. For these reasons, the district court in the Authenticom

matter concluded that CDK had failed to present evidence of a procompetitive justification for its anticompetitive acts.

177. CDK has also used security concerns to defend its arbitrary restrictions on Cox Automotive's integrations with dealer data. For example, CDK has claimed that Xtime cannot be allowed to create or modify repair orders because that would be a security risk. Yet CDK allows other third-parties that it does not fear as competitive threats (*e.g.*, WSA Solutions, formerly known as MOC1 Solutions, and certain other third parties including one or more automotive groups) the right to create and modify repair orders. This shows the security justification is mere pretext; the true reason why CDK denies repair order creation and modification capabilities is that it wants to harm Xtime – the primary competitor to CDK's Service Edge product.

178. Finally, CDK has failed to implement less-restrictive means of protecting dealer data. For example, CDK could establish application programming interfaces ("APIs") for independent integrators. Indeed, before entering the agreement with Reynolds, CDK even advocated that DMS providers should offer APIs for third-party integrators. Other DMS providers – including Cox Automotive itself – regularly provide API access for third-party integrators. Alternatively, other DMS providers also allow for dealers and vendors to utilize APIs between them directly, which is another less-restrictive means.

**COUNT I:  
HORIZONTAL CONSPIRACY IN VIOLATION OF  
SECTION 1 OF THE SHERMAN ACT**

179. Plaintiffs incorporate by reference the preceding allegations.

180. CDK and Reynolds entered into and engaged in an agreement in restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15.

181. CDK and Reynolds are horizontal competitors of one another in the DMS market and the Dealer Data Integration Market.

182. The conspiracy between CDK and Reynolds consists of a continuing agreement, understanding, or concerted action to eliminate competition in the Dealer Data Integration Market and their respective brand-specific aftermarkets. In furtherance of that conspiracy, in February 2015, CDK and Reynolds entered into a written market division agreement pursuant to which they agreed to “close” their DMSs and not to compete in the Dealer Data Integration Market. CDK and Reynolds also engaged in a group boycott to block all third-party access to their respective DMS. The agreement not to compete between CDK and Reynolds is a per se violation of the Sherman Act and is, in any event, an unreasonable and unlawful restraint of trade and commerce.

183. The purposes of the conspiracy between CDK and Reynolds include (1) to protect their DMS duopoly (thereby protecting their monopoly profits), (2) to protect their standalone applications, and (3) to monopolize the Dealer Data Integration Market so that they can reap monopoly profits.

184. Through their conspiracy, CDK and Reynolds have caused actual injury to competition for applications and in the Dealer Data Integration Market and respective aftermarkets.



185. The CDK and Reynolds agreement has cut off access to dealer data that solution providers need in order to compete with CDK and Reynolds.

186. CDK and Reynolds possess dominant positions in the DMS market, which they have utilized to further the conspiracy.

187. CDK's and Reynolds' conspiracy and anticompetitive conduct in furtherance thereof do not enhance efficiency or competition in any market. On the contrary, their conduct has produced only anticompetitive effects.

188. As a proximate result of CDK's and Reynolds' unlawful conduct, for which CDK is jointly and severally liable, Cox Automotive has suffered injury to its business or property in an amount to be proven at trial and automatically trebled.

**COUNT II:  
UNLAWFUL RESTRAINT OF TRADE IN VIOLATION OF  
SECTION 1 OF THE SHERMAN ACT**

189. Plaintiffs incorporate by reference the preceding allegations.

190. CDK entered into contracts with dealers and vendors that contain exclusive dealing provisions that unreasonably restrict trade or commerce in violation of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15.

191. CDK's contracts with dealers provide that dealers cannot provide any third parties with access to the DMS. Likewise, the contracts with vendors provide that vendors cannot access the DMS except through 3PA. These provisions are standard throughout CDK's contracts with dealers and vendors.

192. CDK was able to impose these exclusive dealing provisions on dealers and vendors as a result of its market power in the DMS market and the respective dealer data integration aftermarket.

193. Because CDK imposed these exclusive dealing provisions pursuant to its conspiracy with Reynolds to eliminate competition, they are per se illegal. Nevertheless, whether entered into pursuant to CDK's agreement with Reynolds or independently, CDK's vertical restraints are unlawful because they have led to increased prices and reduced output.

194. Through its exclusive dealing provisions, CDK has injured competition in the DMS and Dealer Data Integration markets.

195. CDK's exclusive dealing agreements do not enhance efficiency or competition in any market. On the contrary, the agreements have produced only anticompetitive effects.

196. As a proximate result of CDK's unlawful conduct, Cox Automotive has suffered injury to its business or property in an amount to be proven at trial and automatically trebled.

**COUNT III:  
UNLAWFUL TYING IN VIOLATION OF  
SECTION 1 OF THE SHERMAN ACT**

197. Plaintiffs incorporate by reference the preceding allegations.

198. CDK has imposed an unlawful tying arrangement on dealers in violation of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15.

199. CDK has market power in the DMS market. When a dealer purchases CDK's DMS, CDK also forces the dealer to rely on CDK's data integration product, 3PA. Dealers have no choice to utilize other data integration products for CDK's DMS.

200. Dealers, not vendors, make the decision regarding which data integration product to "purchase." Dealers must provide authorization for any data integrator to access a DMS, and a vendor cannot use a data integrator that a dealer has not approved. Accordingly, the dealer is the purchaser of both the tying product (the DMS) and the tied product (data integration).

201. CDK has sufficient market power in the tying market (DMS) to appreciably restrain free competition in the market for the tied product (data integration). CDK has demonstrated its ability to leverage their market power in the tying market to control prices and exclude competition in the tied market.

202. CDK's tying arrangement has affected a substantial amount of commerce in the market for the tied product.

203. Although vendors often pass on a portion of the costs of data integration to the dealer, this tying arrangement directly harms vendors like Cox Automotive because those vendors are: (i) at a competitive disadvantage versus CDK's corresponding products and services (because such products and services do not incur integration fees); (ii) not able to pass on all data integration costs; and (iii) less able to allocate funding to develop new products, services, functionality, and features.

204. As a proximate result of CDK's unlawful tying arrangement, Plaintiffs have suffered injury to their business or property in an amount to be proven at trial and automatically trebled.

**COUNT IV:  
UNLAWFUL MONOPOLIZATION IN VIOLATION OF  
SECTION 2 OF THE SHERMAN ACT**

205. Plaintiffs incorporate by reference the preceding allegations.

206. CDK has unlawfully monopolized the aftermarket for dealer data integration services with respect to dealer data stored on the CDK DMS, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

207. When dealers purchase DMS services from CDK, they are "locked in" to that purchase through a long-term contractual relationship and high switching and information costs.

208. Because of customer lock-in in the primary DMS market, CDK has monopoly power – and in fact has monopolized – the Dealer Data Integration aftermarket on its DMS platform. CDK has demonstrated its ability to control prices and exclude competition by blocking third-party access to their DMS by raising data access fees to supracompetitive levels.

209. CDK used anticompetitive means to acquire and maintain its monopoly, including, *inter alia*, by blocking third-party access to the DMS, entering into a market division agreement pursuant to which it agreed with Reynolds that neither DMS provider would provide third-party access to the other's DMS, and imposing anticompetitive exclusive dealing arrangements on vendors and dealers.

210. As a direct and proximate result of CDK's monopolization, Cox Automotive has suffered damage to its business or property in an amount to be proven at trial and automatically trebled.

**COUNT V:  
VIOLATION OF THE CARTWRIGHT ACT**

211. Plaintiffs incorporate by reference the preceding allegations.

212. CDK and non-defendant co-conspirator Reynolds engaged in a conspiracy in unreasonable restraint of trade in violation of the California Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, for all the reasons set forth in the preceding allegations. This conspiracy is a per se violation of the Cartwright Act and is, in any event, an unreasonable and unlawful restraint of trade and commerce. CDK's exclusive dealing requirements are also unlawful under the Cartwright Act.

213. A substantial portion of the unlawful and unfair acts and practices alleged herein occurred in California – where numerous dealers, Kelly Blue Book, and Xtime are located – and harm to Kelly Blue Book, Xtime, car dealers, and car buyers was suffered in California.

214. As a direct and proximate result of CDK's unlawful conduct, Cox Automotive has suffered injury to its business or property. Cox Automotive is entitled to treble damages for the violations of the Cartwright Act alleged herein.

**COUNT VI:  
UNLAWFUL PRACTICES IN VIOLATION OF CALIFORNIA UNFAIR  
COMPETITION LAW**

215. Plaintiffs incorporate by reference the preceding allegations.

216. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.*, defines “unfair competition” to include, among other things, any “unlawful . . . business act or practice.”

217. CDK has engaged in “unlawful” business acts and practices as alleged herein in violation of, among other laws, the Sherman Act, 15 U.S.C. §§ 1 and 2; the Cartwright Act, Cal. Bus. & Prof. Code § 16720; and common law, including the torts of interference with prospective economic relations and defamation.

218. A substantial portion of the unlawful acts and practices alleged herein occurred in California – where numerous dealers, Kelly Blue Book, and Xtime are located – and harm to Kelly Blue Book, Xtime, car dealers, and car buyers was inflicted in California, for all the reasons set forth in the preceding allegations.

219. As a direct and proximate result of CDK’s unlawful conduct, Cox Automotive has suffered injury to its business or property. Cox Automotive is entitled to restitution in an amount to be proven at trial.

**COUNT VII:  
UNFAIR PRACTICES IN VIOLATION OF CALIFORNIA UNFAIR  
COMPETITION LAW**

220. Plaintiffs incorporate by reference the preceding allegations.

221. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.*, defines “unfair competition” to include, among other things, any “unfair . . . business act or practice.”

222. CDK’s acts and practices as alleged herein have been “unfair” under the UCL. CDK’s conduct – for instance, its “tilt-the-table approach” in placing anticompetitive restrictions on competing services and products that it does not

place on its own corresponding solutions – has violated the policy and spirit of the antitrust laws (namely, the Sherman Act, 15 U.S.C. §§ 1 and 2, and the Cartwright Act, Cal. Bus. & Prof. Code § 16720) and significantly threatened and harmed competition for data integration services and among the products and services that rely on those services. Furthermore, any utility from CDK's conduct does not outweigh the harm it causes to competitors, car dealers, and car buyers.

223. A substantial portion of the unfair acts and practices alleged herein occurred in California and the harm to application providers, car dealers, and car buyers was inflicted in California, for all the reasons set forth in the preceding allegations.

224. As a direct and proximate result of CDK's unfair conduct, Cox Automotive has suffered injury to its business or property. Cox Automotive is entitled to restitution in an amount to be proven at trial.

**COUNT VIII:  
FRAUDULENT INDUCEMENT**

225. Plaintiffs incorporate by reference the preceding allegations.

226. In order to induce Cox Automotive to sign the Managed Interface Agreement in January 2016, CDK falsely represented to Cox Automotive that Cox Automotive would receive [REDACTED] for data access given to any third-party solution vendor. That representation was false and intended to induce Cox Automotive to enter into the Managed Interface Agreement. In fact, CDK provided Reynolds with 3PA access for free for five years.

227. CDK knew that the statements made to Cox Automotive were false. It had entered into the Data Exchange Agreement in February 2015, before it approached Cox Automotive to negotiate a “refreshed” omnibus 3PA agreement.

228. CDK intended for Cox Automotive to rely on these false representations. These representations were made during negotiations about the “refreshed” 3PA agreements.

229. Cox Automotive justifiably relied on CDK’s false representations. Cox Automotive had no way of knowing that CDK was giving away free 3PA integration to another third-party solution vendor (Reynolds).

230. If Cox Automotive had known that these representations were false, it would have demanded different terms in the Managed Interface Agreement entered into by Cox Automotive and CDK on January 8, 2016, or would never have entered into the agreement at all.

231. At trial, Cox Automotive will prove the precise amount of damages suffered.

**COUNT IX:  
BREACH OF CONTRACT**

232. Plaintiffs incorporate by reference the preceding allegations.

233. Section 3(b) of the vendor contract dated January 8, 2016 between CDK and Cox Automotive states: “

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED].”

234. Cox Automotive is in compliance with all material obligations of the vendor contract with CDK.

235. CDK has breached Section 3(b) by providing Reynolds’ products and services that are substantially similar to Cox Automotive’s corresponding solutions with free 3PA integration (such as Reynolds SSK Tool) and by not reducing the integration fees charged to Cox Automotive accordingly.

236. At trial, Cox Automotive will prove the precise amount of damages suffered.

**COUNT X:  
UNFAIR TRADE PRACTICES**

237. Plaintiffs incorporate by reference the preceding allegations.

238. The California Unfair Trade Practices (“UTP”), Cal. Bus. & Prof. Code § 17000 *et seq.*, makes unlawful “secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition.” *Id.* § 17045.

239. CDK has granted secret discounts to Reynolds – free 3PA access – through the Data Exchange Agreement that are not made available to other vendors.

240. CDK’s preferential data access to certain products and services (for its own and for Reynolds’) tends to destroy competition for such products and services

because integration with dealer data is essential to the proper functioning of those solutions.

241. At trial, Cox Automotive will prove the precise amount of damages suffered.

**COUNT XI:  
DEFAMATION**

242. Plaintiffs incorporate by reference the preceding allegations.

243. CDK published false statements to Nissan Motor Acceptance Corp. and American Honda Finance Corp. about why Cox Automotive's Dealertrack Sales and F&I electronic contracting solution could not complete a lease transaction without manual, duplicative data entry.

244. These false statements have damaged Cox Automotive's reputation with its business partner, Nissan Motor Acceptance Corp., and within the retail automotive industry more generally.

245. CDK's false statements were neither privileged nor authorized.

246. At trial, Cox Automotive will prove the precise amount of damages suffered.

**JURY DEMAND**

247. In accordance with Federal Rule of Civil Procedure 38(b), Cox Automotive demands a trial by jury on all issues so triable.

### PRAYER FOR RELIEF

WHEREFORE, Cox Automotive requests that the Court:

- (a) decree that CDK entered into an unlawful horizontal conspiracy with Reynolds in violation of Section 1 of the Sherman Act;
- (b) decree that the exclusive dealing provisions in CDK's contracts with Cox Automotive, other vendors, and dealers are anticompetitive and illegal restrictions of trade under Section 1 of the Sherman Act;
- (c) decree that the tying provisions in CDK's contracts with Cox Automotive are anticompetitive and illegal restrictions in trade under Section 1 of the Sherman Act;
- (d) decree that CDK has illegally monopolized the market for integration services for dealer data stored on its DMS platform under Section 2 of the Sherman Act;
- (e) enjoin the enforcement of the exclusive dealing provisions in the CDK contracts with dealers and vendors;
- (f) reform Cox Automotive's 3PA contract with CDK to remedy CDK's fraud and other unlawful behavior;
- (g) enjoin CDK from privileging its own products and services – as compared to Cox Automotive's products and services – with respect to integration with data elements stored on mutual dealer clients' DMSs, including with respect to data access and usage rights, and bi-directional integration;

- (h) award Cox Automotive damages, as provided under the Sherman Act and the Cartwright Act, and hold CDK jointly and severally liable for all damages resulting from CDK's unlawful conspiracy in restraint of trade with Reynolds, to be entered against CDK in an amount to be trebled in accordance with the Sherman Act and the Cartwright Act;
- (i) award appropriate actual and punitive damages for CDK's common law violations;
- (j) award Cox Automotive its reasonable costs and expenses incurred in this action, including expert fees and attorneys' fees;
- (k) award Cox Automotive prejudgment interest; and
- (l) award Cox Automotive any such further relief that the Court may deem just and proper.

December 11, 2017

Respectfully submitted,

/s/ Jennifer L. Gregor

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