

## *Automakers push GPB to sell stores*

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Some automakers are demanding one of the largest dealership groups in the country sell some of its stores after a management upheaval that occurred amid ongoing federal and state investigations into the group's majority owner.

Volkswagen, Toyota, Subaru and Audi said they are troubled over GPB Capital Holdings' September ouster of David Rosenberg as CEO of Prime Automotive Group and as dealer principal of most of the group's dealerships without notice or approval. Some automakers say contract breaches allegedly made by GPB are grounds for franchise termination.



The automaker claims are spelled out in an amended complaint filed in late November by prominent Northeast dealer Rosenberg in a Massachusetts court against GPB and others. Rosenberg is seeking to regain control over the Prime Automotive stores.

GPB is an alternative asset-management firm and majority owner of Prime Automotive, a 56-store dealership group based in Westwood, Mass., that has become the nation's 11th-largest new-vehicle retailer as ranked by *Automotive News*. GPB is the target of several federal and state investigations that have been described as focused on potential violations of securities law.

Volkswagen, in an Oct. 31 letter, told GPB it must sell three dealerships, while Toyota put GPB on notice in October that it must cure a list of contractual issues within six months or sell five stores, according to court records. The automakers' communications to GPB were included in a Nov. 26 court filing by Rosenberg in his lawsuit against GPB.

Unnamed lenders, too, have notified GPB, Prime Automotive and/or Rosenberg that they "are terminating or considering terminating their financing agreements" with Prime

Automotive and its dealerships, according to the Nov. 26 filing. The lawsuit claims that because of uncompleted financial audits, dealerships were in default of loan covenants.

While it's unclear how many automakers and lenders have initiated such steps against GPB, some buy-sell experts say the moves mean others likely have or will follow. The push to sell dealerships could have a domino effect and begin the unraveling of the large dealership group, those experts told *Automotive News*.

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## MOUNTING WOES FOR GPB, PRIME

**2017:** GPB acquires majority stake in Prime Motor Group and forms Prime Automotive Group

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**July 2019:** Prime Automotive Group CEO David Rosenberg sues GPB over alleged nonpayment of \$5.9 million he says he is owed

**September 2019:** Rosenberg is fired by GPB and Kevin Westfall, co-founder of Vroom and a former AutoNation executive, is named interim CEO of Prime Automotive

**October 2019:** GPB's chief compliance officer indicted on charges he accessed information about the Securities and Exchange Commission's investigation into GPB while working at the SEC and later shared it with GPB management

**Fall 2019:** Some automakers begin notifying GPB of breach of contracts following the removal of Rosenberg, dealer principal of many stores; some require that GPB sell stores

**November 2019:** Rosenberg amends complaint against GPB, adding defendants and new allegations of financial misconduct

**December 2019:** Todd Skelton is named CEO of Prime and is slated to start Jan. 1. Westfall will resume role as chairman of GPB's automotive strategy board.

"What's alleged in that complaint will probably result in contact by [other] manufacturers" who will have concerns and want answers, said Mark Johnson, president of MD Johnson Inc., a buy-sell firm in Enumclaw, Wash.

It all makes for an unusual situation being watched closely by other dealers and buy-sell advisers — franchise terminations by automakers are rare, Johnson said.

Rosenberg's Nov. 26 filing described the "crash and burn" of Prime's manufacturer relationships and warned that the automakers' push for GPB to divest stores will create "at best, a 'fire sale' situation and at worst, a total elimination of dealerships' going concern value."

### **Investigations continue**

GPB is tangled in several lawsuits with investors and business partners and faces investigations by the FBI, Securities and Exchange Commission and multiple state government entities. GPB since 2013 has raised hundreds of millions of dollars from thousands of investors, though once-steady distributions to investors have halted.

GPB's auditor put uncompleted financial audits on hold, pending independent investigations of allegations made by Rosenberg and involving Michael Cohn, GPB's chief compliance officer who was indicted in October, GPB spokeswoman Nancy Sterling said. Cohn, who previously worked in the SEC's enforcement division, left the regulatory agency in fall 2018 to work for GPB and is accused of accessing information about the GPB-SEC investigation from SEC servers and sharing it with GPB.

Sterling declined to comment on the automaker pressure. GPB declined to answer several questions about the status of its stores, whether it had initiated dealership sales and whether Prime Automotive's interim CEO had been approved as a dealer principal by any automaker. That interim CEO is Kevin Westfall, co-founder of online used-vehicle retailer Vroom and a former AutoNation Inc. executive whom GPB in September appointed to replace Rosenberg.

Starting Jan. 1, Prime will have a new CEO in Todd Skelton, another former AutoNation executive. Westfall, in a statement, said Skelton brings more than 25 years of retail automotive experience to Prime and that Westfall will return to his duties as chairman of GPB's automotive strategy board once Skelton is on duty.

Skelton held numerous management positions, such as regional president, for AutoNation, the country's largest new-vehicle retailer, and he worked as a store general manager, according to his LinkedIn page.

In September, Sterling said discussions were underway with automakers on Westfall assuming Rosenberg's dealer principal duties. It wasn't immediately clear whether GPB plans for Skelton to apply with automakers to serve as dealer principal at Prime's dealerships.

According to Rosenberg's Nov. 26 filing, Subaru, Audi, Volkswagen and Honda have not approved a successor dealer principal.

"Kevin Westfall has an impeccable 40-year career in the auto industry and numerous manufacturers have indicated that they are happy with Mr. Westfall being in charge of

Prime," GPB said in a statement last week. "The performance of the Prime stores has already been enhanced under his stewardship and day-to-day operations of those dealerships are unaffected by the legal issues."

### **Automaker concerns**

Several automakers have concerns that GPB altered the dealership group's board makeup and changed voting rights control without their consent, the Nov. 26 filing shows. Audi and Volkswagen were troubled that dealerships representing their brands and others had been operating under forbearance agreements with lenders without their prior knowledge, according to the filing.

### **ONGOING CONCERNS**

Several automakers have concerns about franchise agreements with GPB Capital Holdings and Prime Automotive Group after David Rosenberg was fired as Prime Automotive CEO in September. Some say the move breached their contracts and have pushed for GPB/Prime to sell the stores, while others are giving them time to cure noncompliance issues. Here are the stores that 3 automakers, plus a Subaru distributor, expressed concerns about as detailed in court records.

**Audi:** Audi Westwood in Massachusetts

**Subaru:** White River Subaru in White River Junction, Vt.; Prime Subaru Manchester in New Hampshire; and Prime Subaru Hyannis in Massachusetts

**Toyota:** Prime Toyota in Saco, Maine; Prime Toyota-Boston in West Roxbury, Mass.; Orleans Toyota in Massachusetts; Hyannis Toyota in Massachusetts; and Prime Toyota-Route 2 in Lancaster, Mass.

**Volkswagen:** Prime Volkswagen in Saco; FX Caprara Volkswagen in Watertown, N.Y.; and Volkswagen of Norwood in Massachusetts

Volkswagen, in its Oct. 31 letter to GPB CEO David Gentile, said GPB must sell Prime Volkswagen in Saco, Maine; FX Caprara Volkswagen in Watertown, N.Y.; and Volkswagen of Norwood in Massachusetts, according to court records.

In the letter, Brian Kelly, senior director of network operations for Volkswagen, said GPB and Prime breached their business relationship agreement and that Volkswagen demanded GPB submit purchase agreements for the stores within 90 days. Failing to do so and to consummate sales would require GPB to voluntarily terminate its dealer agreements, according to the letter.

"It is clear that there is no remedy to the breaches," Kelly wrote.

A Volkswagen spokesman confirmed the three dealerships remain open for business and declined to make further comment.

An Audi spokeswoman, in an email to *Automotive News*, confirmed Audi Westwood in Massachusetts is open for business, "which we expect to continue," but declined to comment further.

Subaru of New England, the distributor for Subaru in six states, also expressed concerns about Rosenberg's removal, according to the Nov. 26 filing. Its agreements cover White River Subaru in White River Junction, Vt.; Prime Subaru Manchester in New Hampshire; and Prime Subaru Hyannis in Massachusetts.

Bryan Dumais, vice president of market development for Subaru of New England, confirmed the three dealerships are open for business. He declined to comment further.

### **5 Toyota stores at risk**

Toyota on Oct. 1 extended dealer agreements with GPB through April 3 for five stores — Prime Toyota in Saco; Prime Toyota-Boston in West Roxbury, Mass.; Orleans Toyota in Massachusetts; Hyannis Toyota in Massachusetts; and Prime Toyota-Route 2 in Lancaster, Mass., according to court records.

In an Oct. 2 letter, Toyota's Dennis Thornhill, vice president of retail market development, said the automaker had "substantial concerns" regarding investigations by the SEC and Massachusetts regulators into GPB, plus various lawsuits.

"These concerns have been exacerbated by the lack of transparency from the parties, as well as actions that are contrary to both the spirit and the substance of the letter agreement," Thornhill wrote. "Because of GPB's continuing ownership interests in five Toyota dealerships, its actions that are subject to these investigations, disputes and lawsuits not only harm those directly impacted, but also continue to negatively impact Toyota and the Toyota brand."

Toyota expressed doubt that all GPB's noncompliance issues could be cured and thus would "require divestiture," according to the letter. Toyota's agreements with GPB require equity ownership interest in the dealerships, annual financial statements, which hadn't been provided for 2017 and 2018, and dealer principal candidates that meet certain criteria.

A Toyota spokesman confirmed the stores remain open for business. Toyota declined to make further comment.

### **GPB targets stores for sale**

Separately, GPB appears to have plans to sell some stores.

A Nov. 22 letter from GPB to investors obtained by *Automotive News* said GPB in August sold the FX Caprara Chrysler-Dodge-Jeep-Ram of Alexandria Bay store in New York for \$800,000.

"Looking forward, we are seeking to sell the FX Caprara platform, as it is outside of our core geographic focus," the letter said.

That platform at the end of 2018 also included FX Caprara Chevrolet-Buick in Pulaski, N.Y.; FX Caprara Chrysler-Jeep-Dodge-Ram of Watertown; FX Caprara Ford in Watertown; FX Caprara Kia in Watertown; FX Caprara Volkswagen in Watertown; and a used-car center, according to GPB's website.

At least one store is being shut down. Prime Volvo Cars Westborough in Southborough, Mass., will close its doors in mid-December, an employee of the dealership confirmed last week. Westfall in a statement said the closure is because of market consolidation and that Volvo is buying back the franchise. Inventory will be moved to other Prime Automotive Volvo dealerships, he said.

### **Rosenberg lawsuit**

Rosenberg initially sued GPB in July, alleging the company failed to make a \$5.9 million payment to him out of retaliation as he tried to address fraudulent activity at GPB. The lawsuit claims Rosenberg exercised his option to sell his \$23.6 million stake in Prime.

GPB began investing in dealerships in 2013. Prime Automotive formed in fall 2017, when Rosenberg's Prime Motor Group combined with GPB's Capstone Automotive Group. Rosenberg also was fired as CEO of Prime Motor Group, which had continued as a subsidiary of Prime Automotive.

GPB cited misconduct, failure to cooperate with the board and refusal to cooperate with the audits as reasons for terminating Rosenberg with cause, according to a letter signed by Westfall that was included in Rosenberg's amended complaint. Westfall wrote that Rosenberg had been making "derogatory statements" to automakers and lenders to "achieve your transparent objective to force a sale of the automotive business back to you and any financial backers you may have identified."

Rosenberg amended his lawsuit against GPB to include several additional allegations of fraudulent behavior by GPB, such as fabricating income and self-dealing transactions, according to the Nov. 26 complaint. It also named several new defendants such as Gentile and Westfall and other entities.

The lawsuit includes allegations of "massive, past, ongoing and material financial improprieties" by defendants dating to at least 2014 and claims that Rosenberg provided such information to GPB's auditor and the SEC and was retaliated against, including by being terminated.

Rosenberg, according to the lawsuit, this year recommended that GPB should launch a strategic sale of its dealerships to protect investors and assets and to prevent being forced into a "fire sale."

Rosenberg wants to be restored as dealer operator of the dealerships he led, plus seeks damages and attorneys' fees.

"We believe Mr. Rosenberg's allegations should be met with extreme skepticism," GPB said in a statement. "The company intends to vigorously defend against those allegations and fully anticipates that it will succeed on the merits."

GPB lawyer Tab Rosenfeld called Rosenberg a "disgruntled ex-employee who's trying to make trouble for the company." He said GPB denies the allegations made about the automotive business and wouldn't comment on what GPB is doing regarding the automaker notices.

Howard Cooper, a Boston lawyer for Rosenberg, declined to comment on the case, as did Rosenberg.