

DEC 21 2006

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

JAMES W. MCCORMACK, CLERK
By: *[Signature]*
DEP CLERK

HYUNDAI MOTOR FINANCE COMPANY

PLAINTIFF

v.

Case No. 4:06-CV-1714 GH

**MCKAY MOTORS I LLC AND
JOHN P. MCKAY, JR.**

DEFENDANTS

TEMPORARY RESTRAINING ORDER

Pending before the Court is plaintiff's verified complaint for Temporary Restraining Order. Counsel for plaintiff has provided the defendants with notice of plaintiff's request for a Temporary Restraining Order by notifying defendants' attorney, Jack Pruniski at (501)370-0110.

In Dataphase Systems, Inc. v. C.L. Systems, Inc., 640 F. 2d 109 (8th Cir. 1981) (en banc), the Court articulated the elements necessary for injunctive relief and stated that the certainty with which movant must demonstrate a likelihood of succeeding on the merits varies with the extent of irreparable harm the movant will suffer if the relief is not granted. As the Court explained:

Whether a preliminary injunction should issue involves consideration of:

- (1) the threat of irreparable harm to the movant;
- (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant;
- (3) the probability that movant will succeed on the merits; and
- (4) the public interest.

If the chance of irreparable injury to the movant should relief be denied is outweighed by the likely injury to other parties litigant should the injunction be granted, the moving party faces a heavy burden of demonstrating that he is likely to prevail on the merits. Conversely, where the movant has raised a substantial question and the equities are otherwise strongly in his favor, the showing of success on merits can be less.


Dataphase, 64- F.2d at 113.

Based upon the complaint which has been verified by Sam Frobe, National Manager of Commercial Credit of Hyundai Motor Finance Company, the Court finds by a preponderance of the evidence and pursuant to Rule 65 of the Federal Rules of Civil Procedure, that immediate and irreparable harm, consisting of the loss of plaintiff's collateral, will result to plaintiff before defendants can be heard in opposition to the motion. Plaintiff alleges in the verified complaint that defendants have repeatedly sold the Collateral of plaintiff and failed to remit the sale proceeds to plaintiff as required by the Contract between plaintiff and defendants to the extent of \$545,103.63. Plaintiff has requested the defendants to surrender its remaining Collateral or allow plaintiff to take possession of the Collateral and defendants have refused. The Court further finds that in view of defendant's apparent poor financial condition and other factors, no adequate remedy at law is available to Hyundai to avoid additional losses.

Therefore, plaintiff's request for a Temporary Restraining Order is granted up to and including the close of business on the tenth day following the entry of this Order, unless further extended pursuant to Rule 65(b) of the Federal Rules of Civil Procedure. McKay Motors I, LLC, doing business as McKay Hyundai, its employees, officers, servants, attorneys and agents are prohibited from selling, leasing, transferring, consuming, or otherwise disposing of any of the Collateral of Hyundai, including without limitation the motor vehicles described in the attachment to this Order unless the sales or transfers are authorized by Hyundai in a separate writing subsequent to the

entry of this order. Any and all proceeds from the sale or other transfers of the Collateral of Hyundai so authorized by Hyundai shall be paid directly to Hyundai.

SO ORDERED THIS 21st day of December, 2006.

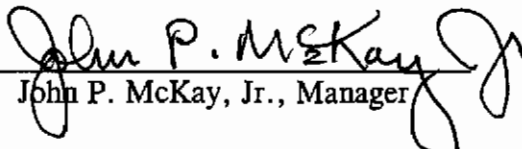


UNITED STATES DISTRICT JUDGE

Without admitting or denying any of the allegations in Plaintiff's Complaint, McKay Motors I, LLC and John P. McKay, Jr. hereby consent to the entry of the foregoing Temporary Restraining Order this 21st day of December, 2006.

McKay Motors I, LLC

By:


John P. McKay, Jr., Manager


John P. McKay, Jr.

		UNITS REMAINING IN INVENTORY						Effective Date	Principal
		Vin#	Last Bk	Year	Make	Model			
Collateral Type: Demonstrators		5NMSH13E57H	005454	2007	HYUN	SANTA FE		10/10/2006	26,040.00
Collateral Totals: 1 Unit									26,040.00
Collateral Type: Service Loans		SNPEU46F57H	167184	2007	HYUN	SONATA GL	SA	7/3/2006	20,804.36
		SNPEU46F57H	177450	2007	HYUN	SONATA GL	SA	7/3/2006	20,288.98
		SNPEU46F57H	182485	2007	HYUN	SONATA GL	SA	7/3/2006	20,804.36
		SNPEU46F57H	183334	2007	HYUN	SONATA GL	SA	7/3/2006	20,110.56
		KMHFU46E65A	426667	2006	HYUN	XG35V	L	11/2/2006	20,088.40
Collateral Totals: 5 Units									102,212.72
Collateral Type: New Hyundai Vehicles		BNMSG13D37H	002117	2007	HYUN	SANTA FE		7/14/2006	22,042.00
		BNMSH13E37H	004441	2007	HYUN	SANTA FE		6/30/2006	23,205.00
		BNMSG13D77H	006783	2007	HYUN	SANTA FE		7/6/2006	22,042.00
		BNMSG13D47H	006984	2007	HYUN	SANTA FE		7/6/2006	23,572.00
		BNMSH13E67H	007477	2007	HYUN	SANTA FE		7/6/2006	25,066.00
		KMHCM36C57U	006338	2007	HYUN	ACCENT		7/6/2006	12,061.00
		SNMSH13E47H	009484	2007	HYUN	SANTA FE		7/6/2006	23,218.00
		SNMSH13E30H	009784	2007	HYUN	SANTA FE		7/7/2006	23,213.00
		KNDMC233076	014830	2007	HYUN	ENTOUR AGE		8/28/2006	18,468.00
		KNDMC233076	019004	2007	HYUN	ENTOUR AGE		7/3/2006	25,782.00
		KNDMC233176	019738	2007	HYUN	ENTOUR AGE		7/3/2006	23,793.00
		KNDMC233176	021354	2007	HYUN	ENTOUR AGE		7/3/2006	23,735.00
		KNDMC233376	022170	2007	HYUN	ENTOUR AGE		7/3/2006	28,819.00
		SNPEU46F58H	077880	2006	HYUN	SONATA GL	SA	2/15/2006	23,365.00
		SNPEU46F58H	078814	2006	HYUN	SONATA GL	SA	2/15/2006	23,365.00
		SNPEU46F58H	087862	2006	HYUN	SONATA GL	SA	2/17/2006	22,091.00
		KMBJN2D15U	088210	2005	HYUN	TUCSON		3/2/2006	15,458.50
		KMHFC46F16A	121886	2006	HYUN	AZERA SE/ LIM		6/23/2006	27,732.00
		SNPEU46C46H	128367	2006	HYUN	SONATA GL	SA	3/1/2006	19,826.00
		SNPEU46C46H	129907	2006	HYUN	SONATA GL	SA	3/6/2006	20,332.00
		SNPEU46F57H	160362	2007	HYUN	SONATA GL	SA	7/3/2006	22,162.00
		SNPEU46C58H	172788	2006	HYUN	SONATA GL	SA	5/10/2006	19,826.00
		SNPEU46F57H	173077	2007	HYUN	SONATA GL	SA	7/10/2006	20,521.00
		SNPEU46F57H	176575	2007	HYUN	SONATA GL	SA	7/10/2006	21,016.00
		SNPEU46F57H	178440	2007	HYUN	SONATA GL	SA	6/30/2006	21,188.00
		SNPEU46F57H	187251	2007	HYUN	SONATA GL	SA	7/12/2006	20,521.00
		SNPEU46F57H	187898	2007	HYUN	SONATA GL	SA	10/10/2006	23,807.00
		SNPEU46F57H	188317	2007	HYUN	SONATA GL	SA	7/31/2006	20,521.00
		KMHIDN46D26U	234801	2006	HYUN	ELANTR A G	LS/	12/21/2005	13,896.00
		KMHIDN46D26U	245100	2006	HYUN	ELANTR A G	LS/	1/30/2006	14,748.00
		KMHCG35C15U	362980	2005	HYUN	ACCENT GT	XL	12/7/2005	10,364.00
		KMHCG35C55U	364102	2005	HYUN	ACCENT GT	XL	12/21/2005	11,810.00
		KMHCG35C08U	364942	2006	HYUN	ACCENT GT	XL	1/2/2006	11,175.00
		KMBJN2D26U	390841	2006	HYUN	TUCSON		7/3/2006	22,242.00
Collateral Totals: 34 Units									718,706.80
Collateral Type: Used Vehicles		SNPEU46F58H	010431	2006	HYUN	SONATA GL	SA	6/13/2006	17,816.00
H06206A		2CNLD13F856	029768	2005	CHEV	EQUINOX		6/19/2006	11,223.00
		1G1JCS24627	186432	2002	CHEV	CAVALI	ERV	6/22/2006	4,850.00
H06224A		2HJYK16526H	502644	2006	HOND	RTL		5/2/2006	23,940.00
H06216A		KMHCG45C75U	648983	2006	HYUN	ACCENT GL		7/14/2006	7,280.00
H06234A		KMRWF255X4A	965451	2004	HYUN	SONATA GL		6/16/2006	7,620.00
Collateral Totals: 6 Units									72,681.80
Dealer Totals: 40 Units									811,858.22

SOLD AND UNPAID UNITS AS OF 12/20/06									
SNPEU46F58H	076037	2006	HYUN	SONATA GL	SA	10/23/2006	23,365.00	SOLD	
BNMSG13D57H	002071	2007	HYUN	SANTA FE		7/3/2006	22,042.00	SOLD	
BNMSH13E37H	005357	2007	HYUN	SANTA FE		7/5/2006	26,185.00	SOLD	
BNMSH13E37H	010420	2007	HYUN	SANTA FE		7/5/2006	25,950.00	SOLD	
KMSSC13D76U	033031	2006	HYUN	SANTA FE		10/12/2006	21,680.00	SOLD	
KMSSC13E16U	038262	2006	HYUN	SANTA FE		10/12/2006	22,391.00	SOLD	
KMSSC13E76U	040667	2006	HYUN	SANTA FE		10/12/2006	22,337.00	SOLD	
KMSSC13D76U	047877	2006	HYUN	SANTA FE		10/10/2006	13,712.02	SOLD	
KMSSC13D56U	055478	2006	HYUN	SANTA FE		10/12/2006	22,484.00	SOLD	
KMHFC46F76A	088169	2006	HYUN	AZERA SE/ LIM		6/12/2006	26,705.00	SOLD	
SNPEU46C46H	123628	2006	HYUN	SONATA GL	SA	3/6/2006	19,826.00	SOLD	
SNPEU46C47H	178788	2007	HYUN	SONATA GL	SA	7/3/2006	18,363.00	SOLD	
KMHIDN46D98U	282231	2006	HYUN	ELANTR A G	LS/	2/29/2006	14,467.00	SOLD	
KMHIDN46D98U	283182	2006	HYUN	ELANTR A G	LS/	2/29/2006	14,467.00	SOLD	
KMHIDN46D26U	283361	2006	HYUN	ELANTR A G	LS/	3/1/2006	14,802.00	SOLD	
KMBJN2D76U	304802	2006	HYUN	TUCSON		7/3/2006	20,636.00	SOLD	
KMBJN12B96U	413711	2006	HYUN	TUCSON		6/26/2006	19,161.00	SOLD	
KMBJN12D66U	441786	2006	HYUN	TUCSON		7/3/2006	20,636.00	SOLD	
KMBJN12B76U	458952	2006	HYUN	TUCSON		6/21/2006	19,034.00	SOLD	
KMBJN12B16U	478223	2006	HYUN	TUCSON		7/12/2006	19,122.00	SOLD	
1G2JWY12E556	126801	2006	PONT	GRAND AM	GT	4/21/2006	10,860.00	SOLD	
KMHCG35C73U	237128	2006	HYUN	ACCENT GS		4/29/2006	3,840.00	SOLD	
1GND6135122	270481	2002	CHEV	TRAILB LAZ	ER	4/28/2006	11,185.00	SOLD	
5TBRT34164S	455823	2004	TOY	TUNDRA AC	CE6	4/21/2006	15,955.00	SOLD	
24 UNITS								TOTAL SOLD AND UNPAID	448,552.82