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NEW MOTOR VEHICLE BOARD

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ATTORNEYS FOR PROTESTANT

FILED
NEW MOTOR VEHICLE BOARD
DATE 9-15-17
BY MT

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

ASIAN PACIFIC INDUSTRIES, INC., dba JAGUAR LAND ROVER STEVENS CREEK,

Protestant,

v.

JAGUAR LAND ROVER NORTH AMERICA, LLC,

Respondent.

PROTEST NO: PR-2531-17

PROTEST
[Vehicle Code Section 3065.1]

Protestant, Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek, a California corporation, qualified to do business in California, through its attorneys, files this protest under provisions of California Vehicle Code Section 3065.1 and alleges as follows:

1. Protestant is a new motor vehicle dealer selling Jaguar vehicles and parts, is duly licensed as a vehicle dealer by the State of California, and is located at, 440 Stevens Creek Boulevard, San Jose, California 95129; Protestant's telephone number is (408) 246-7660.

2. Respondent, Jaguar Land Rover North America, LLC, distributes Jaguar products and is the franchisor of Protestant.

3. Protestant is represented in this matter by Law Offices of Gavin M. Hughes, whose address and telephone number are 3436 American River Drive, Suite 10, Sacramento, California 95864; (916) 900-8022.

4. Respondent operates an incentive program entitled Business Builder Bonus Program ("BBBP"). The BBBP incentive funds available to Jaguar dealers represent 7% of invoice for all vehicles retailed. Respondent modified the BBBP program performance categories over time. Under the current iteration of the BBBP program, Respondent measures Protestant's eligibility for receiving BBBP incentive monies based upon its performance, as measured by Respondent, under six (6) categories: 1.) Facility Reserve; 2.) Approved; 3.) Training; 4) In Territory Sales; 5.) Sales Objectives; and 6.) Customer Pay Hours Sold. Each category counts as 1% toward the total available 7% of invoice, with the exception of Facility Reserve, which accounts for 2%.

5. Respondent pays dealers the amount of BBBP incentive funds it determines each dealer is entitled, on a quarterly basis. Dealers qualifying for the full amount of BBBP funds enjoy a competitive advantage over those dealers that do not receive the full amount.

6. Respondent has unlawfully withheld incentives owed Protestant in an amount exceeding several hundred thousand dollars.

7. Respondent's refusal to pay Protestant the full 7% of BBBP funds is based, in part, upon a deliberately discriminatory sales performance standard, which unreasonably discriminates against Protestant. Moreover, several of the other performance categories of the BBBP program are based upon an overly-broad assigned dealer territory designed to overstate Protestant's facility requirements, sales objectives, and customer pay objectives.

8. Protestant and its attorneys desire to appear before the Board and/or its designated hearing officer for the purpose of presenting oral and documentary evidence concerning the matters herein alleged. Protestant estimates the hearing in this matter will take ten (10) days to complete.

WHEREFORE, Protestant prays as follows:

1. That the Board sustain this protest and order Respondent to desist from further withholding of BBBP funds until the Board resolves this matter, nor thereafter upon resolution.

2. That the Board order Respondent to pay Protestant all BBBP incentive monies determined to have been improperly withheld pursuant to Vehicle Code Section 3065.1.

3. That pending the hearing in this matter, the Board or its executive director or authorized representative immediately order Respondent to cease withholding any BBBP sales incentives funds until such time as Respondent has obtained approval from the Board pursuant to Vehicle Code Sections 3065.1, and 3066.

4. That a pre-hearing conference be set and the parties notified thereof.

5. That Protestant be awarded such other and further relief as the Board deems just and proper.

Dated: September 15, 2017

LAW OFFICES OF
GAVIN M. HUGHES

By Gavin Hughes
Gavin M. Hughes
Attorneys for Protestant

DECLARATION OF SERVICE BY US MAIL

I, Robert A. Mayville, Jr., declare that I am employed in the County of Sacramento, State of California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein. My business address is 3436 American River Drive, Suite 10, Sacramento, California 95864.

I declare that on September 15, 2017, I caused to be served a true and complete copy of:

PROTEST [Vehicle Code Section 3060(b)(1)]
Jaguar Franchise

Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek
v.
Jaguar Land Rover North America, LLC

PROTEST [Vehicle Code Section 3065.1]
Jaguar Franchise

Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek
v.
Jaguar Land Rover North America, LLC

PROTEST [Vehicle Code Section 3060(b)(1)]
Land Rover Franchise

Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek
v.
Jaguar Land Rover North America, LLC

PROTEST [Vehicle Code Section 3065.1]
Land Rover Franchise

Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek
v.
Jaguar Land Rover North America, LLC

///

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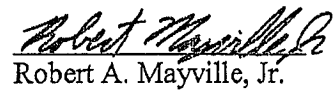
By US Mail:

Thomas J. Loveless
Region VP-Western Region
Jaguar Land Rover North America, LLC
555 MacArthur Blvd.
Mahwah, NJ 07430

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15 September, 2017, Sacramento, California.



Robert A. Mayville, Jr.