

VIA EMAIL

New Motor Vehicle Board

Received  
12-28-22

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New Motor Vehicle Board

Date: 12-28-22

By: RPP

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Attorneys for Respondent  
SUBARU OF AMERICA, INC.

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, INC.  
dba COURTESY SUBARU OF CHICO,

Petitioner,

vs.

SUBARU OF AMERICA, INC.,

Respondent.

Petition No. P-463-22

**NOTICE OF MOTION AND MOTION  
OF RESPONDENT SUBARU OF  
AMERICA, INC.'S FOR NEW MOTOR  
VEHICLE BOARD TO CONSIDER  
THE SUPPLEMENTAL  
DECLARATION OF RAYMOND SMIT  
AND SIGN SPECIFICATIONS  
REQUESTED BY PETITIONER IN  
SUPPORT OF OPPOSITION TO  
PETITION; DECLARATION OF LISA  
M. GIBSON IN SUPPORT THEREOF**

BOARD MEETING ON PETITION:

January 25, 2023

10:00 a.m. PT

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that Respondent Subaru of America, Inc. (“SOA”) will and hereby does move for the President of the California New Motor Vehicle Board (the “Board”) to permit the members of the Board to consider the Supplemental Declaration of Raymond Smit (“Supplemental Smit Declaration”) and the sign specifications requested by Petitioner Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico’s (“Courtesy”) at the January 25, 2023 Board Meeting concerning Courtesy’s Petition.

The Motion will be based on the fact that the information contained in the Supplemental Smit Declaration was requested by Courtesy on October 28, 2022 and relates to the sign specifications previously provided to Courtesy in March, 2018. In addition, at the General Meeting of the Board on November 7, 2022, the Board continued consideration of the Petition to January 25, 2023 to allow for SOA to provide the requested information to Courtesy. As set forth in the Declaration of Lisa M. Gibson, counsel for SOA provided the requested information by email to Courtesy’s counsel on November 18, 2022. SOA’s counsel has further met and conferred with counsel for Courtesy to discuss whether Courtesy would dismiss the Petition but Courtesy has refused to dismiss the Petition and improperly attempted to inject new issues into this matter which are not part of the Petition or the Declaration of Kimberly Wright previously submitted by Courtesy.

This Motion is based on this Notice, the attached Memorandum of Points and Authorities, the accompanying Supplemental Declaration of Raymond Smit and the sign information attached as an exhibit thereto, the Declaration of Lisa M. Gibson and all other records and pleadings on file with the Board, as well as such other evidence as may be presented at the hearing of the motion.

Dated: December 28, 2022

Respectfully submitted,

**NELSON MULLINS RILEY & SCARBOROUGH  
LLP**

By:



Lisa M. Gibson  
Amy M. Toboco  
Attorneys for Respondent  
SUBARU OF AMERICA, INC.

1       **I. INTRODUCTION**

2           In this Motion, SOA seeks permission to file the Supplemental Declaration of Raymond  
3 Smith and attached sign specifications to address the issues stated in the Declaration of Kimberly  
4 Wright (“Wright Declaration”) filed by Courtesy on October 28, 2022, and in compliance with the  
5 parties’ discussions at the Board meeting on November 7, 2022. At the Board meeting on November  
6 7, 2022, SOA agreed to provide additional sign specifications to Courtesy similar to what was  
7 requested in the Wright Declaration and the Board continued the Board meeting on the Petition to  
8 January 25, 2023 to allow time for SOA to do so. On November 18, 2022, counsel for SOA  
9 provided the additional sign specifications received from SOA’s sign vendor to counsel for Courtesy  
10 and requested that Courtesy dismiss the Petition. SOA’s counsel further requested that Courtesy’s  
11 counsel notify SOA’s counsel by November 28, 2022 whether it would agree to dismiss the Petition.  
12 On November 28, 2022, counsel for Courtesy responded to SOA’s request and indicated that  
13 Courtesy would not agree to dismiss the Petition. Therefore, SOA has filed this Motion and  
14 respectfully requests that the Board consider the Supplemental Smit Declaration in connection with  
15 SOA’s Response to the Petition and in response to the Wright Declaration which was previously  
16 filed by Courtesy in this matter.

17  
18       **II. FACTUAL BACKGROUND**

19           Courtesy filed its Petition in this matter on June 20, 2022. Thereafter, on July 20, 2022,  
20 SOA timely filed its Verified Opposition to Petition. In conjunction with its Opposition, SOA also  
21 filed Declarations of Lisa M. Gibson, Raymond Smit and Dean Bakkum. Attached to the  
22 Declaration of Mr. Bakkum as Exhibit A was a detailed design intent deliverable binder (“DID  
23 binder”) containing structural and electrical sign specifications which had previously been provided  
24 by Mr. Bakkum to Raymond Smit at SOA on March 26, 2018. (Declaration of Dean A. Bakkum  
25 filed in Support of SOA’s Response to Petition, ¶13.) It is Mr. Smit’s practice to deliver DID binder  
26 to dealers upon receipt from its design intent vendor so the DID binder would have been delivered  
27  
28

1 to Courtesy in March, 2018. (Declaration of Raymond Smit filed in Support of SOA's Response to  
2 Petition, ¶2.)

3 On October 28, 2022, Gavin Hughes, counsel for Courtesy for the first time contacted SOA's  
4 counsel, Lisa Gibson, to advise her that Courtesy intended to submit a Declaration of Kimberly  
5 Wright relating to the information which it claimed was missing from the specifications attached to  
6 Mr. Bakkum's declaration filed by SOA on July 20, 2022 and provided to Courtesy by Mr. Smit in  
7 March, 2018. Ms. Gibson advised Mr. Hughes that she believed the information was already  
8 included in the DID binder. However, if it was not already provided, she indicated she would check  
9 with SOA to see if the additional information would be available. On that same date, Courtesy filed  
10 the Wright Declaration with the Board and filed a motion for the Board to consider the declaration  
11 at the November 7, 2022 Board meeting. SOA opposed the motion on the grounds that it was not  
12 given an adequate opportunity to respond to the request for information prior to the Board meeting.

13 Thereafter, at the Board Meeting on November 7, 2022, at which the Petition was  
14 considered, the Board granted Courtesy's motion to consider the Wright Declaration. In addition,  
15 Lisa Gibson, SOA's counsel, advised the Board that SOA would attempt to provide the information  
16 requested by Courtesy regarding the sign specifications. Based on the stipulation of the parties, the  
17 Board continued consideration of the Petition to the January 25, 2023 Board Meeting to allow time  
18 for SOA to provide the information to Courtesy. By email communication on November 18, 2022,  
19 Ms. Gibson provided the supplemental sign information to Gavin Hughes, counsel for Courtesy. In  
20 addition, Ms. Gibson requested that Courtesy dismiss the Petition because SOA had provided the  
21 information requested by Courtesy. Ms. Gibson also requested that Mr. Hughes advise her as to  
22 Courtesy's response by November 28, 2022. (Declaration of Lisa M. Gibson ¶2, Ex. "A"). On  
23 November 28, 2022, counsel for Courtesy responded to Ms. Gibson but refused to dismiss the  
24 Petition. Mr. Hughes stated that he would have to confirm with his client that the sign information  
25 provided by SOA was sufficient as to site-specific shop drawings. Mr. Hughes also requested that  
26 SOA provide a full sign package for Subaru signage at the new dealership facility which is still  
27 under construction, that SOA approve a DBA name change request by Courtesy's request and that  
28



SOA confirm Courtesy's right to relocate to the permanent dealership facility currently under construction. (Declaration of Lisa M. Gibson ¶3, Ex. "B"). These issues, however, are outside the scope of this Petition and Courtesy is improperly using this Board Petition to require SOA to approve its permanent facility and signage prior to the completion of the construction of the permanent dealership and while the issues relating to the termination of Courtesy's dealership are the subject of a pending Writ Petition before the Alameda Superior Court. Accordingly, on December 16, 2022, SOA's counsel notified Courtesy's counsel that Courtesy's refusal to dismiss the Petition was improper and that SOA has provided all information requested by Courtesy in connection with the Petition and addressed in the Wright Declaration. (Declaration of Lisa M. Gibson ¶6, Ex. "E").

Accordingly, SOA seeks approval to file the Supplemental Declaration of Raymond Smit which attaches the additional sign information as Exhibit "A" in response to Courtesy's request and in response to the Wright Declaration previously filed by Courtesy on October 28, 2022.

**III. GOOD CAUSE EXISTS TO PERMIT THE FILING OF THE SUPPLEMENTAL DECLARATION AND SIGN INFORMATION, AS SUCH INFORMATION WAS REQUESTED BY COURTESY AND THE BOARD IN ADVANCE OF THE JANUARY 25, 2023 MEETING AND IS IN DIRECT RESPONSE TO THE DECLARATION OF KIMBERLY WRIGHT FILED BY COURTESY.**

As outlined above, at the November 7, 2022 Board Meeting, the parties stipulated to continue the consideration of the Petition to the January 25, 2023 Board Meeting so that SOA could provide additional sign information requested by Courtesy. The Supplemental Smit Declaration also responds directly to the Declaration of Kimberly Wright which was filed by Courtesy after the Board granted Courtesy's motion for permission for the Board to consider that declaration. Because the Wright Declaration was filed only days before the November 7<sup>th</sup> Board meeting, SOA was not able to obtain the information requested by Courtesy or submit a declaration in response. Therefore,

1 for the same reasons justifying the granting of Courtesy's motion, the Board should allow the filing  
2 of the Supplemental Smit Declaration by SOA.

3 In addition, filing of the Supplemental Smit Declaration is supported by section 561 of Title  
4 13 of the California Code of Regulations ("CCR"), which permits a party wishing to present  
5 additional evidence to the Board to make a written request at least ten days before consideration of  
6 the petition. (13 CCR §561). Here, SOA has complied with section 561 by providing the Board  
7 with the supplemental declaration and all exhibits thereto promptly following the November 7<sup>th</sup>  
8 Board meeting and well prior to the January 25, 2023 Board meeting. Further, allowing the  
9 Supplemental Declaration is appropriate under section 561 because the supplemental declaration is  
10 in direct response to the Declaration of Kimberly Wright and Courtesy's request for additional sign  
11 information and there is no other mechanism for SOA to file the declaration or information  
12 requested by Courtesy.

13  
14 **IV. CONCLUSION.**

15 Based on the foregoing, in addition to the relief already requested, SOA respectfully requests  
16 that the Board grant its Motion and consider the Supplemental Declaration of Raymond Smith and  
17 sign information attached as an exhibit thereto at the January 25, 2023 Board Meeting concerning  
18 Courtesy's Petition.

19  
20 Dated: December 28, 2022

Respectfully submitted,

21 **NELSON MULLINS RILEY & SCARBOROUGH**  
22 **LLP**

23 By:



24 Lisa M. Gibson  
25 Amy M. Toboco  
26 Attorneys for Respondent  
27 SUBARU OF AMERICA, INC.  
28

**DECLARATION OF LISA M. GIBSON**

I, Lisa M. Gibson, declare and state as follows;

1. I am an attorney at law, duly licensed to practice before all courts of the State of California. I am a Partner with the law firm of Nelson, Mullins, Riley & Scarborough LLP, counsel of record for Respondent Subaru of America, Inc. ("SOA") in the above-captioned matter. I make this Declaration in support of SOA's Motion for the New Motor Vehicle Board to Consider the Supplemental Declaration of Raymond Smit and Sign Specifications Requested by Petitioner. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. On November 18, 2022, I emailed Gavin Hughes and Robert Mayville, counsel for Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico ("Courtesy"), and provided sign specification information prepared by Philadelphia Sign Company, SOA's sign vendor, that was responsive to the Declaration of Kimberly Wright previously filed by Courtesy on October 28, 2022 in this matter. The information was consistent with the sample specifications referenced in Ms. Wright's declaration regarding Courtesy's Cadillac facility. I also notified Courtesy's counsel that SOA has acted in good faith in providing such information and requested that Courtesy dismiss the Petition in light of the fact that SOA has provided the information to resolve the issues raised in the Petition. I requested a response by November 28, 2022. A true and correct copy of my email and the attached sign information is attached hereto as Exhibit "A."

3. On November 28, 2022, I received a letter from Mr. Hughes in response to my email. Mr. Hughes indicated that he would confirm with Courtesy whether the information provided by SOA was sufficient as to site-specific shop drawings. However, Mr. Hughes also indicated that several other issues remain unresolved which, if resolved, would permit Courtesy to withdraw the Petition. Those issues involve Courtesy's request for a final sign package for the permanent Subaru dealership facility still under construction by Courtesy, SOA's approval of a DBA name change request by Courtesy and SOA's acknowledgment that it will approve Courtesy's relocation to the permanent dealership facility currently under construction. These additional issues raised by Mr. Hughes are outside the scope of the Petition presently before the Board and relate to the pending

1 Petition for Writ of Administrative Mandate filed by SOA and currently pending in the Alameda  
2 Superior Court. Therefore, these issues have no bearing on the dismissal of the Petition in this  
3 matter. A true and correct copy of Mr. Hughes' letter dated November 28, 2022 is attached hereto  
4 as Exhibit "B."

5 4. On December 9, 2022, I wrote to Mr. Hughes in response to his letter of November 28,  
6 2022, and confirmed that SOA had provided the information requested by Courtesy, advised him  
7 that the issue of the dba name change was outside the scope of the Petition and reiterated my request  
8 that Courtesy dismiss the Petition. A true and correct copy of my December 9<sup>th</sup> letter to Mr. Hughes  
9 is attached hereto as Exhibit "C."

10 5. On December 14, 2022, I received another letter from Mr. Hughes in which he requested  
11 additional information regarding the sign specifications involving the pylon sign height allowance  
12 and the removal of the name "Courtesy" from a sign on the North Elevation. Mr. Hughes also  
13 accused SOA of not complying with the ALJ's Confidential Decision and acting improperly by not  
14 approving a name change by Courtesy. A true and correct copy of Mr. Hughes' letter is attached  
15 hereto as Exhibit "D."

16 6. On December 16, 2022, I met and conferred with Mr. Hughes to discuss the December  
17 14, 2022 letter. On that same date, I also wrote to Mr. Hughes in response and advised him that his  
18 letter made demands on SOA which were outside the scope of the Petition and the Wright  
19 Declaration and that SOA has provided all information set forth in the Wright Declaration. I also  
20 explained to Mr. Hughes that the pylon signs are owned, manufactured and installed by SOA and  
21 its vendors, that retailers are not responsible for permitting or installing pylon signs and that SOA  
22 has provided all information necessary for the purpose of any electrical specifications for standard  
23 pylon signs to Courtesy. I also explained SOA's reasoning for not approving a dba name change  
24 and the facts demonstrating that SOA has acted properly and in compliance with both the Subaru  
25 Dealer Agreement and the ALJ's Confidential Decision in doing so. A true and correct copy of my  
26 letter to Mr. Hughes is attached hereto as Exhibit "E."

1 I declare under penalty of perjury under the laws of the State of California that the foregoing  
2 is true and correct.

3 Executed this 28th day of December, 2022, at Torrance, California.

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7 Lisa M. Gibson  
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# **EXHIBIT A**

## Maria Domingo

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**Subject:** FW: Petition No. P-463-22 -- Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Courtesy Subaru of Chico v. Subaru of America, Inc.  
**Attachments:** B103219 SUB401763 Courtesy Subaru of Chico[1].pdf

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**From:** Lisa Gibson <[lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)>  
**Sent:** Friday, November 18, 2022 2:47 PM  
**To:** Gavin M. Hughes ([gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)) <[gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)>; Robert Mayville <[mayville@hughesdealerlaw.com](mailto:mayville@hughesdealerlaw.com)>  
**Cc:** Amy Toboco <[amy.toboco@nelsonmullins.com](mailto:amy.toboco@nelsonmullins.com)>; Maria Domingo <[maria.domingo@nelsonmullins.com](mailto:maria.domingo@nelsonmullins.com)>  
**Subject:** Petition No. P-463-22 -- Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Courtesy Subaru of Chico v. Subaru of America, Inc.

Hello Gavin and Robert,

Happy Friday! Please find attached information from SOA that is responsive to the Kimberly Wright declaration.

As you know, this information is being provided as a good faith gesture by SOA. As I had previously indicated to you in advance of the November 7<sup>th</sup> hearing, SOA would verify whether such information could be made available and, if it were, that SOA would likely provide it.

The Petition filed by Courtesy is and, always has been improper for the reasons fully briefed by SOA in this matter. During oral argument, the public members appeared inclined to dismiss the Petition because the relief sought was both unreasonable and disproportionate to the alleged harm. The matter was deferred in order to work on the issue raised in Ms. Wright's declaration. The attached resolves those issues. I would urge you again, therefore, to dismiss this petition which has no legitimate grounds to go forward.

I would appreciate a response by Monday, November 28<sup>th</sup>.

Best regards,

Lisa

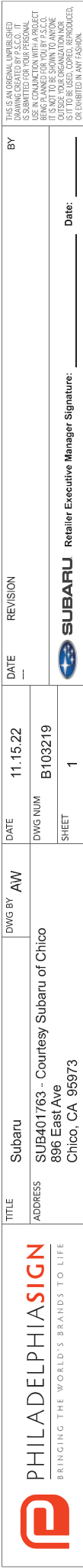


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LISA M. GIBSON **PARTNER**  
[lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)

PACIFIC GATEWAY | SUITE 900  
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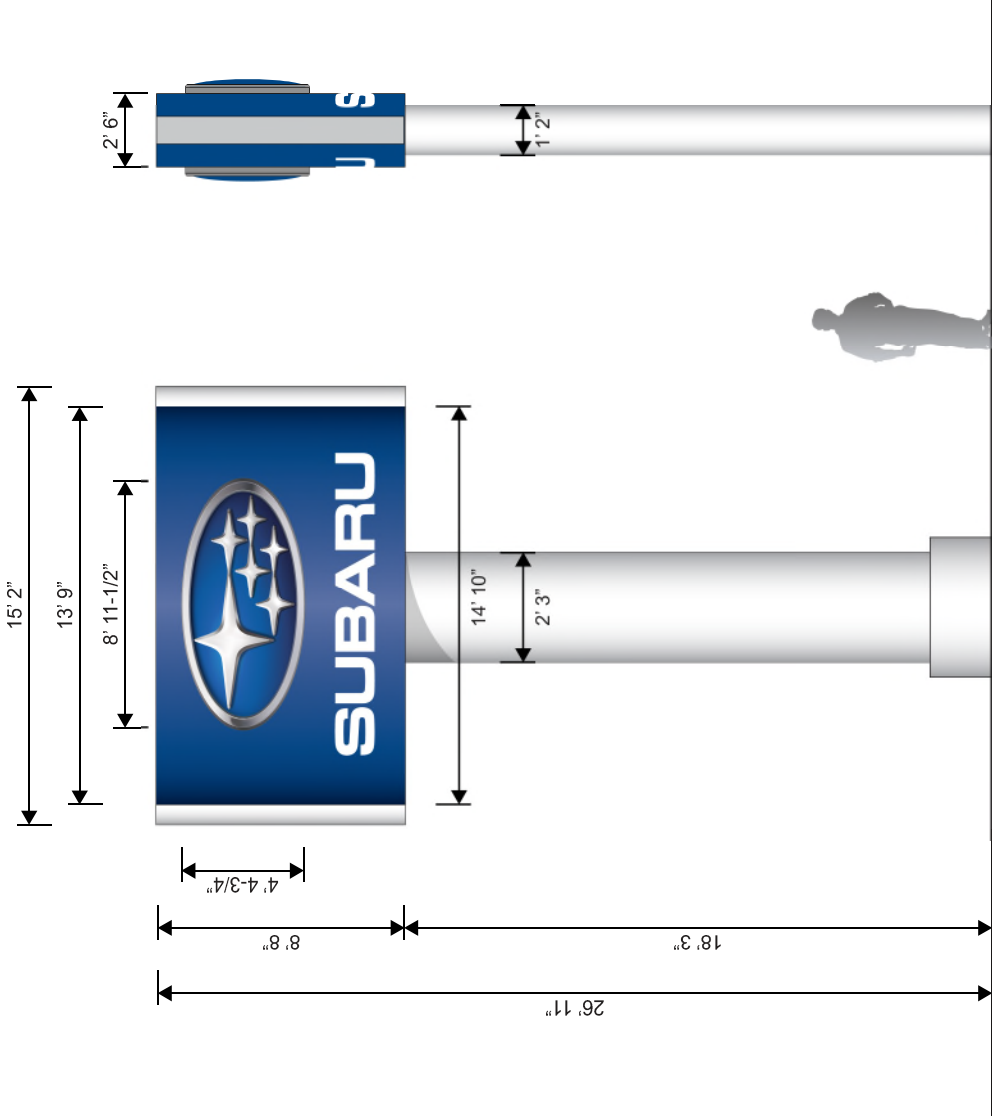
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[illegible]

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N01 P120 2019 Double Faced Illuminated Pylon - 26' 11" OAH



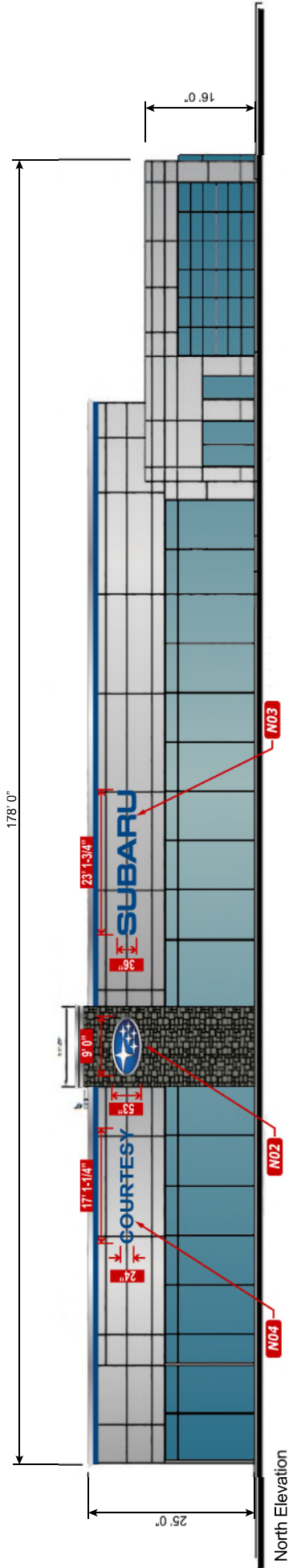
N01 - P120D/E ILLUM PYLON

Scale: 1/4" = 1' 0"

 PHILADELPHIASIGN BRINGING THE WORLD'S BRANDS TO LIFE	TITLE Subaru		DWG BY AW	DATE 11.15.22	REVISION	BY
	ADDRESS SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973			DWG NUM B103219		
			SHEET 2			SUBARU Retailer Executive Manager Signature: _____ Date: _____
	701 WEST SPRING GARDEN ST • PALMAYRA, NJ • 08055 • P: 856-829-1460 • F: 856-829-8549 • WEB: <a href="http://www.philadelphisign.com">http://www.philadelphisign.com</a>					

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P.S.C.O.

- N02 53" 2019 Illum Logo - 53"h x 9' 0"w (39.8 Sq Ft)
- N03 36" 2019 Illum Blue Channel Letters "SUBARU" - 23' 1-3/4" OAL (69.4 Sq Ft)
- N04 24" Illum Blue Channel Letters "COURTESY" - 17' 1-1/4" OAL (34.2 Sq Ft)



NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

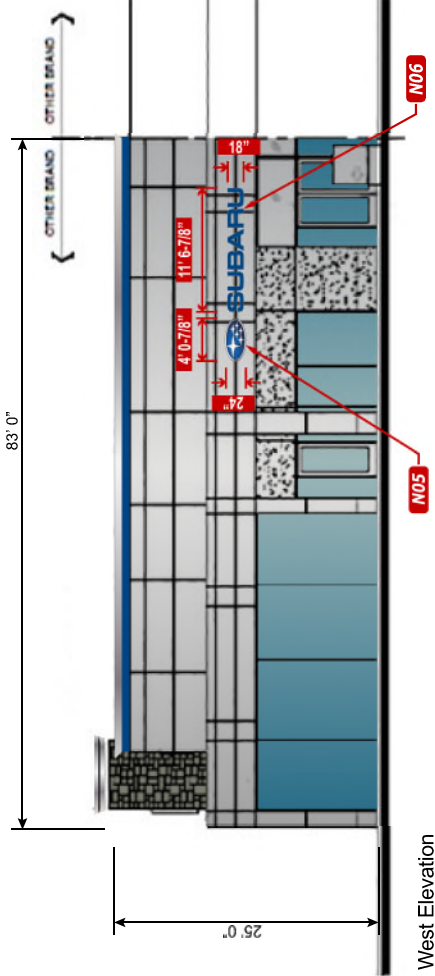
ALL SIGNS RENDERED PROPORTIONALLY TO THE ELEVATIONS			PHILADELPHIASIGN BRINGING THE WORLD'S BRANDS TO LIFE		
TITLE		Subaru	BY		
ADDRESS		SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973	DATE		
			11.15.22		
			REVISION		
			B103219		
			SHEET		
			3		
			Date:		
			Signature:		
			SUBARU Retailer Executive Manager		
			707 WEST SPRING GARDEN ST • PALMYRA, NJ • 08055 • P: 856-859-1460 • F: 856-859-8549 • WEB: <a href="http://www.philadelphiasign.com">http://www.philadelphiasign.com</a>		

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- N05

24" 2019 Illum Logo - 24"h x 4' 0-7/8"w (8.1 Sq Ft)
- N06

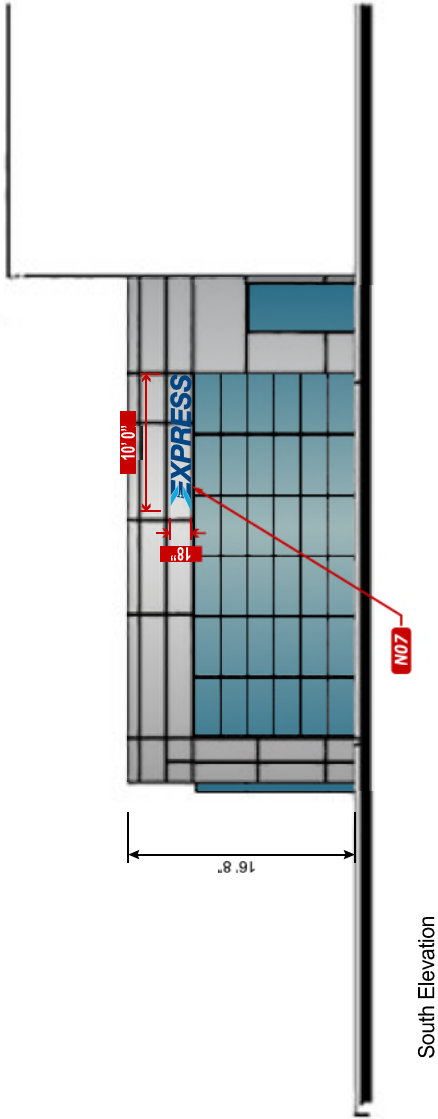
18" 2019 Illum Blue Channel Letters "SUBARU" - 11' 6-7/8" OAL (17.3 Sq Ft)




NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

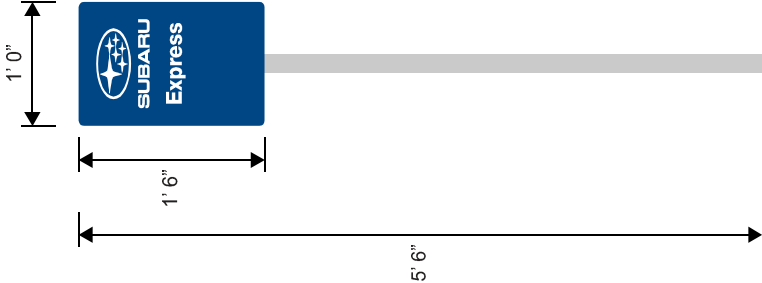
ALL SIGNS RENDERED PROPORTIONALLY TO THE ELEVATIONS			PHILADELPHIASIGN BRINGING THE WORLD'S BRANDS TO LIFE		
TITLE		Subaru	BY		
ADDRESS		SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973	DRAWING CREATED BY P.S.C.O., IT IS NOT TO BE SHOWN TO ANYONE BEING PLANNED FOR YOU BY P.S.C.O. IT IS TO BE USED, COPIED, REPRODUCED, OR EXHIBITED IN ANY FASHION.		
DATE		11.15.22	REVISION		
DWG BY		AW	DATE		
DWG NUM		B103219	BY		
SHEET		4	DATE		
707 WEST SPRING GARDEN ST • PALMVIEW, NJ • 08065 • P: 856-928-4400 • F: 856-928-4549 • WEB: <a href="http://www.philadelphiaign.com">http://www.philadelphiaign.com</a>			SUBARU Retailer Executive Manager Signature: _____		

N07 18" Illum Blue Channel Letters "EXPRESS" - 10' 0" OAL (15.0 Sq Ft)



NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

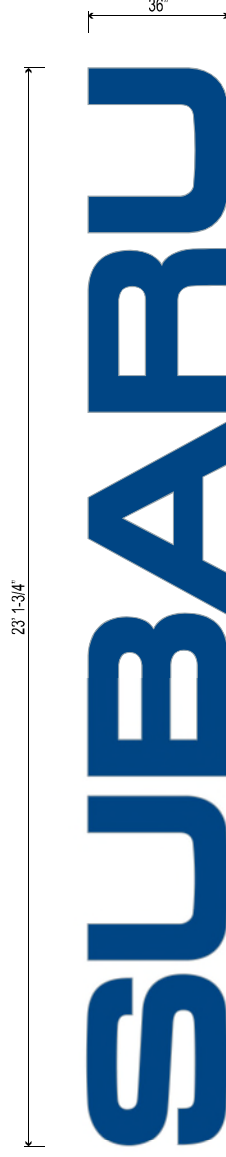
ALL SIGNS RENDERED PROPORTIONALLY TO THE ELEVATIONS										PHILADELPHIASIGN BRINGING THE WORLD'S BRANDS TO LIFE									
TITLE Subaru										DWG BY AW		DATE 11.15.22		REVISION		BY			
ADDRESS SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973										DWG NUM B103219									
										SHEET 5						Date: _____			
														SUBARU		Retailer Executive Manager Signature: _____			
																			
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N08 - REGULATORY SIGN  
Scale: 1" = 1' 0"

NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

<div>PHILADELPHIASIGN</div> <div>BRINGING THE WORLD'S BRANDS TO LIFE</div>		TITLE		Subaru	DWG BY	AW	DATE	11.15.22	REVISION	BY
		ADDRESS		SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973		DWG NUM	B103219			
							SHEET	6		
									SUBARU     Retailer Executive Manager Signature: _____ Date: _____	
				THIS IS AN ORIGINAL UNPUBLISHED DRAWING CREATED BY P.S.C.O., IT IS SUBMITTED FOR YOUR PERSONAL USE ONLY. IT IS NOT TO BE REPRODUCED OR USED IN CONNECTION WITH A PROJECT BEING PLANNED FOR YOU BY P.S.C.O. IT IS NOT TO BE SHOWN TO ANYONE ELSE. IT IS TO BE USED, COPIED, REPRODUCED, OR EXHIBITED IN ANY FASHION.						



**N02 - 53" 2019 ILLUM LOGO**  
Scale:  $\frac{3}{8}" = 1'0"$

**N03 - 36" 2019 ILLUM CHANNEL LETTERS**  
Scale: 3/8" = 1'0"



**N04 - 24" ILLUM CHANNEL LETTER**  
Scale: 3/8" = 1' 0"

**NOTE:** Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

<div> <b>PHILADELPHIASIGN</b> BRINGING THE WORLD'S BRANDS TO LIFE</div>	TITLE		Subaru	DWG BY	AW	DATE	11.15.22	REVISION	BY	
	ADDRESS		SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973			DWG NUM	B103219			
						SHEET	7			
						<div> <b>SUBARU</b> Retailer Executive Manager Signature: _____ Date: _____</div>				
<div>THIS IS AN ORIGINAL UNREVISED DRAWING CREATED BY P.S.C.O. IT IS NOT TO BE REPRODUCED OR USED IN CONNECTION WITH A PROJECT BEING PLANNED FOR YOU BY P.S.C.O. IT IS NOT TO BE SHOWN TO ANYONE OUTSIDE THE FIRM OR FOR WORK ON OTHER PROJECTS WITHOUT THE WRITTEN PERMISSION OF P.S.C.O. NOT FORBIDDEN IN ANY FASHION.</div>										




**N05 - 24" 2019 ILLUM LOGO**  
Scale: 1/2" = 1' 0"

**N06 - 18" 2019 ILLUM CHANNEL LETTERS**  
Scale: 1/2" = 1' 0"

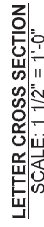
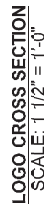


**N07 - 18" ILLUM CHANNEL LETTER**  
Scale: 1/2" = 1' 0"

NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

 PHILADELPHIASIGN BRINGING THE WORLD'S BRANDS TO LIFE	TITLE		Subaru	DWG BY	AW	DATE	11.15.22	DATE	REVISION	BY
	ADDRESS		SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973	DWG NUM		B103219	SHEET		8	
				Retailer Executive Manager Signature:			Date:			

THIS IS AN ORIGINAL UNPUBLISHED  
DRAWING CREATED BY P.S.C.O., IT  
IS NOT TO BE REPRODUCED OR  
USED IN CONNECTION WITH A PROJECT  
BEING PLANNED FOR YOU BY P.S.C.O.  
IT IS NOT TO BE SHOWN TO ANYONE  
ELSE. IT IS TO BE USED, COPIED, REPRODUCED,  
OR EXHIBITED IN ANY FASHION.



**STANDARD WALL SIGN NOTES:**

1. Sufficient Primary Circuit In Vicinity Of Sign By Others.
2. Final Primary Hook-up By Sign Installer, Where Allowed By Local Codes.
3. Sign Shall Be U.I. Listed.
4. Mounting Hardware By Sign Installer.

**STANDARD LETTER NOTES:**

1. Sufficient Primary Circuit In Vicinity Of Sign by Others.
2. Letter To Letter Wiring & Final Primary Hook-up By Sign Installer, Where Allowed By Local Codes.
3. Sign Shall Be U.L. Listed.
4. Mounting Hardware By Sign Installer.
5. Full Size drilling Template Furnished With Sign.
6. This Sign has been Designed with the Criteria as set forth in the IBC 2003 & IBC 2006. The Design Meets or Exceeds those Requirements for the Geographical Location in Which it is to be Erected.

 <b>PHILADELPHIASIGN</b> BRINGING THE WORLD'S BRANDS TO LIFE	TITLE		SUBARU		DWG BY	AW	DATE	11.15.22	REVISION	BY
	ADDRESS		SUB401763 - Courtesy Subaru of Chico				DWG NUM	B103219		
			896 East Ave				SHEET	9		
			Chico, CA 95973						 <b>SUBARU</b> Retailer Executive Manager Signature: _____ Date: _____	
THIS IS AN ORIGINAL UNPUBLISHED DOCUMENT. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM. WITHOUT PERMISSION IN WRITING FROM PHILADELPHIASIGN, NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.										

707 WEST SPRING GARDEN ST • PALMYRA, NJ • 08065 • P: 856-829-1460 • F: 856-829-8549 • WEB: <http://www.philadelphiaesign.com>



# **EXHIBIT B**



Law Offices of  
Gavin M. Hughes

HughesDealerLaw.com

3436 American River Drive, Suite 10  
Sacramento, CA 95864  
gavin@hughesdealerlaw.com  
(916) 900-8022

November 28, 2022

Lisa Gibson, Esq.  
Nelson Mullins Riley Scarborough LLP  
19191 S. Vermont Avenue, Suite 900  
Torrance, CA 90502

Via email  
lisa.gibson@nelsonmullins.com

Re: *Courtesy Subaru Permanent Facility and Sign Package*

Lisa:

Thank you for your email dated November 18, 2022. We appreciate SOA's efforts to provide the signage information. However, several other issues remain unresolved. Pursuant to the stipulation of counsel entered on the record during the November 7, 2022, California New Motor Vehicle Board Meeting, the following sets forth issues to be resolved, which, if resolved, would permit Courtesy to withdraw Petition P-463-22:

**Site-Specific Shop Drawings:** As described in the Declaration of Kimberly Wright in Support of Petition, Courtesy requires documents or drawings showing where each sign will be installed on Courtesy's permanent Subaru facility. The documents must include specifics concerning the installation locations of the signs (i.e., measurements in relation to other features of the building for specific sign locations); any sign specifications required for each sign (including electrical and structural requirements); and information concerning how the signs will be installed on the building (to allow Courtesy's contractors to have appropriate access available during the installation). As indicated in the email attached as Exhibit 2 to Ms. Wright's Declaration, Philadelphia Sign was to provide this information to SOA, which in turn was to provide the information to Courtesy.

We received the document provided with your November 18, 2022, email. This has been provided to Courtesy. We will follow up to confirm whether or not the information provided is sufficient.

**Sign Package:** As requested by Mr. Pajouh starting on March 28, 2022, Courtesy requires a full sign package for Subaru signage required to be installed at the permanent Subaru facility. It is our understanding and belief a complete Sign Package will contain Site-Specific Shop Drawings for each sign as well as lease or other agreements authorizing the installation, display, and use of

the signs. We request SOA provide all documents necessary to proceed with the procurement and installation of all signage required to be installed at the permanent facility.

**DBA Name Change Request:** Courtesy requested SOA approval to change its DBA name, proposing to drop the name Courtesy, and instead, use the DBA Subaru of Chico. Resolution of this request is also necessary to order all required signage for the permanent location.

SOA rejected Courtesy's request without explanation. By email dated October 26, 2022, Ray Smit advised he would seek to provide Mr. Pajouh an explanation for SOA's decision. This office also requested counsel look into this issue, by phone and email, on October 28, 2022. Without some explanation, it appears SOA's decision to reject the DBA change is part of SOA's ongoing refusal to cooperate with Courtesy as it pertains to its completion of and relocation to the Permanent Facility.

**Affirmation of Courtesy's Relocation to the Permanent Facility:** The Stipulated Decision, Facility Addendum between the parties, and Dealer Agreement between the parties expressly confirm Courtesy's Permanent Facility is being constructed at the location approved by SOA.

SOA called into question Courtesy's right to relocate to the Permanent Facility during the November 7 Board Meeting when counsel stated SOA has yet to approve a relocation to the Permanent Facility. There is no basis for SOA to assert Courtesy must obtain some form of further consent to relocate to the Permanent Facility upon its completion and compliance with the terms of the Stipulated Decision and Dealer Agreement.

The Stipulated Decision, paragraph 16, provides for an agreement between the parties that Courtesy "*will* relocate permanently to [the site of Permanent Facility described in parcels]" (emphasis added). Paragraph 16, agreed to and consented to by the parties, already provides for Courtesy's relocation to the Permanent Facility. The agreement refers to the Permanent Facility as the Permanent Facility because Courtesy's current Temporary Facility is just that—temporary pending completion of the Permanent Facility.

Moreover, the Facility Addendum and Amended Facility Addendum support the same conclusion. The Facility Addendum states in relevant part "WHEREAS, Dealer and Distributor *have agreed* to allow Dealer to conduct its Subaru operations at a temporary location at 896 East Avenue, Chico, CA 95926 ("Temporary Facility") until Dealer *relocates* to its permanent facility as described below" (emphasis added). Additionally, the Facility Addendum specifically states "Dealer acknowledges that the facility at the Temporary Facility is only a temporary location for Dealer's Subaru operations until Dealer's Permanent Facility is complete." These provisions further reinforce SOA has already agreed to Courtesy's relocation from the Temporary Facility to the Permanent Facility upon its completion and the Final Review Verification.

Further, the Facility Addendum at paragraph 7 makes all terms of the Facility Addendum and the Stipulated Decision incorporated by reference into the Dealer Agreement. The provisions of the Stipulated Decision providing for Courtesy's relocation to the Permanent Facility are effectively part of the Dealer Agreement based on the incorporation by reference.

Despite the foregoing provisions and other terms of the Dealer Agreement and Stipulated Decision providing for a Temporary Facility only until completion of the Permanent Facility for Courtesy's Subaru franchise, SOA argued during the Board Meeting on November 7, 2022, that it had not yet agreed to Courtesy's relocation to the Permanent Facility.

Please confirm SOA will honor the franchise terms described above providing for Courtesy's relocation to the Permanent Facility upon Final Review Verification and completion of the Permanent Facility. Please also confirm SOA will cease and desist from any further arguments it has not already consented to Courtesy's relocation to the Permanent Facility based on the terms of the Dealer Agreement and Stipulated Decision.

Pursuant to the Board's November 9 Order Continuing Board Consideration, the Board will resume consideration of the relief sought in Courtesy's Petition, on or about January 25, 2023. We are hopeful SOA will use this time to reverse its course, returning to good-faith cooperation with Courtesy. If the issues set forth above can be resolved, Courtesy would dismiss its Petition.

Thank you for your anticipated courtesy and cooperation.

Sincerely,

Law Offices of Gavin M. Hughes

A handwritten signature in blue ink, reading "Gavin Hughes", is positioned above a horizontal line.

Gavin M. Hughes  
Robert A. Mayville, Jr.

cc Amy Toboco, Esq.  
Jerry Mihanpajouh

# **EXHIBIT C**



Lisa M. Gibson  
T: 424.221.7405  
lisa.gibson@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP  
ATTORNEYS AND COUNSELORS AT LAW

19191 South Vermont Avenue, Suite 900  
Torrance, CA 90502  
T: 424.221.7400 F: 424.221.7499  
nelsonmullins.com

December 9, 2022

**Email and US Mail**

Gavin M. Hughes  
Law Offices of Gavin M. Hughes  
3436 American River Drive  
Suite 10  
Sacramento, CA 95864

RE: Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico

Dear Gavin:

Thank you for your letter dated November 28, 2022. As you know, we also met and conferred on December 1, 2022.

During that conference, I confirmed that Subaru of America, Inc. ("SOA") has provided the site-specific shop drawings, as developed by Philadelphia Signs, that were the subject of Ms. Kimberly Wright's declaration. I further renewed my request that Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico ("Courtesy") withdraw its Board petition. You replied that you would revisit this request upon confirmation by Ms. Wright that the information provided in my email to you dated November 18, 2022 was sufficient. Despite your receipt of these drawings three weeks ago, you have yet to confirm that the drawings equate to the same information set forth in Ms. Wright's declaration. I'm surprised by the delay, given that the information is exactly as requested.

Courtesy continues to improperly demand that SOA provide it with documents specific to installation of signs at an unauthorized location. As we discussed, I again confirm that no such document exists. SOA procures, owns and installs all signs. All such documents are also subject to SOA's authorization of an approved site, which is not the case with the disputed location. Courtesy, as is the case with every Subaru dealer, leases dealership signs pursuant to a Sign Lease Agreement, which they currently lease under an executed agreement for signs at the current authorized dealership location. This document has already been provided to Courtesy.

Gavin M. Hughes  
December 9, 2022  
Page 2

Finally, the requirement that SOA approve a dba change is outside the scope of the petition and yet another improper basis for threatening SOA's occupational license. SOA, as the trademark owner, has the right to approve or disapprove dba changes in its sole discretion. As such, it has not approved Courtesy's request and that is its lawful right to do. There is no contractual, statutory or other authority for Courtesy to continue to subject SOA to groundless accusations because SOA has not consented to a dba name change. The further irony of Courtesy's dba request is that it is also entirely inconsistent with Courtesy's petition accusing SOA of failing to provide site-specific information and demanding that it to incur the expense of completing sign installation for a dealership name that Courtesy wishes to change.

Once again, I renew the request that Courtesy take the good faith step to dismiss its petition. As we discussed, SOA intends to file the site-specific shop drawings with the Board should Courtesy decline to voluntarily withdraw this baseless petition. Your response by December 16, 2022 is hereby requested. By such time, it will be nearly one-month following Courtesy's receipt of the drawings.

Please let me know if you would like to discuss this further.

Best Regards,

A handwritten signature in blue ink, appearing to read "Lisa M. Gibson", with a stylized, cursive script.

Lisa M. Gibson

# **EXHIBIT D**





Law Offices of  
Gavin M. Hughes

HughesDealerLaw.com

3436 American River Drive, Suite 10  
Sacramento, CA 95864  
gavin@hughesdealerlaw.com  
(916) 900-8022

December 14, 2022

Lisa Gibson, Esq.  
Nelson Mullins Riley Scarborough LLP  
19191 S. Vermont Avenue, Suite 900  
Torrance, CA 90502

Via email  
lisa.gibson@nelsonmullins.com

Re: *Courtesy Subaru Permanent Facility and Sign Package*

Lisa:

Again, thank you for your email dated November 18, 2022, with the attached signage specifications as well as your follow up letter of December 9, 2022. However, we still need to resolve the additional items set forth in our November 28 letter, which your communications have left unaddressed.

First, the Site-Specific drawings are very close to what is required. However, the following issues remain:

- Sign NO1: The Pylon Sign has a maximum height allowance of 25 feet. This needs to be revised. It currently shows a height of 26 feet and 11 inches; and
- Sign NO4: The “Courtesy” sign on the North Elevation should be removed because Courtesy does not intend to include the name “Courtesy” on any of the buildings.

Please advise whether we can expect SOA’s cooperation on these changes.

The Board Petition was filed in response to SOA’s course of conduct evidencing its disregard for the Board’s Decision. SOA’s refusal to provide the sign specifications was premised on its errant belief the permanent location should not be built. The Board’s Decision confirmed Courtesy is not in material breach of the Stipulated Decision and Courtesy shall continue in its efforts to complete construction of the permanent facility, at the approved location. SOA appears to now take the position this location has not been approved. You even referred to the facility as one “that should not be built.” SOA’s position clearly signals it has no intention of providing the OL 124 for the permanent location upon completion and final inspection.

The withholding of the signage specifications is but one example of SOA's course of conduct wherein it demonstrates an apparent refusal to be bound by the Board's Decision. In addition to filing its writ in Alameda Superior Court, SOA's current refusal to discuss or provide any justification for its rejection of Protestant's requested DBA change is more of the same. The "Courtesy" name is a holdover from the prior ownership group. It is reasonable for Protestant to rebrand and there is no conceivable justification why SOA should object to this change. SOA knows the required signage cannot be finalized and ordered until it secures approval of the DBA change request.

You are also aware the Alameda Superior Court intends to dismiss SOA's writ, with leave to amend. Judge Markman made clear his rejection of SOA's argument that the result of the Board's Decision is subject to challenge. Instead, SOA is to be provided the opportunity to attempt to plead facts showing the Board lacked jurisdiction to issue a decision in the first place, which you know is impossible. It remains a mystery why Judge Markman's final decision has not yet been issued. Nevertheless, there is no reason to believe the final decision will be materially different from the tentative nor inconsistent with the discussion during oral argument.

We would love nothing more than to dismiss the Petition as well as put an end to the litigation in all forums. However, this is not possible until SOA recognizes the effect of the Board's final, binding, and non-appealable Decision. This can only be achieved if SOA commences to act in good faith with Courtesy by approving the requested DBA change and cooperating with regard to the ordering of signage. SOA must also acknowledge it has approved the relocation to the permanent location, conditioned on it being constructed in accordance with the design requirements SOA approved.

Please let me know if you wish to discuss.

Sincerely,

Law Offices of Gavin M. Hughes

A handwritten signature in blue ink, reading "Gavin Hughes", is written over a horizontal line.

Gavin M. Hughes  
Robert A. Mayville, Jr.

cc Amy Toboco, Esq.  
Jerry Mihanpajouh

# **EXHIBIT E**

December 16, 2022

Gavin M. Hughes  
Law Offices of Gavin M. Hughes  
3436 American River Drive  
Suite 10  
Sacramento, CA 95864

RE: Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico

Gavin:

This is in response to your letter dated December 14, 2022. Regrettably, your response is rather disappointing and premised on several false narratives. It also makes demands upon SOA that are neither the subject of the pending petition nor the Kimberly Wright declaration.

Subaru of America, Inc. ("SOA") has provided Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico ("Courtesy") with exactly the information requested. Your response, however, seeks to exact commendations from SOA for items that are either non-existent or unapproved. We have provided the information set forth in the Kimberly Wright declaration and, as a result, we will be filing such information with the Board in order to notify its public members of SOA's full cooperation in this matter.

Given the degree to which Courtesy continues to fabricate events and requirements, however, it is incumbent upon me to also respond to the other issues raised in your letter. In particular, the accusation that SOA did not provide Courtesy with sign specifications has been proven false. Structural and electrical sign specifications were provided over four years ago. Additional structural and electrical sign specifications were provided to you in July, 2021. Finally, days before the November 7<sup>th</sup> Board hearing when additional information was demanded, I conferred with you about this request and, rather than work it out amicably between the parties, Courtesy chose to continue its unjustified petition.

Despite your repetitive pleas for SOA's "cooperation", on its part, Courtesy has only shown SOA the antithesis of good faith cooperation. In contrast, SOA has made several attempts to provide information while maintaining its lawful right to appeal the jurisdictional issues raised by the ALJ's decision on the Stipulated Decision. I cannot say that it would resolve all disputes between the parties, but dismissing this improper petition

would demonstrate that Courtesy is also interested in good faith cooperation. On the other hand, continuing to threaten SOA with accusations that Courtesy knows to be false is not furthering any cause.

Pylon signs are owned, manufactured, and installed by SOA and its vendors. The SOA vendor also makes application for and obtains all permits necessary for the installation of these signs. Retailers are not responsible for permitting or installing pylon signs. Furthermore, construction of any dealership facility is unrelated to the ultimate height of the pylon. As a result, the information necessary for the purposes of any electrical specifications for the pylon has been provided. Courtesy's demand for SOA to design a customized pylon is not necessary for any facility construction and was not the subject of Kimberly Wright declaration. In fact, there is a complete absence of information about pylon signage in the Kimberly Wright whatsoever.

There are several sizes for pylon signs as you can see in the DID materials provided to Courtesy over four years ago. I have attached an extract demonstrating the standard array of pylon signage for SOA. SOA has already provided Courtesy with complete structural and electrical specifications for three sizes of pylons: 21' even, 25'9" and 26'11". Courtesy received the information on the 21' pylon sign in the DID Binder. On July 30, 2021 (seventeen months ago), I sent you the information for the 25' 9" pylon sign. Finally, last month Courtesy was provided information on the largest pylon measuring 26'11". Courtesy is demanding that SOA provide it with non-standard sign specifications (25'even) that do not exist. In agreeing to provide the information in the Kimberly Wright declaration, SOA did not commit to undertaking customization of sign specifications that would require creating new drawings and approval by state engineering authorities.

SOA also did not commit to approving dba name changes. I have already told you (both verbally and in writing) that SOA will not approve the dba name change. The current naming convention for Courtesy meets SOA's requirements and SOA declines to approve any change to the current compliant dba name. Moreover, Courtesy does not have the right to use SOA trademarks without SOA's consent. The use of a dba without 'Courtesy Subaru' in its name is without SOA's consent. Any failure to brand an authorized Subaru facility in compliance with brand identification requirements or use a non-approved dba with the Subaru tradename is a breach of the Subaru Dealer Agreement and a violation of federal trademark laws. This demand is moreover outside the scope of the petition and is being improperly raised as a rationale for pursuing a groundless attack on SOA.

Finally, the remainder of the reasons given for maintaining a false petition against SOA are also unfounded. Specifically, the "SOA fails to recognize" the Board's (sic) decision as providing some rationale for Courtesy to threaten SOA. The ALJ's decision has nothing to do with issuing an OL124, approving a relocation or even, remarkably, completing a facility. This narrative is intentionally misleading and being used to improperly influence the Board into an action that lacks any statutory authority for them to address.

Gavin M. Hughes  
December 16, 2022  
Page 3

Finally, SOA has the right to appeal the lack of jurisdiction for the ALJ's decision and, as you recognize, the writ will go forward amended or otherwise. Judge Markman has not issued any final decision on either the demurrer or SOA's motion to compel and you are wrong to assume how the court will ultimately rule. During oral argument, the court indicated a strong desire to revisit its tentative ruling based on further consideration of *BMW v. NMVB*. I believe such review will result in the court revising its initial inclination to require SOA to amend the writ. Until the court finally rules, therefore, everything you have stated about these issues is pure conjecture.

Best regards,

A handwritten signature in blue ink, appearing to read "Lisa M. Gibson", with a stylized, cursive script.

Lisa M. Gibson

**PROOF OF SERVICE  
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Nelson Mullins Riley & Scarborough LLP and my business address is 19191 South Vermont Avenue, Suite 900, Torrance, CA 90502.

On December 28, 2022 I served the foregoing document entitled

**NOTICE OF MOTION AND MOTION OF RESPONDENT SUBARU OF AMERICA, INC.'S FOR NEW MOTOR VEHICLE BOARD TO CONSIDER THE SUPPLEMENTAL DECLARATION OF RAYMOND SMIT AND SIGN SPECIFICATIONS REQUESTED BY PETITIONER; DECLARATION OF LISA M. GIBSON IN SUPPORT THEREOF**

on all the appearing and/or interested parties in this action by placing a true copy thereof as follows:

**LAW OFFICES OF GAVIN M. HUGHES**

Gavin M. Hughes  
Robert A. Mayville, Jr.  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
T: (916) 900-8022  
E-mail: [gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)  
[mayville@hughesdealerlaw.com](mailto:mayville@hughesdealerlaw.com)

***Counsel for Petitioner***

**NEW MOTOR VEHICLE BOARD**

1507 21st Street, Suite 330  
Sacramento, CA 95811  
Email: [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov)  
[robin.parker@nmvb.ca.gov](mailto:robin.parker@nmvb.ca.gov)  
[danielle.phomsopha@nmvb.ca.gov](mailto:danielle.phomsopha@nmvb.ca.gov)

**[X] BY ELECTRONIC TRANSMISSION:** I transmitted a PDF version of this document by electronic mail to the party(s) identified above and/or on the attached service list using the email address(es) indicated.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on December 28, 2022 at Torrance, California.

*Maria Domingo*  
Maria Domingo

VIA EMAIL

New Motor Vehicle Board

Received  
12-28-22

**FILED**

New Motor Vehicle Board

Date: 12-28-22

By: RPP

1 Lisa M. Gibson (SBN 194841)  
2 Amy M. Toboco (SBN 149508)  
3 NELSON, MULLINS, RILEY &  
4 SCARBOROUGH  
5 19191 South Vermont Avenue, Suite 900  
6 Torrance, CA 90502  
7 Telephone: 424.221.7400  
8 Facsimile: 424.221.7499  
9 Email: [lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)  
10 [amy.toboco@nelsonmullins.com](mailto:amy.toboco@nelsonmullins.com)

11 Attorneys for Respondent  
12 SUBARU OF AMERICA, INC.

13 STATE OF CALIFORNIA  
14 NEW MOTOR VEHICLE BOARD

15 In the Matter of the Petition of:

16 COURTESY AUTOMOTIVE GROUP, INC.  
17 dba COURTESY SUBARU OF CHICO,

18 Petitioner,

19 v.

20 SUBARU OF AMERICA, INC.,

21 Respondent.

Petition No. P-463-22

**SUPPLEMENTAL DECLARATION OF  
RAYMOND SMIT IN SUPPORT OF  
MOTION OF RESPONDENT SUBARU  
OF AMERICA, INC.'S FOR NEW  
MOTOR VEHICLE BOARD TO  
CONSIDER THE SUPPLEMENTAL  
DECLARATION OF RAYMOND SMIT  
AND SIGN SPECIFICATIONS  
REQUESTED BY PETITIONER IN  
SUPPORT OF OPPOSITION TO  
PETITION**

Board Meeting: January 25, 2023



1 I, Raymond Smit, declare and state as follows;

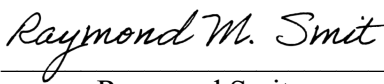
2 1. I am employed by Subaru of America, Inc. ("SOA") as the Zone Retailer Development  
3 Manager for the San Francisco Zone of SOA. I have held this position since February, 2018. As  
4 part of my responsibilities, I coordinate design intents performed at SOA retailers in the San  
5 Francisco Zone and regularly receive the design intent deliverable ("DID") binders at the Zone  
6 offices located in Pleasanton, California. My responsibilities also include processing dealer  
7 agreement changes for retailers in the Zone in coordination with SOA's Western Region in Denver,  
8 Colorado and National headquarters in Camden, New Jersey. I make this Supplemental Declaration  
9 in support of SOA's Response to the Petition filed by Courtesy Automotive Group, Inc. dba  
10 Courtesy Subaru of Chico ("Courtesy"). I have personal knowledge of the facts set forth in this  
11 declaration and, if called as a witness, could and would testify competently to such facts under oath.

12 2. On or about October 28, 2022, I learned that counsel for Courtesy had requested  
13 additional information which it contends was missing from the sign specifications previously  
14 provided to Courtesy in the design intent deliverable binder ("DID binder") in March, 2018 and had  
15 filed the Declaration of Kimberly Wright ("Wright Declaration") to address the allegedly missing  
16 information. Thereafter, I contacted Philadelphia Sign Company, the vendor that is responsible for  
17 the Subaru Sign program, and requested that they provide additional specifications and information  
18 similar to that requested in the Wright Declaration in order to provide the information to Courtesy.

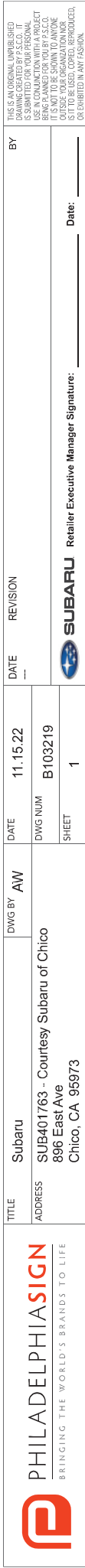
19 3. Attached as Exhibit "A" to this declaration is a true and accurate copy of the  
20 supplemental information that was provided by Philadelphia Sign in order to respond to Courtesy's  
21 request for additional information. I provided this information to Lisa M. Gibson, counsel for SOA,  
22 for transmission to counsel for Courtesy.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct.

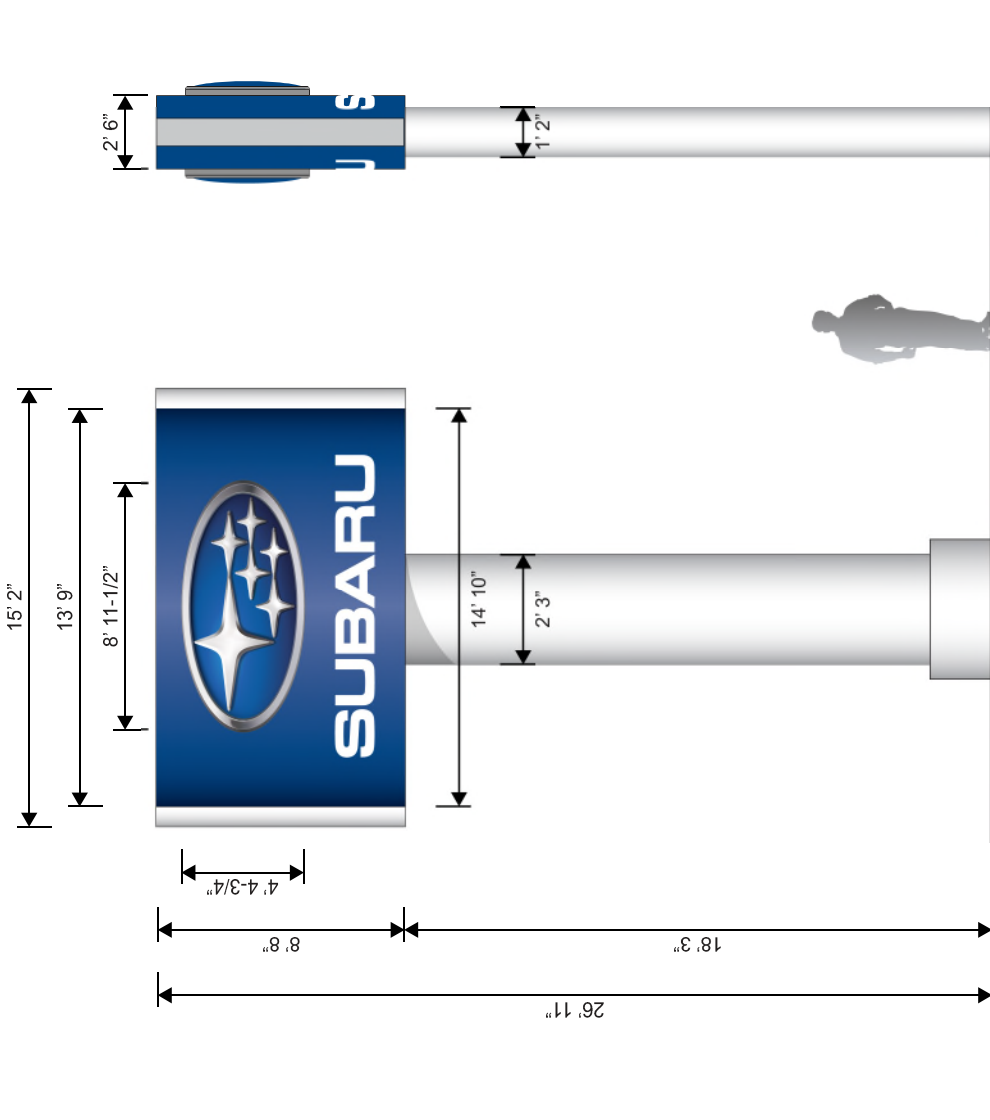
25 Executed on December 28 2022, at Pleasanton, California.

26   
27 \_\_\_\_\_  
28 Raymond Smit

# **EXHIBIT A**


[illegible]

N01 P120 2019 Double Faced Illuminated Pylon - 26' 11" OAH



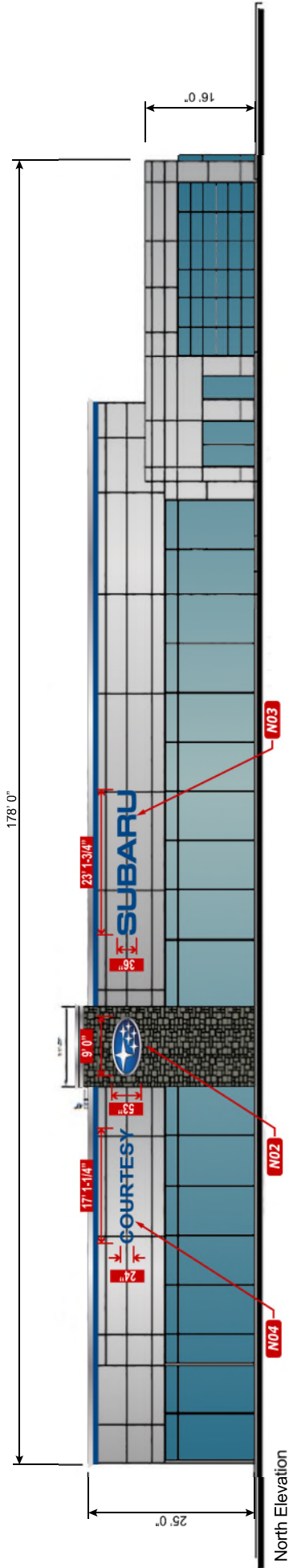
N01 - P120D/E ILLUM PYLON

Scale: 1/4" = 1' 0"

 <b>PHILADELPHIASIGN</b> BRINGING THE WORLD'S BRANDS TO LIFE		TITLE Subaru					DWG BY AW		DATE 11.15.22		REVISION		BY	
		ADDRESS SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973		DWG NUM B103219		SHEET 2		DATE ---		REVISION		BY		
										SUBARU		Retailer Executive Manager Signature: _____ Date: _____		
												THIS IS AN ORIGINAL UNPUBLISHED DRAWING CREATED BY P.S.C.O. IT IS SUBMITTED FOR YOUR PERSONAL USE ONLY. NO PART OF THIS DOCUMENT SHALL BE REPRODUCED OR COPIED BEING LENDED FOR YOUR P.S.C.O. IT IS NOT TO BE SHOWN TO ANYONE OUTSIDE YOUR ORGANIZATION NOR IS IT TO BE USED, COPIED, REPRODUCED, OR EXHIBITED IN ANY MANNER.		

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IT IS NOT TO BE SHOWN TO ANYONE  
OTHER THAN THE PERSON FOR WHOM  
IT IS TO BE USED. COPIES, REPRODUCED,  
OR EXHIBITED IN ANY FASHION.

- N02 53" 2019 Illum Logo - 53"h x 9' 0"w (39.8 Sq Ft)
- N03 36" 2019 Illum Blue Channel Letters "SUBARU" - 23' 1-3/4" OAL (69.4 Sq Ft)
- N04 24" Illum Blue Channel Letters "COURTESY" - 17' 1-1/4" OAL (34.2 Sq Ft)



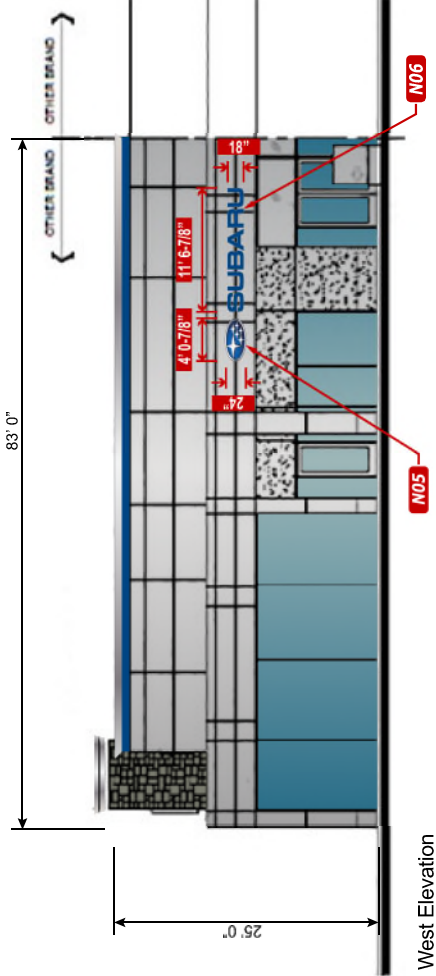
NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

ALL SIGNS RENDERED PROPORTIONALLY TO THE ELEVATIONS			PHILADELPHIASIGN BRINGING THE WORLD'S BRANDS TO LIFE		
TITLE		Subaru	BY		
ADDRESS		SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973	DATE		
			11.15.22		
			REVISION		
			---		
			DWG NUM		
			B103219		
			SHEET		
			3		
			Date:		
			Retailer Executive Manager Signature:		
			SUBARU		
			OR EXHIBIT IN ANY FASHION.		

- N05

24" 2019 Illum Logo - 24"h x 4' 0-7/8"w (8.1 Sq Ft)
- N06

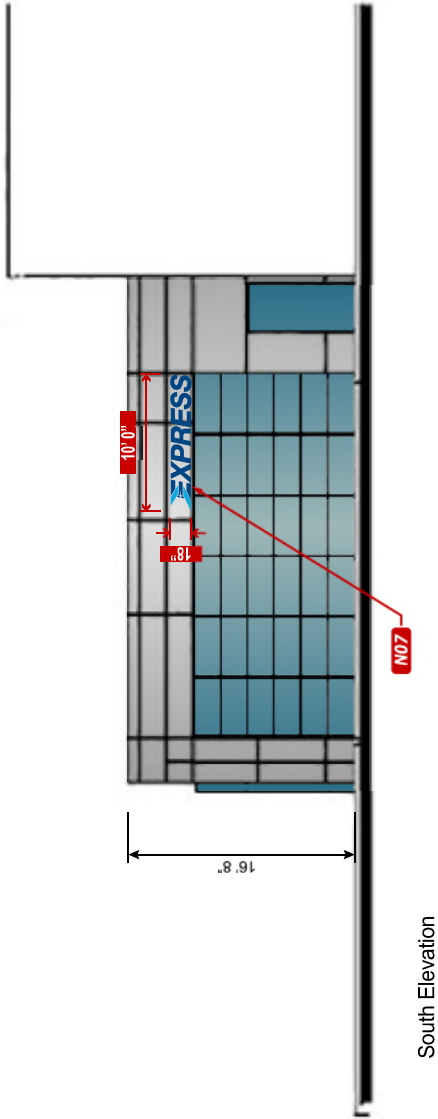
18" 2019 Illum Blue Channel Letters "SUBARU" - 11' 6-7/8" OAL (17.3 Sq Ft)



NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

<div>PHILADELPHIASIGN</div> <div>BRINGING THE WORLD'S BRANDS TO LIFE</div>		TITLE		SUBaru		DWG BY		AW		DATE		11.15.22		REVISION		BY	
		ADDRESS		SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973						DWG NUM		B103219					
										SHEET		4					
														SUBARU		Retailer Executive Manager Signature: _____ Date: _____	
																THIS IS AN ORIGINAL UNPUBLISHED DRAWING CREATED BY P.S.C.O. IT IS SUBMITTED FOR YOUR PERSONAL USE ONLY. IT IS NOT TO BE SHOWN TO ANYONE ELSE, COPIED, REPRODUCED OR EXHIBITED IN ANY FASHION.	

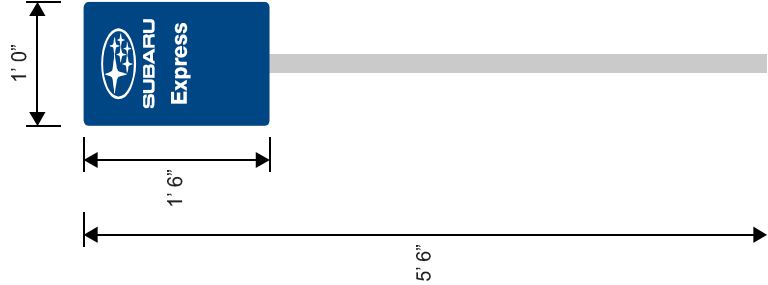
N07 18" Illum Blue Channel Letters "EXPRESS" - 10' 0" OAL (15.0 Sq Ft)



NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

ALL SIGNS RENDERED PROPORTIONALLY TO THE ELEVATIONS										PHILADELPHIASIGN										SUBARU										THIS IS AN ORIGINAL UNPUBLISHED DRAWING CREATED BY P.S.C.O., IT IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN CONSENT OF P.S.C.O. IT IS NOT TO BE SHOWN TO ANYONE ELSE, AND IT IS TO BE USED, COPIED, REPRODUCED, OR EXHIBITED IN ANY FASHION.									
TITLE										Subaru										DATE										BY									
ADDRESS										SUB401763 - Courtesy Subaru of Chico										11.15.22																			
										896 East Ave										B103219																			
										Chico, CA 95973										SHEET 5										Date: _____									
																														Retailer Executive Manager Signature: _____									

N08      2019 Single Faced Non-Illuminated Pole Mounted Regulatory Sign - 1' 6"h x 1' 0"w    (1.5 Sq Ft)

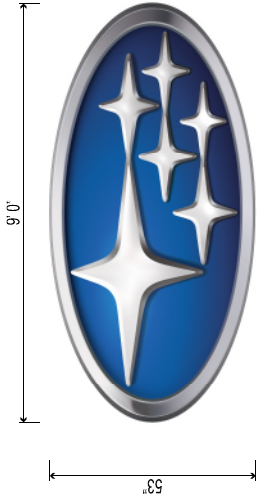


**N08 - REGULATORY SIGN**  
Scale: 1" = 1'0"

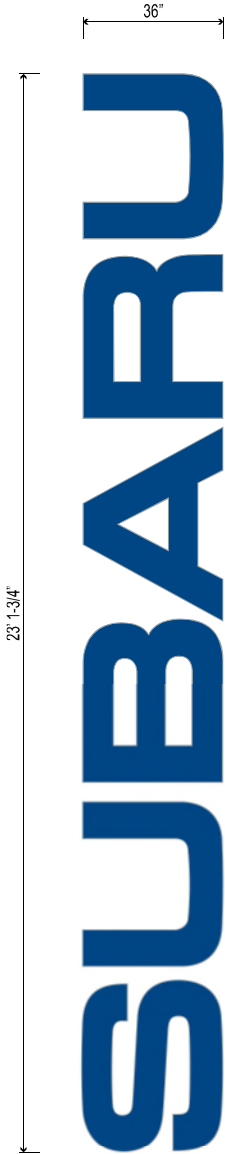
NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

<div></div> <div>PHILADELPHIASIGN</div> <div>BRINGING THE WORLD'S BRANDS TO LIFE</div>		TITLE		SUBaru		DWG BY		AW		DATE		11.15.22		REVISION		BY	
		ADDRESS		SUB401763 - Courtesy Subaru of Chico		896 East Ave		Chico, CA 95973		DWG NUM		B103219					
										SHEET		6					
<div> SUBARU Retailer Executive Manager Signature: _____ Date: _____</div> <div>THIS IS AN ORIGINAL UNPUBLISHED DRAWING CREATED BY P.S.C.O. IT IS SUBMITTED FOR YOUR PERSONAL USE ONLY AND IS NOT TO BE REPRODUCED OR BEING PLANNED FOR YOU BY P.S.C.O. IT IS NOT TO BE SHOWN TO ANYONE ELSE WITHOUT THE WRITTEN PERMISSION OF P.S.C.O. IT IS TO BE USED, COPIED, REPRODUCED, OR EXHIBITED IN ANY FASHION.</div>																	





**N02 - 53" 2019 ILLUM LOGO**  
Scale: 3/8" = 1' 0"



**N03 - 36" 2019 ILLUM CHANNEL LETTERS**  
Scale: 3/8" = 1' 0"



**N04 - 24" ILLUM CHANNEL LETTER**  
Scale: 3/8" = 1' 0"

NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

<div><div>PHILADELPHIASIGN</div><div>BRINGING THE WORLD'S BRANDS TO LIFE</div></div>										TITLE		Subaru		DWG BY		AW		DATE		11.15.22		DATE		REVISION		BY	
										ADDRESS		SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973															
																DWG NUM		B103219									
																SHEET		7									
										Retailer Executive Manager Signature: _____										Date: _____							
										SUBARU																	
										THIS IS AN ORIGINAL UNPUBLISHED DRAWING CREATED BY P.S.C.O., IT IS SUBMITTED FOR YOUR PERSONAL USE IN CONNECTION WITH A PROJECT PLANNED FOR YOU BY P.S.C.O. IT IS NOT TO BE SHOWN TO ANYONE OUTSIDE YOUR ORGANIZATION NOR IS IT TO BE USED, COPIED, REPRODUCED, OR EXHIBITED IN ANY FASHION.																	



**N05 - 24" 2019 ILLUM LOGO**  
Scale: 1/2" = 1' 0"

**N06 - 18" 2019 ILLUM CHANNEL LETTERS**  
Scale: 1/2" = 1' 0"

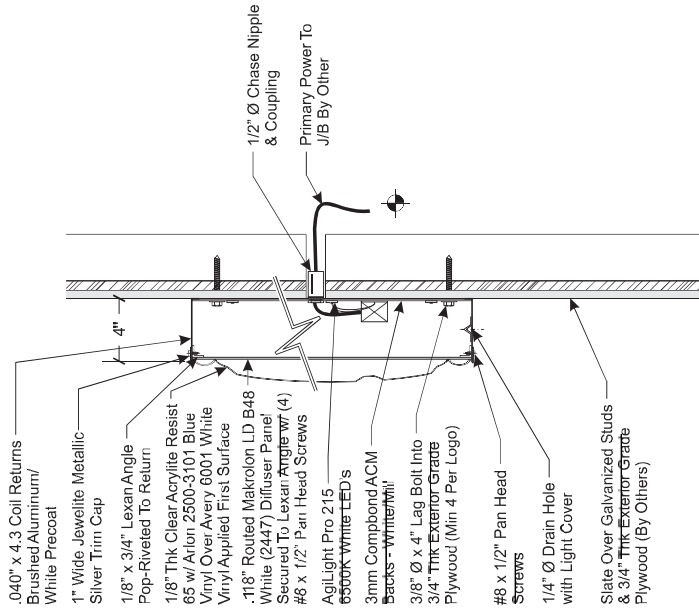


**N07 - 18" ILLUM CHANNEL LETTER**  
Scale: 1/2" = 1' 0"

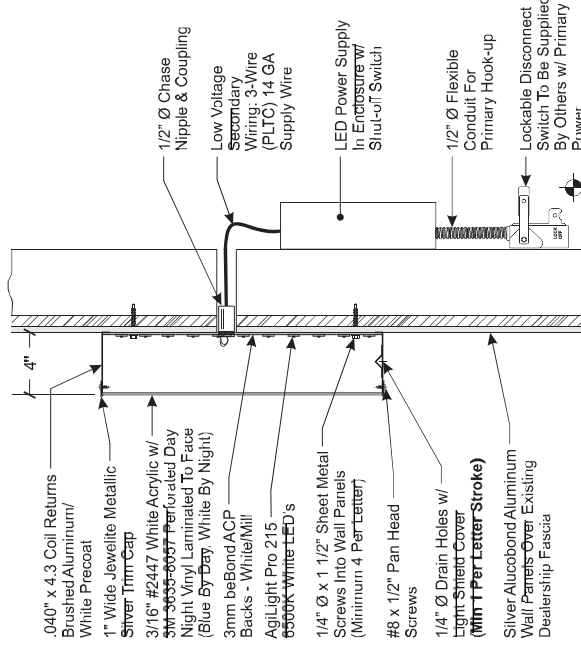
NOTE: Interior wireways &/or exterior parapet raceways are an extra cost where applicable to conceal or otherwise house letter to letter wiring & power supplies for illuminated letters &/or logos.

 <b>PHILADELPHIASIGN</b> BRINGING THE WORLD'S BRANDS TO LIFE	TITLE	Subaru	DWG BY	AW	DATE	11.15.22	REVISION		BY	
	ADDRESS	SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973	DWG NUM	B103219						
			SHEET	8						
		SUBARU		Retailer Executive Manager Signature:		Date:				

THIS IS AN ORIGINAL UNPUBLISHED  
DRAWING CREATED BY P.S.C.O., IT  
IS NOT TO BE REPRODUCED OR  
USED IN ANY MANNER WITHOUT  
BEING PLANNED FOR YOU BY P.S.C.O.  
IT IS NOT TO BE SHOWN TO ANYONE  
ELSE. IT IS TO BE USED, REPRODUCED,  
OR EXHIBITED IN ANY FASHION.



LOGO CROSS SECTION  
SCALE: 1 1/2" = 1'-0"




LETTER CROSS SECTION  
SCALE: 1 1/2" = 1'-0"

**ELECTRICAL LOAD**  
2.0 Amps @ 120 Volts  
**ELECTRICAL REQ'MTS**  
(1) 20 Amp/120 Volt Circuit

- STANDARD WALL SIGN NOTES:**
1. Sufficient Primary Circuit In Vicinity Of Sign By Others.
  2. Final Primary Hook-up By Sign Installer, Where Allowed By Local Codes.
  3. Sign Shall Be U.L.L. Listed.
  4. Mounting Hardware By Sign Installer.

**ELECTRICAL LOAD**  
3.0 Amps @ 120 Volts  
**ELECTRICAL REQ'MTS**  
(1) 20 Amp/120 Volt Circuit

- STANDARD LETTER NOTES:**
1. Sufficient Primary Circuit In Vicinity Of Sign By Others.
  2. Letter To Letter Wiring & Final Primary Hook-up By Sign Installer, Where Allowed By Local Codes.
  3. Sign Shall Be U.L.L. Listed.
  4. Mounting Hardware By Sign Installer.
  5. Full Size Drilling Template Furnished With Sign.
  6. This Sign has been designed to meet the Criteria as set forth in IBC 2003 & IBC 2006. The Design Meets or Exceeds those Requirements for the Geographical Location in Which it is to be Erected.

 <b>PHILADELPHIASIGN</b> BRINGING THE WORLD'S BRANDS TO LIFE	TITLE	Subaru	DWG BY	AW	DATE	11.15.22	REVISION	BY
	ADDRESS	SUB401763 - Courtesy Subaru of Chico 896 East Ave Chico, CA 95973	DWG NUM	B103219	DATE	---		
			SHEET	9				Date: _____
								Retailer Executive Manager Signature: _____

**PROOF OF SERVICE  
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Nelson Mullins Riley & Scarborough LLP and my business address is 19191 South Vermont Avenue, Suite 900, Torrance, CA 90502.

On December 28, 2022, I served the foregoing document entitled

**SUPPLEMENTAL DECLARATION OF RAYMOND SMIT IN SUPPORT OF MOTION OF RESPONDENT SUBARU OF AMERICA, INC.'S FOR NEW MOTOR VEHICLE BOARD TO CONSIDER THE SUPPLEMENTAL DECLARATION OF RAYMOND SMIT AND SIGN SPECIFICATIONS REQUESTED BY PETITIONER IN SUPPORT OF OPPOSITION TO PETITION**

on all the appearing and/or interested parties in this action by placing a true copy thereof as follows:

**LAW OFFICES OF GAVIN M. HUGHES**

Gavin M. Hughes  
Robert A. Mayville, Jr.  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
T: (916) 900-8022  
E-mail: [gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)  
[mayville@hughesdealerlaw.com](mailto:mayville@hughesdealerlaw.com)  
*Counsel for Petitioner*

**NEW MOTOR VEHICLE BOARD**

1507 21st Street, Suite 330  
Sacramento, CA 95811  
Email: [nm vb@nm vb.ca.gov](mailto:nm vb@nm vb.ca.gov)  
[robin.parker@nm vb.ca.gov](mailto:robin.parker@nm vb.ca.gov)  
[danielle.phomsopha@nm vb.ca.gov](mailto:danielle.phomsopha@nm vb.ca.gov)

**[X] BY ELECTRONIC TRANSMISSION:** I transmitted a PDF version of this document by electronic mail to the party(s) identified above and/or on the attached service list using the email address(es) indicated.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on December 28, 2022 at Torrance, California.

*Maria Domingo*  
Maria Domingo

VIA EMAIL

**FILED**

New Motor Vehicle Board

Date: 1-6-23

By: dp

New Motor Vehicle Board

**Received**  
**January 6, 2023**

LAW OFFICES OF GAVIN M. HUGHES  
GAVIN M. HUGHES State Bar #242119  
ROBERT A. MAYVILLE, JR. State Bar #311069  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
Telephone: (916) 900-8022  
E-mail: gavin@hughesdealerlaw.com

ATTORNEYS FOR PETITIONER

**STATE OF CALIFORNIA**

**NEW MOTOR VEHICLE BOARD**

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, Inc., dba  
COURTESY SUBARU OF CHICO,

Petitioner,

v.

SUBARU OF AMERICA, INC.,

Respondent.

**PETITION NO: P-463-22**

**NOTICE OF MOTION AND MOTION  
FOR THE CALIFORNIA NEW MOTOR  
VEHICLE BOARD TO CONSIDER THE  
DECLARATION OF SHAHRAM  
MIHANPAJOUH (JERRY PAJOUH) IN  
SUPPORT OF PETITION**

**BOARD MEETING ON PETITION:**  
January 25, 2023, at 9:30 AM PT  
Via Zoom


1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Petitioner, Courtesy Automotive Group, Inc., dba Courtesy  
3 Subaru of Chico ("Courtesy"), will and hereby does make a motion pursuant to Title 13 of the California  
4 Code of Regulations section 561 for the California New Motor Vehicle Board ("Board") to consider the  
5 Declaration of Shahram Mihanpajouh (Jerry Pajouh) in Support of Petition ("Pajouh Decl.") filed  
6 herewith when ruling on Petitioner's Petition during the January 25, 2023, Board Meeting concerning  
7 Courtesy's Petition. In addition to being based on Title 13 of the California Code of Regulations section  
8 561, Courtesy requests the Board consider the Pajouh Declaration in its reasonable discretion.

9 Courtesy makes this motion based on this Notice of Motion and Motion, the below Memorandum  
10 of Points and Authorities, the Pajouh Declaration filed herewith and dated January 6, 2023, and the  
11 exhibits thereto, the papers on file herein, and such further oral and documentary evidence or argument  
12 as may be presented at the meeting.

13  
14  
15 Dated: January 6, 2023

LAW OFFICES OF  
GAVIN M. HUGHES

17 By   
18 Gavin M. Hughes  
19 Robert A. Mayville, Jr.  
20 Attorneys for Petitioner  
21  
22  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. INTRODUCTION

3 Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico (“Courtesy”) brings this Motion  
4 to request the California New Motor Vehicle Board (“Board”) consider the concurrently filed  
5 Declaration of Shahram Mihanpajouh (Jerry Pajouh) in Support of Petition (“Pajouh Decl.”). Courtesy  
6 brings this Motion in response to Respondent, Subaru of America, Inc.’s (“SOA”), Motion for New  
7 Motor Vehicle Board to Consider the Supplemental Declaration of Raymond Smit and Sign  
8 Specifications Requested by Petitioner in Support of Opposition to Petition (“SOA’s Motion”), the  
9 Supplemental Declaration of Raymond Smit in Support of Respondent Subaru of America, Inc.’s  
10 Response to Petition (“Supplemental Smit Decl.”) and the subsequent communications between the  
11 parties following the Board’s November 7, 2022, General Meeting.

12 Despite good faith efforts on the part of Courtesy to resolve the Petition, SOA has persisted in  
13 its brazen refusal to abide by the Stipulated Decision and Confidential Decision in Protest No. PR-2570-  
14 18 (attached to the [Unredacted] Petition as part of Exhibit 1 and Exhibit 2, respectively). While SOA  
15 provided Courtesy additional sign specifications after the Board’s November 7, 2022, General Meeting,  
16 SOA unreasonably and without any explanation refuses to approve a DBA name change request made  
17 by Courtesy. (*See* Pajouh Decl. at ¶ 19.) The DBA name change request is directly related to SOA’s  
18 failure to provide sign specifications because the signs Courtesy ultimately seeks on its Subaru building  
19 will be for “Subaru of Chico” and not “Courtesy Subaru of Chico.” This change was discussed long  
20 ago without any prior objection from SOA. In addition, SOA refuses to confirm it has approved  
21 Courtesy’s relocation to its Permanent Facility. As SOA’s counsel repeatedly stated during the  
22 November 7, 2022, Board Meeting, SOA maintains the unsupported position that it has allegedly not  
23 approved Courtesy’s relocation to the Permanent Facility.

24 SOA refuses to approve the benign DBA name change requested by Courtesy, SOA refuses to  
25 provide any reason for SOA’s refusal to approve the DBA name change, and SOA refuses to  
26 acknowledge it has approved Courtesy’s relocation to the Permanent Facility pending construction and  
27 a final inspection require Courtesy maintain its Petition. SOA’s course of conduct is intended to prevent  
28 Courtesy’s ability to relocate to the Permanent Facility, as provided for in the Stipulated Decision and

1 reaffirmed by the Confidential Decision. SOA chooses to ignore the effect of the Confidential Decision  
2 in an effort to require Courtesy remain in the Temporary Facility even after Courtesy's construction of  
3 the Permanent Facility.

4 Courtesy requests the Board consider the Pajouh Declaration submitted herewith during the  
5 January 25, 2023, Board Meeting when reaching a decision on Courtesy's Petition. The Pajouh  
6 Declaration further supports why the Board should order the DMV to investigate SOA's ongoing bad  
7 faith treatment of Courtesy and to determine whether SOA's conduct violates orders of the Board with  
8 respect to the Stipulated Decision and Confidential Decision in an unlawful effort to force the sale or  
9 termination of Courtesy's Subaru franchise.

## 10 II. PROCEDURAL AND FACTUAL BACKGROUND

11 On June 20, 2022, Courtesy filed its Petition requesting the Board order the DMV to investigate  
12 SOA's violations of Vehicle Code sections 3060 and 11713.3. SOA's violations are based on SOA's  
13 ongoing efforts to directly or indirectly "modify, replace, enter into, relocate, terminate, or refuse to  
14 renew a franchise in violation of Article 4 (commencing with Section 3060) or Article 5 (commencing  
15 with Section 3070) of Chapter 6 of Division 2." (Cal. Veh. Code, § 11713.3 subd. (l).) SOA is  
16 ultimately seeking the de facto termination of Courtesy's Subaru franchise without complying with  
17 Section 3060 subdivision (a) and/or unilaterally modifying Courtesy's franchise in violation of Section  
18 3060 subdivision (b).

19 As stated in the Petition: "Here, SOA violates Section 11713.3 subdivision (l) by treating  
20 Courtesy's Dealer Agreement and the Stipulated Decision as terminated and modifying Courtesy's  
21 Dealer Agreement by refusing to cooperate in good-faith with Courtesy concerning ongoing efforts to  
22 complete the Permanent Facility, pursuant to the terms of each agreement." (Petition at ¶ 42.)

23 In addition, Courtesy's Petition alleged SOA violated Vehicle Code sections 11713.3(d) which  
24 makes it unlawful for SOA to directly or indirectly "prevent or require, or attempt to prevent or require,  
25 by contract or otherwise, a dealer, or an officer, partner, or stockholder of a dealership, the sale or  
26 transfer of a part of the interest of any of them to another person." (Cal. Veh. Code, § 11713.3, subd.  
27 (d)(1).) SOA is attempting, by contract or otherwise, to force Courtesy to sell its Subaru franchise or  
28 face continued bad faith conduct from SOA intended to force the de facto termination of the franchise.



1 California Vehicle Code section 11705 permits the DMV after notice and hearing to suspend or  
2 revoke the license issued to a distributor upon determining the licensee has “[v]iolated any provision of  
3 Article 1 (commencing with Section 11700 [and including Section 11713.3]) of, or Article 1.1  
4 (commencing with Section 11750) of, Chapter 4 of Division 5 or any rule or regulation adopted pursuant  
5 thereto.” (Cal. Veh. Code, § 11705, subd. (a)(10).) As a result, both violations are within the Board and  
6 the DMV’s jurisdiction. The Board’s jurisdiction is also underscored as a matter of policy—if SOA is  
7 seeking the de facto termination of Courtesy, the Board has jurisdiction to protect the Subaru consumers  
8 in Chico from losing a local Subaru dealer without an order of the Board terminating Courtesy’s  
9 franchise.

10 The conduct demonstrating SOA’s intent to ignore the Board’s Stipulated Decision and  
11 Confidential Decision as alleged in the Petition included SOA’s refusal to provide Courtesy electrical  
12 and structural specifications for Subaru brand signage and also refusing to permit Courtesy to order the  
13 permanent signage required to be installed at the new facility (“Sign Package”). By refusing to provide  
14 the Sign Package, SOA’s conduct demonstrated it would use the ensuing delays to prevent Courtesy  
15 from securing final SOA approval and likely forming the basis for SOA’s refusal to provide the OL 124  
16 form required for DMV approval of the new facility location. (*See* Petition at ¶¶ 6, 31, 34, and 52.)

17 On July 20, 2022, SOA filed its Verified Response to Petition (“SOA’s Response”). Among  
18 other arguments, SOA argued it provided Courtesy the sign information in approximately March 2018  
19 in the form of a design intent deliverable (“DID”) package.

20 After Courtesy reviewed SOA’s Response and the DID package submitted therewith with  
21 Courtesy’s project engineer, Kimberly Wright, Ms. Wright maintained the DID package did not provide  
22 sufficient information for Courtesy’s ongoing construction of the Permanent Facility. Courtesy filed a  
23 Motion for the Board to consider a Declaration from Ms. Wright concerning the DID package and  
24 Courtesy’s sign package needs on October 28, 2022.

25 During the Board’s Meeting on November 7, 2022, the Board heard argument on Courtesy’s  
26 Petition, Courtesy’s Motion for the California New Motor Vehicle Board to Consider the Declaration  
27 of Kimberly Wright in Support of Petition, SOA’s Request for Official Notice in Support of Verified  
28 Response to Petition, and Courtesy’s Motion to File Unredacted Petition Under Seal. The Board granted

1 Courtesy's Motions and SOA's Request. During argument concerning the Petition, the Board proposed  
2 the parties continue the hearing on the Petition to the Board's January meeting to have the opportunity  
3 to conference and share information in an effort to ultimately resolve the Petition. The Parties agreed.

4 Following the November Board Meeting, SOA provided Courtesy additional sign specification  
5 information by email on Friday, November 18, 2022. On November 28, 2022, Courtesy provided SOA  
6 a letter indicating it would review the information SOA provided. Courtesy also requested SOA  
7 approve its DBA name change request. Despite an email from SOA's Ray Smit dated October 26, 2022,  
8 advising he would seek an explanation for why Courtesy's DBA name change request was rejected,  
9 SOA refused to provide any explanation for the rejected DBA name change from "Courtesy Subaru of  
10 Chico" to "Subaru of Chico." Finally, Courtesy requested SOA affirm that it had agreed to Courtesy's  
11 relocation to the Permanent Facility following its completion and final inspection. (See SOA's Motion,  
12 Exhibit B.)

13 Following further communications between the parties, SOA refused to approve or provide any  
14 explanation for its refusal to approve the DBA name change request. SOA also refused to affirm it  
15 would approve the relocation of Courtesy to the Permanent Facility upon its completion and final  
16 inspection.

17 Concerning the sign information SOA provided, Courtesy confirmed it is sufficient for ongoing  
18 construction. However, the signs are built to order and depend on the DBA name change. Neither  
19 Subaru nor Courtesy will be able to timely order the final signs if SOA continues refusing to consider  
20 Courtesy's DBA name change in good faith. (Pajouh Decl. at ¶ 21.) SOA's actions concerning the  
21 DBA name change are further efforts to delay Courtesy's Permanent Facility project.

22 On December 28, 2022, SOA filed SOA's Motion and the Supplemental Smit Declaration. SOA  
23 alleges the issues in Courtesy's November 28, 2022, letter are outside the scope of Courtesy's Petition.  
24 The Supplemental Smit Declaration further seeks to provide the Board with the sign information SOA  
25 provided Courtesy on November 18, 2022. Thereafter, Courtesy prepared the Pajouh Declaration  
26 responding to SOA's Motion and Supplemental Smit Declaration and this Motion.

27 ///

28 ///

1 III. DISCUSSION

2 Pursuant to Title 13 of the California Code of Regulations section 561 (“CCR section 561”), a  
3 party may request the Board consider evidence in addition to that evidence submitted with a petition by  
4 filing a written request at least ten days before the date of consideration of the petition. (13 CCR § 561.)  
5 As applicable from CCR section 561, Courtesy is providing the Board a copy of the signed Pajouh  
6 Declaration and all exhibits attached thereto. (13 CCR § 561, subd. (b)(2).)

7 Granting Courtesy’s motion is desirable (13 CCR § 561, subd. (b)(4)) because it will clarify the  
8 issues before the Board concerning outstanding issues from Courtesy’s Petition and SOA’s ongoing  
9 efforts to seek the de facto termination of Courtesy’s Subaru franchise despite the Board’s Stipulated  
10 Decision and Confidential Decision. The Pajouh Declaration summarizes Courtesy’s ongoing efforts  
11 to construct a Permanent Facility on “green field” property for its Subaru franchise as well as its Volvo,  
12 BMW, Mercedes, Buick, GMC, and Cadillac franchises. (Pajouh Decl. at ¶¶ 2-16.)

13 Moreover, the Pajouh Declaration details SOA’s bad faith conduct toward Courtesy since  
14 issuance of the Confidential Decision. (Pajouh Decl. at ¶¶ 17-22.) Mr. Pajouh explains how SOA’s  
15 conduct demonstrates SOA intends to ignore the Board’s Stipulated Decision and Confidential Decision  
16 and how SOA repeatedly indicated it had not yet approved Courtesy’s relocation to the Permanent  
17 Facility. (Pajouh Decl. at ¶ 23.) However, Courtesy would never have commenced construction of the  
18 Permanent Facility without approval from SOA that it would be able to operate from the Permanent  
19 Facility following construction. (Pajouh Decl. at ¶ 24.) Despite the Board’s Stipulated Decision and  
20 Confidential Decision, SOA’s conduct demonstrates SOA is seeking to force termination of Courtesy  
21 without a Board decision terminating the franchise pursuant to Section 3060 subdivision (a). (Pajouh  
22 Decl. at ¶¶ 25-29.)

23 In summary, Mr. Pajouh’s Declaration further demonstrates SOA’s violation of Section 11713.3  
24 subdivision (l) and (d) and provides a necessary response to SOA’s Supplemental Smit Declaration.  
25 Pursuant to 13 CCR section 561, Courtesy requests the Board consider Mr. Pajouh’s six-page  
26 declaration and the exhibits attached thereto when reaching a decision on Courtesy’s Petition during the  
27 January 25, 2023, Board Meeting. For the same reasons, Courtesy also requests the Board consider the  
28 Pajouh Declaration in its reasonable discretion—if the Board is to consider the Supplemental Smit


1 Declaration, the Board should also consider the Pajouh Declaration in reaching a decision.

2 IV. CONCLUSION

3 Based on the foregoing reasons, Courtesy respectfully requests the Board grant its request for the  
4 Board to consider the Pajouh Declaration at the January Board Meeting concerning Courtesy's Petition.  
5 The Pajouh Declaration responds to SOA's Supplemental Smit Declaration and clarifies the continued  
6 issues facing Courtesy as a result of SOA's treatment of Courtesy's Dealer Agreement as soon to be  
7 (i.e., de facto) terminated or by modifying Courtesy's Dealer Agreement to ignore SOA's obligations  
8 to cooperate with Courtesy in good faith toward the completion of the Permanent Facility. The Pajouh  
9 Declaration explains Courtesy's need to maintain the Petition in view of events subsequent to the  
10 November Board Meeting and despite SOA providing additional signage information on November 18,  
11 2022.

12  
13  
14 Dated: January 6, 2023

LAW OFFICES OF  
GAVIN M. HUGHES

15  
16 By   
17 Gavin M. Hughes  
18 Robert A. Mayville, Jr.  
19 Attorneys for Petitioner  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                                    **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

2            I, John David Wooten, declare that I am employed in the County of Sacramento, State of  
3 California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein.

4 My business address is 3436 American River Drive, Suite 10, Sacramento, California 95864.

5            I declare that on January 6, 2023, I caused to be served a true and complete copy of:

6  
7            ***NOTICE OF MOTION AND MOTION FOR THE CALIFORNIA NEW MOTOR VEHICLE***  
8            ***BOARD TO CONSIDER THE DECLARATION OF SHAHRAM MIHANPAJOUH (JERRY***  
9            ***PAJOUH) IN SUPPORT OF PETITION***

10                                    *and*

11            ***DECLARATION OF SHAHRAM MIHANPAJOUH (JERRY PAJOUH) IN SUPPORT OF***  
12            ***PETITION***

13                                    ***Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico***

14                                    ***v.***

15                                    ***Subaru of America, Inc.***

16                                    **PETITION NO.: P-463-22**

17 By Electronic Mail:

18 Lisa M. Gibson

19 Amy M. Toboco

20 Nelson Mullins Riley & Scarborough LLP

21 Pacific Gateway, Suite 900

22 19191 South Vermont Ave

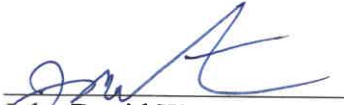
23 Torrance, CA 90502

24 Lisa.Gibson@nelsonmullins.com

25 Amy.Toboco@nelsonmullins.com

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

27            Executed this 6 January 2023 in Sacramento, California.

28                                      
John David Wooten

PROOF OF SERVICE

VIA EMAIL

LAW OFFICES OF GAVIN M. HUGHES  
GAVIN M. HUGHES State Bar #242119  
ROBERT A. MAYVILLE, JR. State Bar #311069  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
Telephone: (916) 900-8022  
E-mail: gavin@hughesdealerlaw.com

ATTORNEYS FOR PETITIONER

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, Inc., dba  
COURTESY SUBARU OF CHICO,

Petitioner,

v.

SUBARU OF AMERICA, INC.,

Respondent.

**PETITION NO: P-463-22**

**DECLARATION OF SHAHRAM  
MIHANPAJOUH (JERRY PAJOUH) IN  
SUPPORT OF PETITION**

BOARD MEETING ON PETITION:  
January 25, 2023, at 9:30 AM PT  
Via Zoom

I, Shahram Mihanpajouh (Jerry Pajouh), declare as follows:

1. I am the owner and operator of Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico ("Courtesy"). I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them under oath if called as a witness.

2. For the past several years I have been working diligently to construct new dealership facilities for the seven automotive franchises I own and operate including Subaru, Volvo, BMW, Mercedes, Buick, GMC, and Cadillac.

**FILED**

New Motor Vehicle Board

Date: 1-6-23

By: dp

New Motor Vehicle Board

**Received**  
**January 6, 2023**

1           3.       I purchased unimproved “green field” property located outside the City of Chico, in the  
2 County of Butte (the “County”), for the purpose of constructing new dealership facilities for each of  
3 these brands. Because the property was located in Butte County, our initial plans were designed to  
4 County Code and development requirements.

5           4.       At some point in 2018, after the rezoning of the property was completed with the County  
6 of Butte, the City of Chico quickly moved to annex the property where our facilities were to be  
7 constructed. The City of Chico had a different set of codes and development standards than the County.  
8 In an effort to keep the project moving forward, the City of Chico agreed to enter into a Development  
9 Agreement that would permit the project to be built to County standards, as designed, as well as to defer  
10 additional offsite civil improvements the City of Chico would now require, and to spread out the cost of  
11 the additional City impact fees.

12           5.       Courtesy was in the process of securing all entitlements, permit approvals, and zoning  
13 approvals at the time the City of Chico rapidly pushed thorough the annexation in 2018. It was my  
14 understanding the City of Chico agreed to accept the project as approved by the County. However, the  
15 City annexed the property before building permit approvals could be secured from the County. I was  
16 advised the annexation process would take approximately one year or more, but somehow the City of  
17 Chico was able to accomplish this in a mere six months.

18           6.       The City of Chico’s annexation resulted in significant obligations not required by the  
19 County. These included the construction of sidewalks, connection to the city sewer system,  
20 modifications to the existing roadway, installation of street lights, and the requirement to secure approval  
21 from the Architectural Review Board (“ARB”). Moreover, the impact fees required by the City of Chico  
22 were roughly three times more than those for the County.

23           7.       In 2018, it was agreed Courtesy and the City of Chico would enter into a Development  
24 Agreement that would address some of the obstacles created by the City’s annexation. However, these  
25 negotiations were disrupted in November 2018 following the Camp Fire.

26           8.       In March of 2020, the COVID-19 Pandemic forced the shutdown of the City of Chico  
27 offices. This caused significant delays in all communications between Courtesy and the City of Chico.  
28 We were unable to submit plans online and were instead required to contact the City of Chico to schedule

1 appointments to meet employees at closed to the public City of Chico offices to hand deliver documents.  
2 While progress did not cease during the pandemic, it was significantly burdensome and delayed.

3 9. It was not until City offices began to resume more normal operations in late 2020 and  
4 early 2021 that we began to make significant progress toward securing all required City of Chico  
5 approvals. The Development Agreement was finalized and executed in March 2021.

6 10. The City issued the building permits on April 26, 2021. (*See Exhibit 1 attached hereto.*)

7 11. The City issued the service building permit on or about April 5, 2022. (*See Exhibit 2*  
8 *attached hereto.*)

9 12. Construction commenced on June 28, 2021. Both the sale and service buildings are  
10 nearing substantial completion. (*See Exhibit 3 attached hereto.*)

11 13. We have invested well over \$7,041,000 in our facility project, which my Subaru franchise  
12 is a critical component. The project was designed to house seven different franchises in three split (not  
13 dualled) showroom buildings.

14 14. Our facility project was conceived in Butte County and designed to meet County  
15 standards. While we expected some challenges in developing a green field property, the City of Chico's  
16 annexation of the property created significant unanticipated obstacles and expense. Despite this, we  
17 never stopped diligently working to move the project forward to completion. Moreover, when the  
18 COVID-19 pandemic occurred in March 2020, we continued to press forward with securing approvals  
19 for the project, despite this unprecedented circumstance.

20 15. In 2018, Subaru attempted to terminate my Subaru franchise. As the Board is aware, we  
21 executed a Stipulated Decision resolving the protest on March 20, 2019. In general terms, the Stipulated  
22 Decision confirmed Courtesy was to complete construction of the permanent facility located at certain  
23 identified unimproved parcels on Garner Lane, in Chico California.

24 16. In October 2020, later amended in February of 2021, Subaru gave notice alleging  
25 Courtesy was in material breach of the conditions of the Stipulated Decision. With the assistance of  
26 counsel, Courtesy invoked the Board's continuing jurisdiction pursuant to the Stipulated Decision. ALJ  
27 Matteucci subsequently issued a decision, described in greater detail in Courtesy's Petition and attached  
28 to the Petition as Exhibit 2.



1           17.     It is my understanding the Confidential Decision was to be final, binding, and non-  
2     appealable.   Nevertheless, Subaru filed an action in Alameda Superior Court challenging the  
3     Confidential Decision. Subaru is using its bad faith writ as a justification to ignore the effect of the  
4     Confidential Decision.

5           18.     It is clear to me Subaru has no intention of permitting our relocation to the permanent  
6     facility under construction. This first became evident when Subaru refused to provide the signage  
7     specifications necessary for my general contractor to complete the building such that Subaru signage  
8     could later be installed. While this information was eventually provided, it was only in response to this  
9     Petition being filed.

10          19.     Next, Subaru continues to deny our request for a DBA name change from “Courtesy  
11     Subaru of Chico” to “Subaru of Chico.” (*See* Exhibit 4 attached hereto.) We inherited the “Courtesy”  
12     name when we initially purchased the franchise. It was always understood we would change the name  
13     to drop “Courtesy” upon relocation to the permanent facility. However, Subaru denied this request and  
14     has refused to provide any explanation. It is clear Subaru is refusing to cooperate in any manner not  
15     ordered by the Board or a court.

16          20.     The DBA name change is necessary to finalize the signage to be ordered and installed on  
17     the new permanent facility. Subaru is aware of this and is acting in bad faith by refusing to approve the  
18     DBA name change. By first refusing to provide the signage specifications and now refusing to approve  
19     the DBA name change, Subaru is attempting to prevent the completion of the permanent facility.

20          21.     It is my understanding these signs are built to order. We do not know the lead time for  
21     the fabrication of the final Subaru signage. The longer this issue persists, the more imminent the threat  
22     of delay becomes. The signage order cannot be placed until the final sign package is approved and  
23     executed. We will not know when the signage will be received for installation until the order is placed.  
24     This is true regardless of whether Subaru or Courtesy directly orders the signs.

25          22.     There is little doubt Subaru agreed to allow Courtesy to relocate to the permanent location  
26     under construction. However, we still must pass a final Subaru inspection before Subaru will issue the  
27     OL 124 for the permanent location. This requires the installation of all required Subaru signage.  
28     Subaru’s efforts to prevent or delay the ordering and installation of Subaru signage is intended to prevent

1 final completion of Courtesy's permanent facility as set forth in the Stipulated Decision and reaffirmed  
2 by the Confidential Decision.

3 23. Courtesy filed this Petition because Subaru intends to ignore the Confidential Decision  
4 by taking the position Subaru has not approved a relocation to where the permanent facility is being  
5 constructed. This is confirmed by the comments from Subaru's counsel during the November 7, 2022,  
6 Board meeting. I reviewed the transcript from the November 7 meeting and I read at least six (6)  
7 instances where Subaru's counsel stated Subaru has not approved the relocation to our permanent  
8 facility. (*See Exhibit 5 attached hereto.*)

9 24. We would never have commenced construction if SOA had not approved the relocation  
10 to the permanent location. We would never have entered into the Stipulated Decision if Subaru did not  
11 agree to the relocation. We would not have secured the Confidential Decision if it did not affirm our  
12 right and obligation to construct a building at and relocate to the proposed location. Subaru executed  
13 the Stipulated Decision and agreed to be bound by the Board's continuing jurisdiction over the same.

14 25. My franchise agreement confirms Subaru's approval of our relocation to the permanent  
15 location, the Stipulated Decision confirms Courtesy must construct and relocate to the permanent  
16 location, and the Final Decision determined Courtesy has not materially breached its obligation to  
17 construct and relocate to the permanent location. Subaru may not terminate my franchise nor treat me  
18 differently than any of its other franchisees unless and until the Board reaches a determination permitting  
19 SOA to terminate Courtesy's franchise. Subaru's contention it has not approved the relocation to the  
20 permanent location demonstrates Subaru will continue to ignore the Board's jurisdiction and authority  
21 and will refuse to issue the OL 124 necessary for Courtesy to lawfully commence operations at the  
22 permanent location.

23 26. We have been mired in litigation with Subaru for several years. I hoped the Confidential  
24 Decision would have put an end to this—it has not. We are currently defending against the writ in  
25 Alameda County Superior Court. We also filed a civil action against Subaru, which was removed to  
26 Federal Court and is stayed pending resolution of the writ. This Petition is our last recourse against  
27 Subaru's efforts to force the termination of my franchise. I cannot wait for Subaru to drive us out of  
28 business—it will be too late and no amount of damages would be sufficient.

1           27.     Subaru is engaged in a course of conduct intended to ignore the Confidential Decision  
2 concerning the Stipulated Decision. The Board should refer this matter to the DMV for further  
3 investigation to determine whether Subaru is willfully refusing to abide by the Confidential Decision  
4 with no intention of permitting Courtesy's relocation to the proposed location. The DMV investigation  
5 would secure facts and information for the Board's further consideration before the Board determines  
6 whether or not to take appropriate action against Subaru.

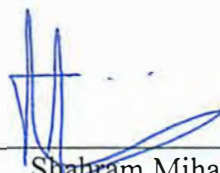
7           28.     Our current temporary Subaru sales operations are located at 896 East Avenue, Chico,  
8 California. Our service location is located at 2520-2522 Cohasset Road, Chico, California. Both these  
9 locations are subject to lease agreements that are not indefinite. Courtesy cannot remain at these  
10 locations indefinitely. Further, Courtesy cannot afford the expense of leasing these locations while its  
11 newly constructed Subaru facility sits vacant.

12           29.     The correspondence from Subaru's counsel and its comments to the Board make clear  
13 Subaru's position. If Courtesy does not agree to sell the franchise, Subaru will ignore the Board's  
14 Stipulated Decision, ignore ALJ Matteucci's Confidential Decision, and never approve the relocation to  
15 the permanent location.

16           I declare under penalty of perjury under the laws of the State of California that the foregoing is  
17 true and correct.

18           Executed this January 6, 2023 at Chico, California.

19  
20  
21           Dated: January 6, 2023



Shahram Mihanpajouh (Jerry Pajouh)  
Owner and Operator  
Courtesy Automotive Group, Inc., dba  
Courtesy Subaru of Chico

# EXHIBIT 1





## ALLOWABLE AREA

- [illegible]

B11 SERVICE MGR	125	+	100	=	1	1
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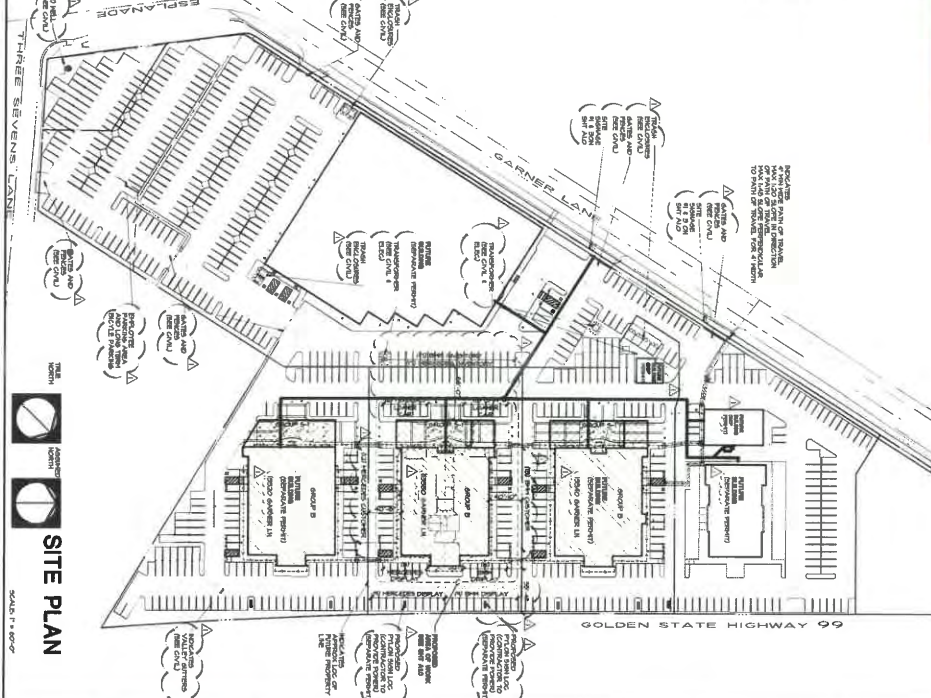
- [illegible]

MOULTIE ASSOCIATES  
401 CLOVIS AVE., STE. 201  
CLOVIS, CA 93612  
(408) 938-2000

- 

CONSTRUCTION BILLS, GOING TO  
HILL, ACCEPTED REQUIREMENTS  
STATED IN THE APPROPRIATE  
GENERAL STATE AND FEDERAL  
LEGISLATION -- CONG. OFF.  
OF CTS

L. WORK IS BEING  
FIELD INSPECTOR'S  
APPROVAL.



# SITE PLAN

[illegible]



## CITY OF CHICO

- [illegible]

### OCCUPANT LOAD CALCULATION

- [illegible]

GO1 SERVICE ADVISOR	284
GO1 SERVICE MGR	157

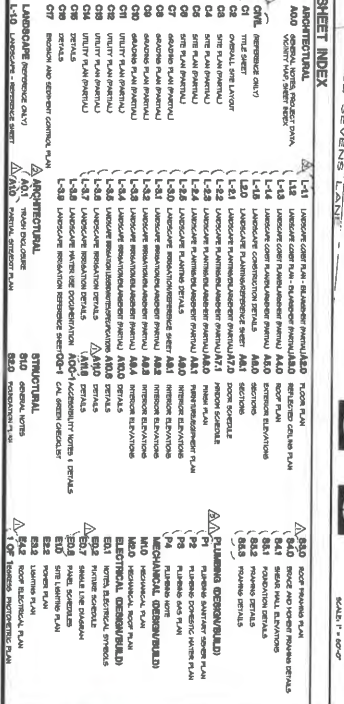
- | PLANNING FUTURE CALCULATION |     |     |     |     |     |     |     |     |     |
|-----------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| TOTAL AVERAGE LIFE          |     |     |     |     |     |     |     |     |     |
| 001                         | 002 | 003 | 004 | 005 | 006 | 007 | 008 | 009 | 010 |
| 011                         | 012 | 013 | 014 | 015 | 016 | 017 | 018 | 019 | 020 |
| 021                         | 022 | 023 | 024 | 025 | 026 | 027 | 028 | 029 | 030 |
| 031                         | 032 | 033 | 034 | 035 | 036 | 037 | 038 | 039 | 040 |
| 041                         | 042 | 043 | 044 | 045 | 046 | 047 | 048 | 049 | 050 |
| 051                         | 052 | 053 | 054 | 055 | 056 | 057 | 058 | 059 | 060 |
| 061                         | 062 | 063 | 064 | 065 | 066 | 067 | 068 | 069 | 070 |
| 071                         | 072 | 073 | 074 | 075 | 076 | 077 | 078 | 079 | 080 |
| 081                         | 082 | 083 | 084 | 085 | 086 | 087 | 088 | 089 | 090 |
| 091                         | 092 | 093 | 094 | 095 | 096 | 097 | 098 | 099 | 100 |
| 101                         | 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 |
| 111                         | 112 | 113 | 114 | 115 | 116 | 117 | 118 | 119 | 120 |
| 121                         | 122 | 123 | 124 | 125 | 126 | 127 | 128 | 129 | 130 |
| 131                         | 132 | 133 | 134 | 135 | 136 | 137 | 138 | 139 | 140 |
| 141                         | 142 | 143 | 144 | 145 | 146 | 147 | 148 | 149 | 150 |
| 151                         | 152 | 153 | 154 | 155 | 156 | 157 | 158 | 159 | 160 |
| 161                         | 162 | 163 | 164 | 165 | 166 | 167 | 168 | 169 | 170 |
| 171                         | 172 | 173 | 174 | 175 | 176 | 177 | 178 | 179 | 180 |
| 181                         | 182 | 183 | 184 | 185 | 186 | 187 | 188 | 189 | 190 |
| 191                         | 192 | 193 | 194 | 195 | 196 | 197 | 198 | 199 | 200 |
| 201                         | 202 | 203 | 204 | 205 | 206 | 207 | 208 | 209 | 210 |
| 211                         | 212 | 213 | 214 | 215 | 216 | 217 | 218 | 219 | 220 |
| 221                         | 222 | 223 | 224 | 225 | 226 | 227 | 228 | 229 | 230 |
| 231                         | 232 | 233 | 234 | 235 | 236 | 237 | 238 | 239 | 240 |
| 241                         | 242 | 243 | 244 | 245 | 246 | 247 | 248 | 249 | 250 |
| 251                         | 252 | 253 | 254 | 255 | 256 | 257 | 258 | 259 | 260 |
| 261                         | 262 | 263 | 264 | 265 | 266 | 267 | 268 | 269 | 270 |
| 271                         | 272 | 273 | 274 | 275 | 276 | 277 | 278 | 279 | 280 |
| 281                         | 282 | 283 | 284 | 285 | 286 | 287 | 288 | 289 | 290 |
| 291                         | 292 | 293 | 294 | 295 | 296 | 297 | 298 | 299 | 300 |
| 301                         | 302 | 303 | 304 | 305 | 306 | 307 | 308 | 309 | 310 |
| 311                         | 312 | 313 | 314 | 315 | 316 | 317 | 318 | 319 | 320 |
| 321                         | 322 | 323 | 324 | 325 | 326 | 327 | 328 | 329 | 330 |
| 331                         | 332 | 333 | 334 | 335 | 336 | 337 | 338 | 339 | 340 |
| 341                         | 342 | 343 | 344 | 345 | 346 | 347 | 348 | 349 | 350 |
| 351                         | 352 | 353 | 354 | 355 | 356 | 357 | 358 | 359 | 360 |
| 361                         | 362 | 363 | 364 | 365 | 366 | 367 | 368 | 369 | 370 |
| 371                         | 372 | 373 | 374 | 375 | 376 | 377 | 378 | 379 | 380 |
| 381                         | 382 | 383 | 384 | 385 | 386 | 387 | 388 | 389 | 390 |
| 391                         | 392 | 393 | 394 | 395 | 396 | 397 | 398 | 399 | 400 |
| 401                         | 402 | 403 | 404 | 405 | 406 | 407 | 408 | 409 | 410 |
| 411                         | 412 | 413 | 414 | 415 | 416 | 417 | 418 | 419 | 420 |
| 421                         | 422 | 423 | 424 | 425 | 426 | 427 | 428 | 429 | 430 |
| 431                         | 432 | 433 | 434 | 435 | 436 | 437 | 438 | 439 | 440 |
| 441                         | 442 | 443 | 444 | 445 | 446 | 447 | 448 | 449 | 450 |

NOTE:  
PROVIDE COPY OF CAL GREEN

- 
- City Limit
- Pavement
- PROJECT SITE

\_\_\_\_\_

- 
- A vicinity map showing the project area in Golden State, California. The map highlights the intersection of Interstate 5 (I-5) and Interstate 10 (I-10). The project area is located near the intersection, with labels for 'I-5', 'I-10', and 'Golden State 1987-99'. A north arrow is also present.




DRAWING NO. 18-001-0000000000 SHEET NUMBER <b>A0.0</b>				DATE 12-19-19		PRINTS ISSUED FOR PLAN CHECK		DATE 09-29-20 10-25-20 01-18-21		REVISION BACK CHECK BACK CHECK 2 BACK CHECK 3		project <b>COURTESY AUTOMOTIVE CENTER</b> <b>CADILLAC - BUICK - GMC</b> <b>13320 GARNER LANE</b> <b>CHICO, CA 95973</b>		PRINCIPAL		201806 Cerna Marlette Principal <b>MAPLETTE ASSOCIATES</b> <b>ARCHITECTURE</b> 25160 ALLIANCE Avenue, Suite 1-62 Chino, California 91710 PH 919.327.6888	
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# EXHIBIT 2



# PERMIT NO: B19-00575 ON-LINE PERMIT

<b>CITY OF CHICO</b> 411 Main Street 2nd Floor Mailing Address: P.O. Box 3420 Chico, CA 95927	<b>PERMIT TYPE</b> <b>BUSINESS B</b> <b>OCCUPANCY BUILDING</b>	<b>APPLIED DATE</b> <b>12/19/2019</b>	
	<b>PERMIT SUB-TYPE</b> <b>B MAX 49 OCC</b> <b>ASSEMBLY COMPLETE</b> <b>BUILD OUT 327</b>	<b>APPROVED DATE</b> <b>4/5/2022</b>	
	<b>JOB VALUE</b> <b>6816202.7</b>	<b>ISSUED DATE</b> <b>4/6/2022</b>	
	<b>APN</b> <b>006-400-063-000</b>	<b>EXPIRE DATE</b>	
	<b>DESCRIPTION</b> <b>(N) SERVICE CENTER</b> <b>20366/42818/2512</b>		

PERMIT INFORMATION		FEE SUMMARY	
<b>SITE</b>	13310 GARNER LN CHICO, CA 95973	<b>BUILDING ENERGY FEES</b>	\$58.00
<b>APPLICANT</b>	MODERN BUILDING INC P O BOX 772 CHICO CA 95928	<b>OCCUPANCY FEES</b>	\$10,518.66
<b>OWNER</b>	JP REAL ESTATE INVESTMENTS LLC PO BOX 7468 CHICO CA 95927	<b>CALIFORNIA STATE AND ADMIN FEES</b>	\$2,531.54
<b>CONTRACTOR</b>	MODERN BUILDING INC P O BOX 772 CHICO CA 95928	<b>OCCUPANCY FEES</b>	\$10,518.66
		<b>PLANNING FEES GROUP</b>	\$461.00
		<b>BUILDING INSPECTION AND PLAN CHECK FEE</b>	\$300.00
		<b>Total Fees Charged:</b>	\$24,387.86

NOTE: This job copy of this permit shall be kept on the job site to make the required entries thereon. The permit will expire if work is not started in 180 days, is abandoned, or does not receive an inspection for more than 180 days. Additional fees will be collected to renew expired permits. This is a Building Permit when properly filled out, signed and validated, and is not transferable. Construction Hour: Construction is limited to the hours of 7:00am to 7:00pm each day. No work shall be performed on certain holidays (MMC V-213-3(b)).

<p align="center"><b>LICENSED CONTRACTORS DECLARATION</b></p> <p>I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.</p> <p>License No: _____ Expiration Date: _____ Contractor: _____</p> <p align="center"><b>OWNER-BUILDER DECLARATION</b></p> <p>I hereby affirm under penalty of perjury that I am exempt from the contractors license Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by an applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500).):</p> <p>_____, I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner or Property who builds or improves thereon, and who contracts for such projects with a contractor(s) licensed pursuant to the Contractors License Law.)</p> <p>_____, I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner or Property who builds or improves thereon, and who contracts for such projects with a contractor(s) licensed pursuant to the Contractors License Law.)</p> <p>I am exempt under Sec. _____ B.P.C. for this reason _____</p> <p>DATE _____ OWNER _____</p> <p align="center"><b>WORKERS COMPENSATION DECLARATION</b></p> <p>I hereby affirm under penalty of perjury one of the following declarations:</p> <p>_____, I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the permit is issued.</p> <p>_____, I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are: _____</p> <p>Carrier/Policy No: _____</p> <p>(This section need not be completed if the permit is for one hundred dollars (\$100) or less).</p> <p>_____, I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any number so as to become subject to the workers' compensation laws or California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.</p> <p>DATE _____ APPLICANT: _____</p> <p><b>WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.</b></p> <p align="center"><b>CONSTRUCTION LENDING AGENCY</b></p> <p>I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).</p> <p>DATE _____ APPLICANT: _____</p> <p>* I certify that I have read this application and state that the above information is correct. I agree to comply with all city ordinances and state laws relating to building construction, and hereby authorize representatives of this city to enter upon the above-mentioned property for inspection purposes.</p> <p><b>SIGNATURE OF APPLICANT OR AGENT :</b> _____ <b>DATE</b> _____</p>	<p align="center"><b>INSPECTION SUMMARY</b></p> <p>_____ SLAB AND REBAR</p> <p>_____ FTG FOR SLAB</p> <p>_____ SLAB AND REBAR</p> <p>_____ SLAB AND REBAR</p> <p>_____ FTG FOR SLAB</p> <p>_____ PLUMB GGI INTERCEPTOR</p> <p>_____ PLUMB GREASE INTERCEPTOR</p> <p>_____ FTG FOR SLAB</p> <p>_____ SLAB AND REBAR</p> <p>_____ PLUM UG SEWER DRAIN PIPE</p> <p>_____ SLAB AND REBAR</p> <p>_____ ENG SITE DRAINAGE</p> <p>_____ ENG STORMDRAN STRUCT</p> <p>_____ ENG SEWER STRUCTURES</p> <p>_____ ELECT UG CONDUIT</p> <p>_____ PLUMB GREASE INTERCEPTOR</p> <p>_____ BUILDING PROGRESS</p> <p>_____ ELECT UG CONDUIT</p> <p>_____ FTG FOR SLAB</p> <p>_____ PLUMB GGI INTERCEPTOR</p> <p>_____ SLAB AND REBAR</p> <p>_____ FTG FOR SLAB</p>
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**Permit Finaled Date:** \_\_\_\_\_ **Inspector Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

# EXHIBIT 3















































# EXHIBIT 4

Begin forwarded message:

**From:** "Smit, Ray" <[rsmi@subaru.com](mailto:rsmi@subaru.com)>  
**Subject:** RE: Subarunet Inactive Users - Subaru of Chico  
**Date:** December 13, 2022 at 11:49:32 AM PST  
**To:** Jerry Pajouh <[jpajouh@me.com](mailto:jpajouh@me.com)>  
**Cc:** "Farabee, Scott" <[sfarab@subaru.com](mailto:sfarab@subaru.com)>, "Hinkle, Beth" <[bhin@subaru.com](mailto:bhin@subaru.com)>, Lisa Gibson <[lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)>

Hi Jerry.

This issue has been raised by your counsel to our attorney and the response has been provided counsel to counsel.

Respectfully,

Raymond Smit

Zone Retailer Development Manager  
Subaru of America, Inc. - San Francisco Zone  
5000 Hopyard Road, Suite 125  
Pleasanton, CA 94588  
678-517-1163 cell  
[rsmi@subaru.com](mailto:rsmi@subaru.com)

Subaru: KBB's most trusted brand for 8 years in a row and CR's best overall brand.



---

**From:** Jerry Pajouh <[jpajouh@me.com](mailto:jpajouh@me.com)>  
**Sent:** Tuesday, December 13, 2022 11:30 AM  
**To:** Smit, Ray <[rsmi@subaru.com](mailto:rsmi@subaru.com)>  
**Cc:** Farabee, Scott <[sfarab@subaru.com](mailto:sfarab@subaru.com)>; Hinkle, Beth <[bhin@subaru.com](mailto:bhin@subaru.com)>; Lisa Gibson <[lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)>  
**Subject:** Re: Subarunet Inactive Users - Subaru of Chico

**CAUTION:** This email has originated from outside of SOA. Do not click on links or open attachments unless you recognize the sender and know the content is safe.  
Good morning Ray,

I am following up regarding the DBA name change and awaiting the response as to why Subaru does not consent to the DBA name change if that is still Subaru's position. Please let me know as soon as possible.

Thank you,

Jerry Pajouh  
CEO / Dealer Principal

Courtesy Automotive Center  
BMW Buick Cadillac GMC Mercedes-Benz Subaru Volvo  
Sales Service Parts Collision  
2520 Cohasset Road  
Chico, CA 95973  
o (530) 345-9444  
c (559) 824-2026  
[jpajouh@me.com](mailto:jpajouh@me.com)

On Oct 26, 2022, at 5:08 AM, Smit, Ray <[rsmi@subaru.com](mailto:rsmi@subaru.com)> wrote:

Good morning, Jerry.

I'll investigate this and get back with you.

Thanks,

Ray

---

**From:** Jerry Pajouh <[jpajouh@me.com](mailto:jpajouh@me.com)>  
**Sent:** Tuesday, October 25, 2022 2:21 PM  
**To:** Smit, Ray <[rsmi@subaru.com](mailto:rsmi@subaru.com)>  
**Cc:** Farabee, Sco <[sfarab@subaru.com](mailto:sfarab@subaru.com)>; Hinkle, Beth <[bhin@subaru.com](mailto:bhin@subaru.com)>; Lisa Gibson <[lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)>  
**Subject:** Re: Subarunet Inactive Users - Subaru of Chico

**CAUTION:** This email has originated from outside of SOA. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good morning Ray, please provide the reason why SOA has rejected the DBA name change request.

Thank you,

Jerry Pajouh

Sent from my iPhone

On Sep 30, 2022, at 9:39 AM, Smit, Ray <[rsmi@subaru.com](mailto:rsmi@subaru.com)> wrote:

Thank you for following up, Jerry.

This is to inform you that SOA does not provide its consent to the dba change.

Raymond Smit

Zone Retailer Development Manager  
Subaru of America, Inc. - San Francisco Zone  
5000 Hopyard Road, Suite 125  
Pleasanton, CA 94588  
678-517-1163 cell  
[rsmi@subaru.com](mailto:rsmi@subaru.com)

Subaru: KBB's most trusted brand for 8 years in a row and CR's best overall brand.

<image001.jpg>

---

**From:** Jerry Pajouh <[jpajouh@me.com](mailto:jpajouh@me.com)>  
**Sent:** Friday, September 30, 2022 5:59 AM  
**To:** Smit, Ray <[rsmi@subaru.com](mailto:rsmi@subaru.com)>  
**Subject:** Re: Subarunet Inactive Users - Subaru of Chico

**CAUTION:** This email has originated from outside of SOA. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good morning Ray,

I'm just checking in to follow up for direction regarding this process. Please let me know or refer me to someone who can help with this DBA name change from "Courtesy Subaru of Chico" to just Subaru of Chico" dropping the word "Courtesy".

Thank you again,

Jerry

On Aug 1, 2022, at 11:18 AM, Smit, Ray <[rsmi@subaru.com](mailto:rsmi@subaru.com)> wrote:

Hi Jerry,

I'm looking into this.

Thanks,

Ray

**From:** Jerry Pajouh <[jpajouh@me.com](mailto:jpajouh@me.com)>  
**Sent:** Saturday, July 30, 2022 1:50 PM  
**To:** Smit, Ray <[rsmi@subaru.com](mailto:rsmi@subaru.com)>  
**Subject:** Re: Subarunet Inactive Users - Subaru of Chico

**CAUTION:** This email has originated from outside of SOA. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello Ray, I hope you are doing great as well.

Please see below response to your inquiry. I had also sent you an email while you were out of the office a couple of weeks ago with no reply. I assumed it may have gone to your spam file. I will send a copy of it in a separate email and would appreciate a speedy response.

Thank you,

Jerry Pajouh  
CEO / Dealer Principal  
Courtesy Automotive Center  
BMW Buick Cadillac GMC Mercedes-Benz Subaru Volvo  
Sales Service Parts Collision  
2520 Cohasset Road  
Chico, CA 95973  
o (530) 345-9444  
c (559) 824-2026  
[jpajouh@me.com](mailto:jpajouh@me.com)

On Jul 27, 2022, at 4:25 PM, Smit, Ray <[rsmi@subaru.com](mailto:rsmi@subaru.com)> wrote:

Good afternoon Jerry.

I hope you're doing well and staying healthy.

Subaru of America is doing an audit on Subarunet users. Below is a spreadsheet containing the names of all of the users SOA has identified as inactive. Please confirm if these users still require access to Subarunet by marking the far right column with either "Remove" or "Keep" depending on the user's status.

**Please return the completed spreadsheet to me by next Friday, August 5th, 2022.**

Thanks and don't hesitate to reach out to me with any questions.

USERNAME	FIRST_NAME	LAST_NAME	Region	Zone	District	DEALER_NUMBER	DEALER_NAME	FINAL (Remove/Keep)
cbra2703	Chrystina	Braught	080	03	03	401763	COURTESY SUBARU OF CHICO	Remove
teng1040	Tyler	Engstrom	080	03	03	401763	COURTESY SUBARU OF CHICO	Keep
jhyd3242	Jacob	Hydeman	080	03	03	401763	COURTESY SUBARU OF CHICO	Keep
tjoh6799	Ted	Johnson	080	03	03	401763	COURTESY SUBARU OF CHICO	Remove
kmag0285	Kimberly	Magee	080	03	03	401763	COURTESY SUBARU OF CHICO	Remove
joli9985	Jose	Oliveros	080	03	03	401763	COURTESY SUBARU OF CHICO	Keep

fray5451	Florencio	Raygoza	080	03	03	401763	COURTESY SUBARU OF CHICO	Keep
jans8509	Dane	Taylor	080	03	03	401763	COURTESY SUBARU OF CHICO	Remc
dtay9176	Dane	Taylor	080	03	03	401763	COURTESY SUBARU OF CHICO	Keep
tuye8213	Todd	Uyehara	080	03	03	401763	COURTESY SUBARU OF CHICO	Keep
spou2961	Sebastian	Pounders	080	03	03	401763	COURTESY SUBARU OF CHICO	Remc
fvel9378	Federico	Veloso	080	03	03	401763	COURTESY SUBARU OF CHICO	Remc
yxio6415	Yaze	Xiong	080	03	03	401763	COURTESY SUBARU OF CHICO	Remc

Raymond Smit

Zone Retailer Development Manager  
Subaru of America, Inc. - San Francisco Zone  
5000 Hopyard Road, Suite 125  
Pleasanton, CA 94588  
678-517-1163 cell  
[rsmi@subaru.com](mailto:rsmi@subaru.com)

Subaru: KBB's most trusted brand for g years in a row and CR's best overall brand.

<image001.jpg>

# EXHIBIT 5

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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
GENERAL MEETING - NOVEMBER 7, 2022  
VIA ZOOM AND TELECONFERENCE  
9:32 A.M.

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APPEARANCES

NEW MOTOR VEHICLE BOARD MEMBERS:

BISMARCK OBANDO, PRESIDENT, PUBLIC MEMBER  
ARDASHES KASSAKHIAN, VICE PRESIDENT, PUBLIC MEMBER  
RAMON ALVAREZ, DEALER MEMBER  
ANNE SMITH BOLAND, DEALER MEMBER  
KATHRYN ELLEN DOI, PUBLIC MEMBER  
JACOB STEVENS, PUBLIC MEMBER

NEW MOTOR VEHICLE BOARD STAFF:

TIM CORCORAN, EXECUTIVE DIRECTOR  
ROBIN PARKER, CHIEF COUNSEL  
DANIELLE PHOMSOPHA, SENIOR STAFF COUNSEL  
DAWN KINDEL, ASSISTANT EXECUTIVE OFFICER  
LEE MOORE, MEDIATION ANALYST  
SUZANNE LUKE, ADMINISTRATIVE ANALYST

ALSO PRESENT:

ANTHONY SKROCKI, ADMINISTRATIVE LAW JUDGE; JOHN  
MCGLOTHLIN, DEPUTY ATTORNEY GENERAL; LISA GIBSON, ESQ.;  
AMY TOBOCO, ESQ.; GAVIN HUGHES, ESQ.; ROBERT MAYVILLE,  
ESQ.; ALEX MARTINEZ, RAY SMIT, SCOTT FARABEE



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MONDAY, NOVEMBER 7, 2022

9:32 A.M.

MR. OBANDO: I would like to call the meeting of the New Motor Vehicle Board to order. Just so you all know, the meeting materials are available on the Board's website. Hard copies of any materials can be requested by contacting the Board's legal staff at 916-445-1888 or nmvb@nmbv.ca.gov.

I just want to let everyone know that this meeting is being recorded and transcribed except when members are in closed executive session. Please contact our legal staff at the Board's offices concerning transcripts for this meeting.

Also, if you want to -- if you want to speak, please use the raise-hand feature on your toolbox. Also, we want to just let everyone know that we don't want to have any shared documents. And then when we are speaking, please state your name and who you're with, and please speak slowly so that our court reporter can transcribe that information for us appropriately -- or accurately.

And then finally, there can be no posting of links in the chat room. If a link is posted, it should not be opened. Chat may not be -- may not be used to

1 denial to 900 dealers. It's a denial to this retailer  
2 that has their signs right now in a location in Chico.  
3 Because they did not order their signs. They did not  
4 install the signs. They do not own the signs. They are  
5 owned by Subaru.

6 The third element --

7 MS. DOI: So Ms. Gibson, is Subaru prepared  
8 then to install the signs? Is that what you're saying?

9 MS. GIBSON: No. And thank you for your  
10 clarification, Ms. Doi. We have no relocation proposal  
11 in front of us. We haven't approved relocation. We  
12 would not do that until after there would be any  
13 approval of a relocation.

14 What we do have -- the third thing is -- as  
15 part of the sign approval is that Courtesy is requesting  
16 or requires of Subaru that they enter into a sign lease  
17 agreement when no signs are ordered, no signs are  
18 installed, no signs are being leased by them except for  
19 the present location. And they, in fact, do have a sign  
20 lease agreement for the present location.

21 But all of this is premature. It doesn't  
22 happen until we -- we're ready to approve the  
23 relocation. And so what they are asking for is part --  
24 is something that no retailer is allowed to do, and in  
25 part is premature too before there is any relocation.

1 There is no building to put signs on right now. There  
2 is no completion. And they are very behind in the  
3 building as well.

4 So those are the three things that they're  
5 talking about. And I believe what Mr. Mayville is doing  
6 is he is conflating all three of those things and saying  
7 the sign package was refused because Subaru said, "You  
8 don't order signs. You don't own signs." Therefore,  
9 that's a refusal, I think, in Courtesy's mind.

10 And thirdly, or the last one, is in terms of  
11 signing an agreement for when there are no signs yet  
12 ordered. There are no signs in existence. There is no  
13 relocation approved. There is no building built. And  
14 that we have clearly -- and myself included -- have  
15 communicated to Courtesy it's too soon.

16 MR. OBANDO: Okay. Ms. Doi, do you have any  
17 other follow-up questions for Mr. Mayville or  
18 Ms. Gibson?

19 MS. DOI: No, not at this time. Thank you.

20 MR. OBANDO: All right. Mr. Mayville, we're  
21 going to give you some time to -- as the petitioner to  
22 rebuttal, and then we'll allow Ms. Gibson as the  
23 respondent to the rebuttal. And then we're going to go  
24 to public comment.

25 MR. MAYVILLE: Understood. Thank you,

1 no support for that, that that's not contained in their  
2 answer, that it's an unsupported assertion and should  
3 not be considered by this board. And I'm happy to  
4 address any other questions, but based on Subaru  
5 admitting that this is a minor issue and that the  
6 consideration of this declaration by Kimberly Wright  
7 would not materially affect their position for  
8 considering of the other issues, this board should allow  
9 it. In essence, the Kimberly Wright declaration narrows  
10 the issues that we need to talk about today, and if we  
11 don't allow the Kimberly Wright declaration in, we'll  
12 have to talk about the specifications in the abstract,  
13 including also those that are talked about specifically  
14 in the Kimberly Wright declaration. So I'm happy to  
15 address anything else.

16 MR. OBANDO: Thank you, Mr. Mayville.  
17 Ms. Gibson, we'll allow you for rebuttal. And then, as  
18 I noted earlier, we're going to end the conversation  
19 there unless there's any other board members that have  
20 follow-up questions, but then we're going to go to  
21 public comment.

22 So Ms. Gibson, you want a rebuttal?

23 MS. GIBSON: Thank you, Mr. President.

24 First of all, it's just untrue that anything  
25 has been ordered in terms of approving a relocation.

1 The board has no jurisdiction to do that either by the  
2 means of a confidential decision or by any means. There  
3 is no authority by or jurisdiction of this board  
4 involving ordering or approving relocations. That  
5 doesn't exist. And it certainly doesn't exist in this  
6 case.

7 Secondly, Mr. President and the board, this is  
8 something that's just merely a licensee versus licensee  
9 dispute. This is just Courtesy trying to involve the  
10 board into trying to order the board to do something  
11 that they themselves cannot make Subaru do because they  
12 have no basis for it, no grounds for it, but they appear  
13 to want to order and have the board order Subaru to do  
14 things --

15 MS. DOI: Wait --

16 (Simultaneous colloquy.)

17 MS. GIBSON: -- jurisdiction.

18 MS. DOI: Ms. Gibson, I think you're wading  
19 into the other issues that we're going to discuss. I  
20 think right now we're just discussing the declaration.

21 MS. GIBSON: I didn't understand that. So  
22 thank you for that clarification. I thought we were  
23 getting into everything by what Mr. Mayville was just  
24 talking about, because of the -- what he was saying.

25 So I will lastly just address does Courtesy

1 that's what this -- all of those e-mails that were not  
2 mentioned by Mr. Mayville that clearly indicate that we  
3 were talking settlement. It was -- Exhibit 6 is a  
4 letter from myself to Mr. Hughes which is the ongoing  
5 conversation.

6           This petition is improper because it's also not  
7 verified, which I couldn't agree more that the  
8 Mitsubishi case was not set aside as precedential, but  
9 the rules of evidence do not change. The rules of  
10 evidence are that if something is just basically  
11 argument or laid out in a petition, it is hearsay. It  
12 is not verified. Our answer is verified and, therefore,  
13 the rules of evidence are the rules of evidence. This  
14 entire petition is hearsay. It has also been shown to  
15 be false. I have in three different ways demonstrated  
16 to the board that this is false.

17           I think we're missing Board Member Stevens.  
18 Should I wait or... Oh, he's here. Okay.

19           MR. STEVENS: Sorry. I could hear you. I'm so  
20 sorry. I just had to wave somebody off from the front  
21 door. I really apologize. I was listening the whole  
22 time.

23           MS. GIBSON: No, no, that's okay. That happens  
24 to me all the time, Mr. Stevens, so I understand, in  
25 hearings. The FedEx people drive me mad sometimes.

1           Okay. So thank you.

2           So this petition is also improper because it is  
3 trying to assert things that are untrue. And I've shown  
4 in three different ways why it's untrue. For four and a  
5 half years, they have had sign specifications,  
6 electrical specifications. They have had everything  
7 that every other Subaru dealer has had to build Subaru  
8 dealerships. There's been hundreds of Subaru  
9 dealerships that have been built using the same  
10 information. I don't think that there's anything that  
11 has been done in bad faith by Subaru with respect to  
12 what they have provided, why they have provided it.

13           It is untrue that we have refused to issue an  
14 OL-124. What I have said, and I believe you can agree  
15 with me, is I have said there is no relocation that's  
16 been approved because there's been no relocation  
17 submitted. There's been no building built. There's  
18 been no relocation to go to. There is no new place of a  
19 franchise. There is only one place that's a franchise  
20 right now under definition Vehicle Code section 331.  
21 That is the location of the present location of Courtesy  
22 where it now exists in Chico. This is a place that has  
23 not been completed.

24           To say that the only reason -- although I take  
25 it back. Mr. Mayville may not have said "the only

1 reason," but one of the reasons why they can't complete  
2 the construction are the signs. I don't believe it, and  
3 I don't believe the board is going to believe this  
4 either. We have given a lot of information about the  
5 signage.

6 I presume that Mr. Kassakhian is just  
7 observing?

8 MR. OBANDO: Yes. He actually is observing.

9 MS. GIBSON: Okay.

10 MR. OBANDO: Given that he missed a great  
11 portion of all of the debate, he will not be voting on  
12 this matter.

13 MS. GIBSON: I got you. Thank you.

14 And as a result, that is false about the fact  
15 that the building cannot be built. There are buildings  
16 built all the time where signage is either late, it's  
17 not available, it's not installed yet.

18 In addition to that, if there is something that  
19 is absolutely necessary for Courtesy Subaru that wasn't  
20 necessary for 600 other Subaru dealers that they need,  
21 that is something that I think we can still try to work  
22 out and doesn't necessitate a DMV investigation of  
23 Subaru's license.

24 This petition is also improper because it is  
25 raising things that are not necessarily raised to



1 resolve or have any basis in a violation of any Vehicle  
2 Code, and is the possibility that if you decide -- or  
3 decide to have the DMV investigate what Courtesy's  
4 petition is requesting you to investigate, that we would  
5 indeed have a situation. And it is not just about  
6 signs, as Mr. Mayville says. As you know, he's also  
7 talked about relocation. He's talked about a whole  
8 range of things that supposedly Subaru has done wrong.

9           If we were to involve the DMV, we now have a  
10 fourth forum that is going to be trying to enter into  
11 this dispute and decide this dispute, and possibly in a  
12 very conflicting way.

13           I also take issue with Mr. Mayville's  
14 suggestion that the fact that the -- Judge Markman took  
15 the matters under submission, that there's anything that  
16 is quite pending or is valid until set aside. I know of  
17 no legal principle that's that way. The decision is  
18 under submission. That is the status, and that's on the  
19 docket itself. There is no tentative that has been  
20 adopted. There is nothing but, at this point, a matter  
21 that is under submission.

22           I think Mr. Mayville has also misinterpreted,  
23 entirely, Mazda. He did later, I think more correctly,  
24 interpret it that the only thing that can be  
25 jurisdictionally ruled upon by the board is a

1 franchisor/franchisee issue that the board would then  
2 either review, with being reasonable to -- to refer to  
3 the DMV for an investigation. There's nothing that the  
4 board can order or resolve at this point.

5           And again, as I think I've said several times,  
6 I don't see that there's anything proper here that would  
7 necessitate the board to take as serious of an issue as  
8 to refer an investigation by the DMV. To investigate  
9 what? What is the DMV going to investigate? Inches?  
10 That is, I think, not an appropriate use of either the  
11 board's time or the DMV's time, and it's certainly a  
12 very serious issue that affects over 600 Subaru dealers  
13 that -- not just Courtesy.

14           So I think the only thing I might not have  
15 addressed, and I guess I have to go back and address it,  
16 would be our request for the official notice of the four  
17 things that we've already noted. The purpose of the  
18 request for the official notice is to really highlight  
19 for the board the various venues right now that  
20 everything is under litigation, and that definitely the  
21 confidential decision is still under appeal so it is not  
22 final as Mr. Mayville suggested it is.

23           I think that's it. Thank you.

24           MR. OBANDO: Okay. Thank you, Ms. Gibson. We  
25 had gone about 13 minutes into that one. Thank you for

1 MS. GIBSON: Excellent question. They're  
2 already in -- in raising the issues, the issue of  
3 whether or not there's a measurement from the ground up  
4 can be resolved rather quickly just among the parties.  
5 I don't believe a forum is necessary for that, but --

6 MS. DOI: Say --

7 MS. GIBSON: I understand, Ms. Doi. I think  
8 your question goes more to specifically is there a forum  
9 for what appears to be trying to convert this petition  
10 into -- which we also said was improper -- convert the  
11 petition into a termination or modification hearing.  
12 And there is no termination of Courtesy. Courtesy  
13 orders cars, sells cars, services cars at the present  
14 location. They have never been terminated. They  
15 continue on as usual. There is no modification. Not a  
16 single word of the existing agreement has been changed.  
17 And in fact, the forum for such an address would be  
18 under Vehicle Code 3060. If there was a termination, if  
19 there was a modification, there should be a 3060  
20 protest. And none exists. Courtesy is unfettered in  
21 terms of its operating as a motor vehicle dealer today,  
22 as it was yesterday, as it will be tomorrow. It can  
23 operate at the authorized location that it's currently  
24 at. If it wants to relocate, there's another Vehicle  
25 Code section that requires Subaru's prior consent, and

1 they must provide the information necessary for Subaru  
2 to consent to it. And that is also in a whole another  
3 area of 11700 ad sec in terms of -- excuse me, 1100 ad  
4 sec. And that is a whole another area of where they do  
5 that. And when they're ready to relocate, that's when  
6 they're going to have to ask for the permission, and  
7 that's where the parties then will either end up with a  
8 consent or -- I have no idea. It's too early to tell.  
9 We have an appeal. We have lots of things that are  
10 going on in the air right now. By the time we get this  
11 building built, if it ever gets built, there are many  
12 things that could happen from here to then. So we're in  
13 the land of speculation there, which is where this  
14 petition is as well. So --

15 MS. DOI: But it seems like these are really  
16 issues of breach of the terms of the stipulated  
17 decision, and it only -- that decision dealt with how to  
18 address, you know, a particular issue that's the subject  
19 of the Superior Court writ petition but didn't really  
20 address -- I don't want to violate anything either  
21 but -- I mean, I suppose there could have been -- there  
22 could be a remedy within the confines of the stipulated  
23 decision about what to do if the parties -- one party  
24 feels the other is breaching the decision.

25 MS. GIBSON: There is. There is.

1 MS. DOI: Okay. All right. I'm sorry, go  
2 ahead.

3 MS. GIBSON: No, I mean to the extent that -- I  
4 can't talk about what is in the stipulated decision, but  
5 there is mechanisms in the stipulated decision that are  
6 required to be followed if one party believes that  
7 another party is not honoring it. And that is in the  
8 decision itself. And so if -- that's the fourth thing  
9 that I think is being alleged, which we don't know quite  
10 what that is being alleged here. It's just in the  
11 abstract that there's something that we're not honoring  
12 in terms of the stipulated decision. It has never been  
13 fully -- even in the unredacted petition, fully  
14 explained other than just alleged. And again, without  
15 any facts, any verification, any evidence.

16 MR. OBANDO: All right. Mr. Stevens, do you  
17 have any follow-up? Otherwise we'll go to Ms. Gibson's  
18 rebuttal.

19 MR. STEVENS: No, sir. Continue.

20 MR. OBANDO: Okay. Ms. Gibson.

21 MS. GIBSON: Thank you, Mr. President.

22 I'd just like to also finally -- I think we  
23 kind of covered it, but I do believe that this -- one of  
24 the last areas in the verified answer was that this  
25 decision -- or this petition, excuse me -- is trying to

1 convert the petition into something that -- if it has  
2 any basis, if there is a termination, if there is a  
3 modification, the remedy lies in Vehicle Code 3060.  
4 It's not in the petition that is being sought here. So  
5 that is also something that is improper.

6           And in terms of, again, the idea that there is  
7 a termination, the idea that there is a modification,  
8 it's without evidence because there isn't. I don't know  
9 how to say it any more matter-of-factly. They are a  
10 dealer. They are operating as a dealer. They are  
11 allowed to buy cars, sell cars, service cars. They are  
12 in the midst of building a building. The building is  
13 something that they have chosen to do despite the fact  
14 that there's an appeal pending. And they are risking  
15 the fact that if Subaru wins the appeal, they're  
16 building a building for naught. If they -- if we lose  
17 the appeal, then that's a whole another story, but it is  
18 under appeal, and that is their choice to go ahead.

19           And if they finish the building, like I said,  
20 if it's ever finished, then at that point, there's  
21 another decision on everybody's part: Whether or not  
22 they want to relocate into the building, whether they  
23 ask for Subaru's consent to relocate into the building,  
24 and ultimately does Subaru consent to it.

25           Nothing here has said that that decision has

1 been made, that the building has been built, that we're  
2 even there. We are dealing in sand castles right now.

3 And again, to take an action as serious as  
4 possibly investigating Subaru's license based on what is  
5 improper and flimsy, I really think -- and I  
6 respectfully ask the board not to consider this. Thank  
7 you.

8 MR. OBANDO: Okay. Thank you, Ms. Gibson.

9 All right. Now we're going to take public  
10 comment, and then we're going to -- just in terms of  
11 flow, just so everyone's aware, we're going to take some  
12 public comment if there is any, and then we're going to  
13 allow for a wrap -- like a, 2- to 3-minute wrap-up from  
14 each -- from Mr. Mayville and Ms. Gibson. And then  
15 we'll have a deliberation of the board.

16 So that's just kind of in terms of process.

17 Ms. Doi?

18 MS. DOI: I'm sorry. Can I just ask  
19 Mr. Mayville to respond to that question about the forum  
20 before we kind of lose it?

21 MR. MAYVILLE: Yes, of course. Thank you,  
22 Member Doi.

23 Yes. So the problem here is that the  
24 appropriate forum for a modification or termination  
25 protest is the board, but we've had a protest. We've

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REPORTER'S CERTIFICATION

I, Elizabeth A. Willis-Lewis, Certified  
Shorthand Reporter in and for the State of California,  
do hereby certify:

That the foregoing proceedings were taken  
before me at the time and place herein set forth; that  
the proceedings were reported stenographically by me  
and later transcribed into typewriting under my  
direction; that the foregoing is a true record of the  
testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name  
on this date:

Elizabeth A. Willis-Lewis, CSR



1                                    **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

2            I, John David Wooten, declare that I am employed in the County of Sacramento, State of  
3 California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein.

4 My business address is 3436 American River Drive, Suite 10, Sacramento, California 95864.

5            I declare that on January 6, 2023, I caused to be served a true and complete copy of:

6  
7            ***NOTICE OF MOTION AND MOTION FOR THE CALIFORNIA NEW MOTOR VEHICLE***  
8            ***BOARD TO CONSIDER THE DECLARATION OF SHAHRAM MIHANPAJOUH (JERRY***  
9            ***PAJOUH) IN SUPPORT OF PETITION***

10                                    *and*

11            ***DECLARATION OF SHAHRAM MIHANPAJOUH (JERRY PAJOUH) IN SUPPORT OF***  
12            ***PETITION***

13                                    ***Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico***

14                                    ***v.***

15                                    ***Subaru of America, Inc.***


16                                    **PETITION NO.: P-463-22**

17 By Electronic Mail:

18 Lisa M. Gibson  
19 Amy M. Toboco  
20 Nelson Mullins Riley & Scarborough LLP  
21 Pacific Gateway, Suite 900  
22 19191 South Vermont Ave  
23 Torrance, CA 90502  
24 Lisa.Gibson@nelsonmullins.com  
25 Amy.Toboco@nelsonmullins.com

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

27            Executed this 6 January 2023 in Sacramento, California.

28                                      
John David Wooten

PROOF OF SERVICE

VIA EMAIL

New Motor Vehicle Board

Received  
1-17-23

**FILED**

New Motor Vehicle Board

Date: 1-17-23

By: RPP

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Amy M. Toboco (SBN 149508)  
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Attorneys for Respondent  
SUBARU OF AMERICA, INC.

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, INC.  
DBA COURTESY SUBARU OF CHICO,

Petitioner,

vs.

SUBARU OF AMERICA, INC.,

Respondent.

Petition No. P-463-22

**RESPONDENT SUBARU OF  
AMERICA, INC.'S OPPOSITION TO  
PETITIONER'S MOTION FOR THE  
CALIFORNIA NEW MOTOR  
VEHICLE BOARD TO CONSIDER  
THE DECLARATION OF SHAHRAM  
MIHANPAJOUH (JERRY PAJOUH) IN  
SUPPORT OF PETITION;  
DECLARATION OF LISA M. GIBSON  
IN SUPPORT THEREOF**

BOARD MEETING ON PETITION:

January 25, 2023

9:30 a.m. PT

Respondent Subaru of America, Inc. ("SOA") submits the following Opposition to Petitioner Courtesy Automotive Group, Inc. DBA Courtesy Subaru of Chico's ("Courtesy") Motion For New Motor Vehicle Board to Consider the Declaration of Shahram Mihanpajouh (Jerry Pajouh) in Support of Petition (the "Motion").

1           **I. INTRODUCTION**

2           In the Motion for the Board to Consider the Declaration of Shahram Mihanpajouh (Jerry  
3 Pajouh), Courtesy improperly seeks permission to file the Declaration of Mr. Pajouh (“Pajouh  
4 Declaration”) which raises new issues not raised in either the Petition itself or at the last Board  
5 meeting on November 7, 2022. In essence, Courtesy is seeking to rewrite the Petition to raise new  
6 issues knowing that SOA has complied with the sign specifications addressed in the original Petition  
7 and at the Board meeting on November 7<sup>th</sup> and having been told by Board member Kathryn Doi  
8 that the relief being sought under its Petition is not within the power of the Board to provide.  
9 However, Courtesy’s belated attempt to amend its Petition should not be permitted.

10           Moreover, Courtesy’s Motion and the Pajouh Declaration fail to present any evidence or  
11 argument which would give rise to any statutory violation or other basis for the Board to order a  
12 DMV investigation. Rather, by its own admission, Courtesy claims that SOA has “refus[ed] to  
13 abide by the Stipulation Decision and Confidential Decision in Protest No. PR-2570-18” by  
14 allegedly failing to approve a DBA name change or confirm Courtesy’s relocation to the permanent  
15 facility. As such, Courtesy has not raised any statutory violation on the part of SOA which would  
16 warrant a DMV investigation. Rather, Courtesy is improperly trying to use the Board Petition to  
17 require SOA to approve a facility and DBA name change prior to the completion of the construction  
18 of the permanent dealership and while the issues relating to the termination of Courtesy’s dealership  
19 are the subject of the pending Writ Petition before the Alameda Superior Court.<sup>1</sup> Further, if  
20 Courtesy believes that SOA has breached the terms of the Stipulated Decision, the appropriate  
21 remedy for Courtesy is to file a notice of non-compliance with the Stipulated Decision in accordance  
22 with the terms of the parties’ agreement and request an ALJ determination on that issue.

23           Accordingly, because the issues raised in the Pajouh Declaration are outside the scope of the  
24 Petition, and do not warrant a DMV investigation in any event, SOA respectfully requests that the  
25 Board deny the Motion and not allow the Pajouh Declaration to be filed or considered in this matter.  
26

27 \_\_\_\_\_  
28 <sup>1</sup> As allowed by the Court, SOA intends to file an amended Writ Petition on or before February 3, 2023.  
The Court has also ordered a Case Management Conference for March 14, 2023.

1       **II. FACTUAL BACKGROUND**

2           Courtesy filed its Petition in this matter on June 20, 2022. Thereafter, on July 20, 2022,  
3 SOA timely filed its Verified Opposition to Petition and supporting declarations of Lisa M. Gibson,  
4 Raymond Smit and Dean Bakkum. Accordingly, SOA also incorporates into this opposition all the  
5 reasons set forth in the Verified Opposition to Petition, including that (1) the Petition is not verified  
6 by Courtesy and consists of inadmissible hearsay evidence; (2) the Board is without jurisdiction to  
7 adjudicate a licensee versus licensee dispute; (3) the Petition is premised upon the ALJ's findings  
8 contained in the Confidential Decision which is not a final determination and is subject to a pending  
9 appeal; (4) SOA has already provided Courtesy with the sign specifications and Courtesy cannot  
10 establish that SOA violated Vehicle Code sections 11713.3 or 3060 or any other statutory provision  
11 or contractual obligation; (5) the Petition involves a dispute between a distributor and a single dealer  
12 and does not implicate any other dealers, the motor vehicle industry as a whole or the public and  
13 therefore does not warrant involvement by the Department of Motor Vehicle ("DMV"); (6) the  
14 DMV does not have authority to investigate an alleged breach of the Stipulated Decision or  
15 Confidential Decision of the Board or a matter based on SOA's litigation and settlement  
16 communications between counsel; (7) the Petition appears to be designed to frustrate SOA's efforts  
17 to obtain relief in the pending writ proceeding and in response to SOA's exercise of its rights under  
18 a letter of credit provided by Courtesy; (8) the Petition is premised on settlement discussions which  
19 are inadmissible as evidence in any proceeding; and (9) there are pending proceedings (the writ  
20 petition filed by SOA challenging the ALJ's Confidential Decision and a civil lawsuit for damages  
21 filed by Courtesy against SOA) which involve overlapping issues and which, if determined in  
22 SOA's favor, would preclude the action sought by Courtesy in this Petition. To all the foregoing,  
23 SOA also now adds the following: (10) requiring SOA to approve an unconstructed facility and  
24 consent to a DBA name change are clearly outside the scope of Courtesy's Petition and the  
25 jurisdiction of the Board; and (11) the Petition is an inappropriate statutory means to address any  
26 alleged breach of the Stipulated Decision and Confidential Decision.

1 Subsequently, on October 28, 2022, Courtesy submitted a Motion for the Board to Consider  
2 the Declaration of Kimberly Wright (“Wright Declaration”) relating to the information which it  
3 claimed was missing from the specifications attached to Mr. Bakkum’s declaration filed by SOA.  
4 At the Board Meeting on November 7, 2022, at which the Petition was initially considered, the  
5 Board granted Courtesy’s motion to consider the Wright Declaration. After SOA’s counsel advised  
6 the Board that SOA would attempt to provide the information requested by Courtesy regarding the  
7 sign specifications, and based on the stipulation of the parties, the Board continued consideration of  
8 the Petition to the January 25, 2023 Board Meeting to allow time for SOA to provide the information  
9 regarding the sign specifications to Courtesy.

10 On November 18, 2022, SOA’s counsel, Lisa Gibson, provided the supplemental sign  
11 information to counsel for Courtesy and requested that Courtesy dismiss the Petition because SOA  
12 had provided the requested information. Ms. Gibson also requested that Mr. Hughes advise her as  
13 to Courtesy’s response by November 28, 2022. (Declaration of Lisa M. Gibson (“Gibson Decl.”)  
14 ¶2). On November 28, 2022, Gavin Hughes, counsel for Courtesy, responded to Ms. Gibson but  
15 refused to dismiss the Petition stating that he would have to confirm with his client that the sign  
16 information provided by SOA was sufficient as to site-specific shop drawings. Mr. Hughes also  
17 requested that SOA provide a full sign package for Subaru signage at the new dealership facility  
18 which is still under construction, that SOA approve a DBA name change request by Courtesy’s  
19 request and that SOA confirm Courtesy’s right to relocate to the permanent dealership facility  
20 currently under construction. (Gibson Decl. ¶3). These issues, however, are outside the scope of  
21 Courtesy’s Petition and Courtesy is improperly using its Petition to now require SOA to approve its  
22 permanent facility and signage prior to the completion of the construction of the permanent  
23 dealership and while the issues relating to the termination of Courtesy’s dealership are the subject  
24 of a pending Writ Petition before the Alameda Superior Court. Accordingly, in subsequent  
25 communications in December, 2022, SOA’s counsel notified Courtesy’s counsel that Courtesy’s  
26 refusal to dismiss the Petition was improper and that SOA has provided all information requested  
27 by Courtesy in connection with the Petition as addressed in the Wright Declaration. (Gibson Decl.  
28

¶¶4-6). SOA's counsel also reiterated its position that issues related to the DBA name change and permanent facility were outside the scope of the Petition. (*Id.*) Now, in its Motion, Courtesy again improperly seeks to raise issues outside the scope of its Petition relating to the approval of its permanent facility and the DBA name change.

**III. GOOD CAUSE EXISTS TO DENY COURTESY'S MOTION AS THE ISSUES RAISED ARE OUTSIDE THE SCOPE OF THE PETITION AND DO NOT WARRANT A DMV INVESTIGATION.**

Courtesy's Motion fails to provide any explanation as to why it now seeks to raise additional issues not included in the Petition or raised at the November 7<sup>th</sup> Board meeting. Indeed, none of the issues addressed in the Motion or the Pajouh Declaration relate to the issues raised at the last Board meeting, respond to the supplemental Declaration of Raymond Smit which provided the additional sign specifications requested by Courtesy or otherwise justify allowing Courtesy to essentially amend its Petition at this late date. Accordingly, there is no basis for the Board to permit the belated filing of the Pajouh Declaration in this matter.

Further, Courtesy's belated allegations, like the prior allegations in the Petition, are unfounded, unverified and false. Courtesy improperly claims that SOA has violated 11713.3 by treating Courtesy's Dealer Agreement and the Stipulated Decision as terminated and modifying Courtesy's Dealer Agreement by refusing to cooperate with Courtesy in completing the permanent facility pursuant to the terms of those agreement. Courtesy also contends that SOA is attempting by contract to force Courtesy to sell its Subaru franchise. However, Courtesy's baseless contentions that SOA has somehow breached the terms of the Stipulated Decision or the Administrative Law Judge's Confidential Decision do not warrant a DMV investigation as they relate to a private dispute between the parties, and *not* to any order or the ALJ's decision. The Conclusion for the Confidential Decision ordered only that SOA's request for termination was denied and that SOA was not permitted to terminate Courtesy "at this time". Nothing in the Confidential Decision or the Stipulated Decision requires SOA to approve an incomplete facility or consent to a DBA name

1 change. Furthermore, should Courtesy, in fact, hold a good faith believe that SOA has either  
2 breached the Stipulated Decision or is seeking to terminate or modify its franchise, its Petition is  
3 not the procedurally proper method of challenging either of these allegations.

4 Additionally, Courtesy's contentions regarding SOA's alleged violations of the Confidential  
5 Decision are also unfounded because that decision is the subject of a pending Writ Petition in the  
6 Alameda Superior Court. Therefore, there is no statutory violation for the DMV to investigate  
7 relating to the Pajouh Declaration. Rather, if Courtesy believes that SOA has somehow breached  
8 the terms of the Stipulated Decision, the appropriate remedy as specified in that agreement is for  
9 Courtesy to file a notice of non-compliance with the Board and seek a determination by an  
10 Administrative Law Judge on the issues. In the event that Courtesy believes that SOA is somehow  
11 terminating or modifying its franchise, it is also well aware of the method for making such a  
12 challenge—which is filing a protest under Vehicle Code section 3060. Both, however, are  
13 unnecessary because SOA has neither breached the terms of the Stipulated Decision nor terminated  
14 or modified Courtesy's franchise. This Petition is under all circumstances unquestionably improper  
15 and should be denied.

16  
17 **IV. SOA WILL SUFFER SIGNIFICANT PREJUDICE IF THE BOARD ALLOWS**  
18 **COURTESY TO FILE THE PAJOUH DECLARATION WHICH SEEKS TO**  
19 **IMPROPERLY AMEND THE PETITION.**

20 As noted above, Courtesy has provided no justification whatsoever for its failure to timely  
21 raise the issues set forth in the Pajouh Declaration in its original Petition or prior to the November  
22 7<sup>th</sup> Board meeting. Allowing Courtesy to unilaterally amend its Petition and raise new issues would  
23 significantly prejudice SOA at this late date. Moreover, as noted above, a petition seeking a DMV  
24 investigation is not the appropriate remedy to address Courtesy's allegations that SOA has failed to  
25 comply with the Stipulated Decision or the ALJ's Confidential Decision and Courtesy has not  
26 demonstrated any statutory violation which would warrant DMV action.

1       **V. CONCLUSION.**

2               Based on the foregoing, SOA respectfully requests that the Board deny Courtesy's Motion  
3 to For New Motor Vehicle Board to Consider the Declaration of Jerry Pajouh in Support of Petition.

4       Dated: January 17, 2023

Respectfully submitted,

5               **NELSON MULLINS RILEY & SCARBOROUGH**  
6               **LLP**

7       By:



8               \_\_\_\_\_  
9               Lisa M. Gibson  
10              Amy M. Toboco  
11              Attorneys for Respondent  
12              SUBARU OF AMERICA, INC.



**DECLARATION OF LISA M. GIBSON**

I, Lisa M. Gibson, declare and state as follows;

1. I am an attorney at law, duly licensed to practice before all courts of the State of California. I am a Partner with the law firm of Nelson, Mullins, Riley & Scarborough LLP, counsel of record for Respondent Subaru of America, Inc. ("SOA") in the above-captioned matter. I make this Declaration in support of SOA's Opposition to Petitioner's Motion for the New Motor Vehicle Board to Consider the Declaration of Shahram Mihanpajouh (Jerry Pajouh). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. On November 18, 2022, I emailed Gavin Hughes and Robert Mayville, counsel for Courtesy Automotive Group, Inc. DBA Courtesy Subaru of Chico ("Courtesy"), and provided sign specification information prepared by Philadelphia Sign Company, SOA's sign vendor, that was responsive to the Declaration of Kimberly Wright previously filed by Courtesy on October 28, 2022 in this matter. The information was consistent with the sample specifications referenced in Ms. Wright's declaration regarding Courtesy's Cadillac facility. I also notified Courtesy's counsel that SOA has acted in good faith in providing such information and requested that Courtesy dismiss the Petition in light of the fact that SOA has provided the information to resolve the issues raised in the Petition. I requested a response by November 28, 2022.

3. On November 28, 2022, I received a letter from Mr. Hughes in response to my email. Mr. Hughes indicated that he would confirm with Courtesy whether the information provided by SOA was sufficient as to site-specific shop drawings. However, Mr. Hughes also indicated that several other issues remain unresolved which, if resolved, would permit Courtesy to withdraw the Petition. Those issues involve Courtesy's request for a final sign package for the permanent Subaru dealership facility still under construction by Courtesy, SOA's approval of a DBA name change request by Courtesy and SOA's acknowledgment that it will approve Courtesy's relocation to the permanent dealership facility currently under construction. These additional issues raised by Mr. Hughes are outside the scope of the Petition presently before the Board and relate to the pending

Petition for Writ of Administrative Mandate filed by SOA and currently pending in the Alameda Superior Court. Therefore, these issues have no bearing on the dismissal of the Petition in this matter.

4. On December 9, 2022, I wrote to Mr. Hughes in response to his letter of November 28, 2022, and confirmed that SOA had provided the information requested by Courtesy, advised him that the issue of the DBA name change was outside the scope of the Petition and reiterated my request that Courtesy dismiss the Petition.

5. On December 14, 2022, I received another letter from Mr. Hughes in which he requested additional information regarding the sign specifications involving the pylon sign height allowance and the removal of the name "Courtesy" from a sign on the North Elevation. Mr. Hughes also accused SOA of not complying with the ALJ's Confidential Decision and acting improperly by not approving a name change by Courtesy.

6. On December 16, 2022, I met and conferred with Mr. Hughes to discuss the December 14, 2022 letter. On that same date, I also wrote to Mr. Hughes in response and advised him that his letter made demands on SOA which were outside the scope of the Petition and the Wright Declaration and that SOA has provided all information set forth in the Wright Declaration. I also explained to Mr. Hughes that the pylon signs are owned, manufactured and installed by SOA and its vendors, that retailers are not responsible for permitting or installing pylon signs and that SOA has provided all information necessary for the purpose of any electrical specifications for standard pylon signs to Courtesy. I also explained SOA's reasoning for not approving a DBA name change and the facts demonstrating that SOA has acted properly and in compliance with both the Subaru Dealer Agreement and the ALJ's Confidential Decision in doing so. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17<sup>th</sup> day of January, 2023 at Torrance, California.



Lisa M. Gibson

**PROOF OF SERVICE  
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Nelson Mullins Riley & Scarborough LLP and my business address is 19191 South Vermont Avenue, Suite 900, Torrance, CA 90502.

On January 17, 2023 I served the foregoing document entitled

**RESPONDENT SUBARU OF AMERICA, INC.'S OPPOSITION TO PETITIONER'S  
MOTION FOR THE CALIFORNIA NEW MOTOR VEHICLE BOARD TO CONSIDER  
THE DECLARATION OF SHAHRAM MIHANPAJOUH (JERRY PAJOUH) IN  
SUPPORT OF PETITION**

on all the appearing and/or interested parties in this action by placing a true copy thereof as follows:

**LAW OFFICES OF GAVIN M. HUGHES**

Gavin M. Hughes  
Robert A. Mayville, Jr.  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
T: (916) 900-8022  
E-mail: [gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)  
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***Counsel for Petitioner***

**NEW MOTOR VEHICLE BOARD**

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**[X] BY ELECTRONIC TRANSMISSION:** I transmitted a PDF version of this document by electronic mail to the party(s) identified above and/or on the attached service list using the email address(es) indicated.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was Executed on January 17, 2023 at Torrance, California.

*Maria Domingo*  
Maria Domingo

Received  
1-19-23

VIA EMAIL

LAW OFFICES OF GAVIN M. HUGHES  
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ATTORNEYS FOR PETITIONER

FILED

New Motor Vehicle Board

Date: 1-19-23

By: RPP

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, Inc., dba  
COURTESY SUBARU OF CHICO,

Petitioner,

v.

SUBARU OF AMERICA, INC.,

Respondent.

PETITION NO: P-463-22

REPLY IN SUPPORT OF MOTION FOR  
THE CALIFORNIA NEW MOTOR  
VEHICLE BOARD TO CONSIDER THE  
DECLARATION OF SHAHRAM  
MIHANPAJOUH (JERRY PAJOUH) IN  
SUPPORT OF PETITION

BOARD MEETING ON PETITION:  
January 25, 2023, at 9:30 AM PT  
Via Zoom

Petitioner, Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico ("Courtesy"), submits the following Reply in Support of Motion for the California New Motor Vehicle Board to Consider the Declaration of Shahram Mihanpajouh (Jerry Pajouh) in Support of Petition ("Motion") and in response to Respondent Subaru of America, Inc.'s ("SOA") Opposition to Petitioner's Motion for the California New Motor Vehicle Board to Consider the Declaration of Shahram Mihanpajouh (Jerry Pajouh) in Support of Petition ("SOA's Opposition").

## INTRODUCTION

SOA's Opposition adopts the same position toward ALJ Matteucci's Confidential Decision<sup>1</sup> as SOA had adopted following the Decision and throughout the proceedings in this Petition matter—SOA seeks to ignore the Confidential Decision was ever issued. SOA argues this Board should ignore whether it is complying with ALJ Matteucci's Confidential Decision, and it would allegedly not be appropriate for the Board to order a DMV investigation based on SOA's failure to comply with lawful orders of this Board. (SOA's Opposition at 6:23-26 ("a petition seeking a DMV investigation is not the appropriate remedy to address Courtesy's allegations that SOA has failed to comply with the Stipulated Decision or the ALJ's Confidential Decision and Courtesy has not demonstrated any statutory violation which would warrant DMV action."))

ALJ Matteucci's Confidential Decision should mean something. It should mean something to this Board, to Courtesy, and to SOA. This Board approved the procedure calling for the Confidential Decision and issued the Stipulated Decision approving of that procedure. The parties and ALJ Matteucci followed that procedure. The binding, non-appealable Confidential Decision issued by ALJ Matteucci should be considered equivalent to a final decision by the Board because this Board specifically approved that procedure. (*See* Stipulated Decision at ¶ 28.) Courtesy's franchise agreement remains in full force and effect.

However, despite Courtesy's franchise agreement remaining in full force and effect, SOA is ignoring the very terms of the franchise agreement and the legal effect of ALJ Matteucci's Confidential Decision. SOA cannot terminate or modify Courtesy's franchise agreement without an express order of the Board, but SOA is seeking to do so despite the Confidential Decision.

SOA's actions threaten to undercut the legal force and effect of this Board's decisions. SOA is arguing this Board ignore its own Stipulated Decision and ALJ Matteucci's Confidential Decision and not enforce them to the full extent of the Board's jurisdiction when requested by a franchisee. The Board should reject SOA's argument and exercise its jurisdiction when a distributor shows it has and will continue to flout the Board's decisions.

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<sup>1</sup> "Confidential Decision" and "Stipulated Decision" herein have the same meanings as used in the Petition. The Stipulated Decision is Exhibit 1 and the Confidential Decision is Exhibit 2 to the Petition.

1 **DISCUSSION**

2 SOA's Opposition argues its ongoing acts of bad faith are "new issues not raised" by the Petition  
3 or at the November, 7, 2022, Board Meeting. SOA's argument fails because Courtesy's Petition alleged  
4 "SOA violates Section 11713.3 subdivision (l) by treating Courtesy's Dealer Agreement and the  
5 Stipulated Decision as terminated and modifying Courtesy's Dealer Agreement by refusing to cooperate  
6 in good-faith with Courtesy concerning ongoing efforts to complete the Permanent Facility, pursuant to  
7 the terms of each agreement." (Petition at ¶ 42.) SOA's conduct at the November 7, 2022, Board  
8 Meeting and its refusal to approve the DBA name change request from Courtesy are further instances  
9 of SOA's bad faith conduct which have continued despite Courtesy's Petition. (*See, infra*, Part I.)

10 SOA's arguments against the Board's jurisdiction fail for the same reasons addressed during the  
11 November 7, 2022, Board Meeting. The Board has jurisdiction over this Petition and the relief requested  
12 therein. (*See, infra*, Part II.)

13 The alternative allegedly appropriate remedies SOA proposes in its Opposition are inaccurate  
14 and ignore this Board already reached a decision concerning whether SOA could terminate Courtesy.  
15 A petition is the appropriate procedure for a franchisee to pursue when a franchisor ignores a previous  
16 Board decision. (*See, infra*, Part III.)

17 I. THE ISSUES RAISED IN THE PAJOUH DECLARATION ARE FURTHER SUPPORT OF  
18 THE PETITION BASED ON SOA'S SUBSEQUENT CONDUCT.

19 SOA argues Courtesy's Motion and Mr. Pajouh's Declaration seek to raise new issues not  
20 contained in the original Petition and not discussed at the November 7, 2022, Board Meeting. (SOA's  
21 Opposition at 2:2-9; 5:2-4; and 5:9-15.) However, as specified in Courtesy's Motion, the Petition raised  
22 two grounds for the Board to refer SOA's conduct to the DMV for investigation.

23 First, Courtesy alleged SOA's conduct violated Vehicle Code section 11713.3 subdivision (l)  
24 by directly or indirectly seeking to "modify, replace, enter into, relocate, terminate, or refuse to renew  
25 a franchise in violation of Article 4 (commencing with Section 3060) or Article 5 (commencing with  
26 Section 3070) of Chapter 6 of Division 2." (Petition at ¶ 38.) Second, Courtesy alleged SOA's conduct  
27 violated Vehicle Code section 11713.3 subdivision (d) by directly or indirectly seeking to "prevent or  
28 require, or attempt to prevent or require, by contract or otherwise, a dealer, or an officer, partner, or

1 stockholder of a dealership, the sale or transfer of a part of the interest of any of them to another person.”  
2 (Petition at ¶ 55.) Courtesy’s Petition shows SOA is seeking to terminate or modify Courtesy’s Dealer  
3 Agreement in violation of Section 11713.3 subdivision (l) through its refusal to cooperate in good-faith  
4 (Petition at ¶ 42) and is providing a veiled threat to continue litigating against Courtesy unless and until  
5 Courtesy sells its franchise in violation of Section 11713.13 subdivision (d) (Petition at ¶ 58).

6 At the time of the Petition and the November 7, 2022, Board Meeting, SOA’s bad faith conduct  
7 included refusing to provide Courtesy the Sign Package. However, now having been pressed to provide  
8 the Sign Package by Courtesy’s Petition, SOA is seeking other avenues to refuse to cooperate in good-  
9 faith.

10 SOA refuses to approve a DBA name change from “Courtesy Subaru of Chico” to “Subaru of  
11 Chico” and refuses to provide the reason(s) for its refusal.<sup>2</sup> SOA’s refusal to agree to the DBA name  
12 change, which it would agree to for any of its other Subaru franchises, is bad faith conduct designed to  
13 frustrate Courtesy’s ongoing effort to comply with its Permanent Facility obligations.

14 The DBA name change request is related to the Sign Package issue originally raised in  
15 Courtesy’s Petition because the signs Courtesy is seeking to have installed on its building would read  
16 “Subaru of Chico” and not “Courtesy Subaru of Chico” if the DBA name change is approved. The issue  
17 is not specifically stated in the original Petition because it only arose after Courtesy’s initial request to  
18 change its DBA name on or about September 30, 2022. (Pajouh Decl. at Exh. 4, p. 2.) The matter  
19 reached an impasse on December 13, 2022, when Raymond Smit refused to provide any further reason  
20 why SOA refused Courtesy’s requested DBA name change. (Pajouh Decl. at Exh. 4, p. 1.)

21 Moreover, as of the November 7, 2022, Board Meeting, SOA’s arguments confirmed it would  
22 ignore the Confidential Decision and the Stipulated Decision. SOA’s arguments provide further support  
23

---

24 <sup>2</sup> The Declaration of Lisa M. Gibson submitted in support of SOA’s Opposition states “I also explained  
25 SOA’s reasoning for not approving a DBA name change and the facts demonstrating that SOA has  
26 acted properly and in compliance with both the Subaru Dealer Agreement and the ALJ’s Confidential  
27 Decision in doing so” in paragraph 6 of the declaration. The Gibson Declaration does not say what the  
28 reason for denying the DBA name charge request is. Moreover, during the call, SOA never provided a  
reason for denying the DMA name change—only that SOA could deny the name change and was not  
explicitly required to approve it. SOA’s refusal to provide any reason for its refusal is a violation of its  
obligation to work with Courtesy in good faith.



1 that without the Board's intervention, SOA will refuse to provide Courtesy its OL 124 and ignore the  
2 Confidential Decision." (See Petition at ¶ 52 (pleading SOA's argument (at the time in SOA's May 25,  
3 2022, letter) indicates it would refuse to grant Courtesy an OL 124).) SOA's arguments during the  
4 November 7, 2022, Board Meeting arose after Courtesy's Petition.

5 The operative events in SOA's further bad faith conduct all occurred after Courtesy filed its  
6 Petition. Courtesy should not be required to continue amending its Petition every time SOA pursues  
7 additional conduct demonstrating a failure to act in good faith. Courtesy's general allegations that SOA  
8 is failing to act in good faith as required by the parties' franchise agreement and seeking to litigate  
9 against Courtesy unless and until Courtesy sells its franchise are sufficient to encompass SOA's  
10 continued bad faith conduct as described in the Pajouh Declaration. Moreover, the additional conduct  
11 relates to the Sign Package because the signs will ultimately include Courtesy's modified DBA name  
12 change and the arguments from SOA's counsel during the Board's November 7, 2022, Meeting  
13 concerned SOA's refusal to provide Courtesy the Sign Package.

## 14 II. THE BOARD HAS JURISDICTION OVER THE PETITION.

15 SOA's Opposition re-raises eleven (11) jurisdictional arguments SOA raised at the November  
16 7, 2022, Board Meeting. For the same reasons Courtesy provided at the November 7, 2022, Board  
17 Meeting, all of SOA's jurisdictional arguments fail. Courtesy remains available to address SOA's  
18 jurisdictional arguments at the January 25, 2023, Board Meeting. None of SOA's jurisdictional  
19 arguments provide a reason to not consider the Pajouh Declaration at the Board Meeting.

20 Fundamentally, the Board has jurisdiction over Courtesy's Petition because the Board may hear  
21 a Petition concerning the activities of a distributor (SOA) submitted by any person (Courtesy). (Cal.  
22 Veh. Code, § 3050, subd. (b).) The Vehicle Code goes on to preclude board members who are motor  
23 vehicle dealers from participating in disputes between a franchisee and a franchisor, implying  
24 franchisees and franchisors may file a petition against one another for violations of the Vehicle Code for  
25 the Board's review. (*Id.*; see also *Mazda Motor of America, Inc. v. New Motor Vehicle Board* (2003)  
26 110 Cal.App.4th 1451, 1459 (reaching the same conclusion).) The Board has the jurisdiction to order  
27 the DMV to conduct an investigation (Cal. Veh. Code, § 3050, subd. (b)(1)) and the DMV has  
28 jurisdiction to consider violations of Section 11713.3 pursuant to Vehicle Code section 11705 (Cal.

1 Veh. Code, § 11705, subd. (a)(10)).

2 SOA also misquotes the Board Members from the November 7, 2022, Board Meeting in arguing  
3 the Board does not have jurisdiction. SOA claims Member Doi indicated “the relief being sought under  
4 its Petition is not within the power of the Board to provide.” (SOA’s Opposition at 2:5-8.) Board  
5 Member Doi never made such a statement. Instead, Member Doi indicated “if we [the Board] think it’s  
6 bad enough, potentially refer the matter to DMV for them to take action against Subaru’s license for  
7 failing to give you the information you’re seeking.” (November 7, 2022, Board Hearing Transcript,  
8 90:14-21 (also indicating the Board could not order SOA to provide information).) Similarly, Board  
9 Member Stevens indicated “we heard earlier that we don’t have the authority to compel anybody to  
10 accept anything. We just have to determine how bad of an issue it is of, you know, bad faith or however  
11 we choose to describe it.” (*Id.* at 138:7-12.) The Board did not question it had the jurisdiction to order  
12 the DMV to investigate SOA’s license as Courtesy’s Petition requests.

13 SOA’s reliance on its Writ Petition in the Alameda County Superior Court is also misplaced.  
14 (*See* SOA’s Opposition at 2:16-19 and fn. 1.) SOA’s Writ Petition concerns SOA’s effort to overturn  
15 the Confidential Decision in comparison to Courtesy’s Petition which concerns SOA’s bad faith conduct  
16 while the parties’ franchise agreement remains in full force and effect. SOA has never sought to stay  
17 the operation of the Confidential Decision while its Writ Petition is pending in the Alameda County  
18 Superior Court.

19 In addition, as SOA notes, SOA is seeking to amend its Writ Petition in the Alameda County  
20 Superior Court after the court sustained Courtesy’s Demurrer to the Writ Petition with leave to amend.  
21 The court held SOA’s Writ Petition fails to state a claim for lack of fundamental jurisdiction and does  
22 not allege facts to overcome the express waiver of appeal rights in Paragraph 28 of the Stipulated  
23 Decision. A true and correct copy of the Alameda County Superior Court’s January 11, 2023, Order  
24 Sustaining Demurrer with Leave to Amend and Denying Motion to Compel Production of Privileged  
25 Document is attached hereto as Exhibit 1. As the court noted on page three of the order, “The  
26 contractual waiver of the right to appeal is a serious problem for SOA’s petition.” (*See* Exhibit 1, p. 3  
27 (first full paragraph).)

28 ///

1 III. NONE OF THE ALLEGEDLY ALTERNATIVE PROCEDURES SOA PROPOSES APPLY  
2 AND COURTESY'S PETITION IS THE APPROPRIATE PROCEDURE FOR COURTESY  
3 TO PURSUE WHEN SOA IGNORES A BOARD DECISION AND ACTS IN BAD FAITH  
4 WITH RESPECT TO A FRANCHISE AGREEMENT.

5 SOA proposes two alternative procedures Courtesy allegedly should have followed instead of  
6 its Petition before the Board as reasons to deny Courtesy's Motion. First, SOA proposes Courtesy could  
7 have sought to file a notice of non-compliance pursuant to the Stipulated Decision. (SOA's Opposition  
8 at 2:19-22 and 6:7-10.) Second, SOA proposes Courtesy could file additional Vehicle Code section  
9 3060 protests challenging SOA's efforts to terminate or modify its franchise. (SOA's Opposition at 10-  
10 12.) Both alternatives fail to provide alternative procedures to Courtesy's Petition.

11 First, the Stipulated Decision does not provide Courtesy a means of filing a notice of non-  
12 compliance. Paragraph 28 of the Stipulated Decision only provides SOA (and not Courtesy) the ability  
13 to serve a notice of non-compliance. (*See* Petition at Exhibit 1, ¶ 28.) SOA does not cite any language  
14 in the Stipulated Decision in support of its argument, and the Stipulated Decision does not otherwise  
15 allow Courtesy to file a notice of non-compliance with the resulting appointment of an ALJ in any other  
16 paragraphs.

17 Second, SOA's proposal Courtesy could file additional Vehicle Code section 3060 protests  
18 ignores the procedural history in Protest No. PR-2570-18. Courtesy already filed a Section 3060(a)  
19 termination protest. The protest already reached a resolution by way of the Stipulated Decision.  
20 Following the procedures set forth in the Stipulated Decision, the Confidential Decision determined  
21 Courtesy's franchise agreement would remain in full force and effect—a determination analogous to  
22 what the Board would be determining in a Section 3060 Protest.

23 As a result, any Section 3060 protest SOA proposes Courtesy file would be duplicative of the  
24 results already reached by the Confidential Decision. SOA's efforts to ignore the legal effect of the  
25 Board's Stipulated Decision and the Confidential Decision required Courtesy take the additional step  
26 of filing this Petition requesting the Board exercise its jurisdiction to investigate SOA's bad faith  
27 conduct.

28 This Petition is unique compared to other disputes previously before the Board because it  
follows a Board decision and involves a franchisor ignoring that decision. The Petition is not an initial

1 invocation of Section 3060 of the Vehicle Code but an effort to enforce the Board's decisions already  
2 reached in a Section 3060 protest.

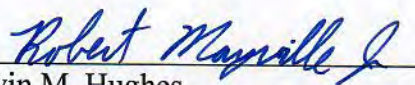
3 SOA also disputes the Petition only alleges breach of contract. (See SOA's Opposition at 6:4-  
4 15.) However, the Petition concerns breach of a specific type of contract within the Board's express  
5 jurisdiction—a new motor vehicle franchise agreement. The agreement is subject to the Board's  
6 jurisdiction, and the Board is the sole agency provided the authority by statute to decide when the  
7 agreement may be terminated or modified. (See Cal. Veh. Code, § 3060, subd. (a) and (b).) Courtesy's  
8 Petition is proper and within the Board's jurisdiction after the Board issued the Stipulated Decision and  
9 the Confidential Decision and SOA persists in efforts to ignore the legal effects of those decisions.

10 **CONCLUSION**

11 Courtesy respectfully requests the Board grant Courtesy's request to consider the Pajouh  
12 Declaration at the January Board Meeting concerning Courtesy's Petition. The issues raised by the  
13 Petition including SOA's bad faith conduct toward Courtesy are ongoing as evidenced by Mr. Pajouh's  
14 Declaration. The Board should order the DMV to investigate SOA's conduct based on SOA's efforts  
15 to ignore the Stipulated Decision and Confidential Decision. SOA cannot be allowed to treat a franchise  
16 agreement as terminated or modified without an order of the Board. If SOA is permitted to seek the de  
17 facto termination of Courtesy it will harm both Courtesy and the Subaru customers in Chico, California.

18  
19  
20 Dated: January 19, 2023

LAW OFFICES OF  
GAVIN M. HUGHES

21  
22 By   
23 Gavin M. Hughes  
24 Robert A. Mayville, Jr.  
25 Attorneys for Petitioner  
26  
27  
28

# EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Date: 1/11/2023

Hon. MICHAEL MARKMAN, Judge

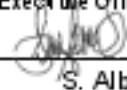
Dept. No. 14

**FILED**

Superior Court of California  
County of Alameda

01/11/2023

Clad Flake, Executive Officer / Clerk of the Court

By:  Deputy  
S. Albert

SUBARU OF AMERICA, INC.,

Petitioner,

v.

NEW MOTOR VEHICLE BOARD,

Respondent.

COURTESY AUTOMOTIVE GROUP, INC. DBA  
COURTESY SUBARU OF CHICO,

Real Party in Interest.

Case Nos. 22-CV-010968

**ORDER SUSTAINING DEMURRER WITH  
LEAVE TO AMEND AND DENYING MOTION  
TO COMPEL PRODUCTION OF PRIVILEGED  
DOCUMENT**

**I. ORDERS**

Real Party in Interest Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico's ("Courtesy") Demurrer to the Petition for Writ of Administrative Mandate is SUSTAINED WITH LEAVE TO AMEND.

Petitioner Subaru of America, Inc.'s ("SOA") Motion to Compel Production of Staff Summary Withheld by Respondent New Motor Vehicle Board ("the Board") from Administrative Record or, In the Alternative, for Privilege Determination is DENIED.

The Court GRANTS Petitioner's Request for Judicial Notice of Respondent New Motor Vehical Board's Answer, though as a pleading in the case judicial notice ought not be necessary.

The Court GRANTS Real Party in Interest's unopposed Motion to Seal portions of its Demurrer and Reply and Petitioner's unopposed Motion to Seal portions of its opposition to the Demurrer. Based on the Court's review, redacted public versions of the sealed documents have been filed in the public record.



## II. OVERVIEW

This case concerns the aftermath of the settlement of a car dealership franchise dispute. On March 20, 2019, Petitioner Subaru of America, Inc. (“SOA”) and Courtesy Subaru of Chico agreed to enter a stipulated Decision and Order of the Board Resolving Protest and Lawsuit (“Stipulated Decision”) in proceedings before the New Motor Vehicle Board (the “Board”). Attached to the Stipulated Decision was a Confidential Agreement (“Agreement”), setting forth the terms of the parties’ settlement.

The Board retained jurisdiction “to enforce its Order in the future if requested by either party hereto.” (Petition at ¶ 2.) an Administrative Law Judge (“ALJ”) could hear disputes concerning enforcement of the Stipulated Decision (though the parties dispute whether a permissible hearing could include an evidentiary hearing). The ALJ’s determination would be “binding” and “non-appealable.” The parties waived “any claim that the Board itself should consider the ALJ’s decision, should reach its own decision, or otherwise involve itself in resolving the issue or dispute.” The parties waived any right to appeal to “any individual, forum, or entity of any kind or nature whatsoever, including, without limitation . . . any state or federal court[.]”

On March 24, 2022, ALJ Evelyn Matteuci issued a Confidential Decision resolving one of the parties’ disputes. On May 9, 2022, SOA filed its Petition for a writ of administrative mandate, which challenges the ALJ’s decision, as approved by the Board. Courtesy demurs to the Petition. In parallel, Courtesy seeks to compel the production and incorporation into the Administrative Record of a staff memorandum prepared for the Board in connection with its review of the ALJ’s decision.

On July 12, 2022, the Court granted SOA’s motion to seal certain portions of the Petition, including exhibits. On October 18, 2022, the Court continued the hearing on this Demurrer to ensure compliance with the sealing rules, and the Court is concurrently granting the parties’ unopposed Motions to Seal.

The parties may seek to maintain the confidentiality of their settlement, and the Court will endeavor to minimize discussion of confidential provisions in this Order and subsequent orders. That said, the Court must unavoidably discuss certain confidential provisions in order to intelligently resolve the issues presented for decision by SOA’s Demurrer. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1211 [“Litigants certainly anticipate, upon submitting their disputes for resolution in a public court, before a state-appointed or publicly elected judge, that the proceedings in their case will be adjudicated in public”].)

## III. GENERAL DEMURRER TO PETITION FOR LACK OF JURISDICTION

The parties’ primary disputes concern jurisdiction. For its part, SOA says the ALJ lacked jurisdiction to hear Courtesy’s arguments concerning compliance with the parties’ settlement.



Courtesy, by contrast, says the ALJ had jurisdiction to hear disputes concerning the settlement but no one has jurisdiction to hear any appeal from the ALJ's decision. (Respondent's Mem. at 12:4-13:13.)

At this early stage the Court must focus on Courtesy's argument that the ALJ's decision is unappealable, meaning that this Court lacks jurisdiction to hear a writ. The Court disagrees with Courtesy as to the Court's subject matter (or fundamental) jurisdiction and overrules Courtesy's demurrer on that ground. (Code Civ. Proc. § 430.10(a).) As discussed below, however, the parties expressly and unambiguously agreed to waive their respective rights of appeal from an ALJ's decision concerning disputes about Courtesy's compliance with the parties' Stipulated Decision and Agreement. The contractual waiver of the right to appeal is a serious problem for SOA's petition. The Court will sustain Courtesy's demurrer, with leave to amend, for failure to state a claim on which relief can be granted due to the operation of SOA's waiver.

The parties' settlement included provisions for addressing potential disputes concerning Courtesy's compliance. Paragraph 28 of the Confidential Agreement, incorporated into the Stipulated Decision as Exhibit 1, requires SOA to provide notice to Courtesy (called "Chico" in the Agreement). Courtesy then had fifteen days "from receipt of that notice to file a written request with the Board asking it to appoint an [ALJ] to hold a hearing on the allegations made in the notice of non-compliance and to make the final determination of whether there has been a material failure to comply with the Conditions by Chico." (Agreement at ¶28 [Writ Petition at p. 55 of 153].) If Courtesy failed to make a request by the deadline, it would "terminate automatically as a SOA dealer without any recourse or right of appeal...." (*Id.* at ¶ 28(a).)

If, however, Courtesy invoked the provision permitting Board review, as happened here, the parties agreed, "The Board will have continuing jurisdiction over this matter solely for the purpose of appointing an ALJ to determine, in the event of a timely request by Chico, whether there has been a failure by Chico to materially comply with any of the Conditions of this Confidential Agreement. Any such timely request will be submitted for binding, non-appealable determination to an ALJ appointed by the Board on an expedited basis, and in no event later than thirty (30) days after the filing by Chico of the request." (Agreement at ¶ 28(b).)

The parties then defined the phrase "binding, non-appealable" as mean[ing] that each Party adopts the ALJ's decision as a final, binding settlement of the matter at issue and waives any and all recourses, right of action, or appeal with respect to the resulting ruling and/or any resulting termination, to any individual, forum, or entity of any kind or nature whatsoever, including without limitation, and state or federal agency, any state or federal court, or any other governmental, judicial, quasi-judicial, or private entity or forum. The Parties expressly waive any claim that the Board itself should consider the ALJ's decision, should reach its own decision, or otherwise involve itself in resolving the issue or dispute." (Agreement at ¶ 28(c).)

The parties further outlined that "The ALJ's decision will be issued expeditiously after the close of evidence. If the ALJ determines that Chico has materially failed to comply with any

of the Conditions set forth herein, the termination shall be effective immediately upon issuance of the ALJ's decision and no further conditions may be imposed to require continuation of the relationship between SOA and Chico. If the ALJ determines that Chico has complied with the Condition or Conditions in question, the provisions of this Confidential Agreement that take effect in the event of compliance with the Condition or Conditions in question are effective immediately upon issuance of the ALJ's decision." (Agreement at ¶ 28(d).)

The Court has subject matter jurisdiction over SOA's Petition. (See *ibid.*; see also Cal. Const., art. VI, §§ 10, 11.) The Court is particularly mindful of the fact that the parties elected to adjudicate disputes before one of the Board's ALJs – an open and public process – and not via private, confidential, and binding arbitration. The parties' Agreement sought to treat the ALJ like a private mediator, to the extent of even eliminating Board review of the ALJ's decision, and the ALJ noted that the decision regarding the parties' dispute would not be subject to the Board's review. (Confidential Decision Resolving Stipulated Decision and Order Dispute at ¶ 10 [Writ at p. 68/153].)

For better or worse, the parties lack the power to transform an ALJ into a private arbitrator. Even an arbitrator's decisions are reviewable by the Court, though the scope of that review is narrowly circumscribed by the California Arbitration Act. (See Code Civ. Proc. §§ 1286.2 and 1286.6.) Here, on a writ of mandate, the Court's review is also circumscribed by statute under section 1094.5 of the Code of Civil Procedure.

The Court's subject matter jurisdiction "may not be waived by a party." (*Tripplett v. Workers' Comp. Appeals Bd.* (2018) 25 Cal.App.5th 556, 562.) Questions involving the enforceability of contractual forum restrictions "are distinct from the questions of subject matter jurisdiction." (See *Miller-Leigh LLC v. Henson* (2007) 152 Cal.App.4th 1143, 1149 [forum selection clause does not deprive trial court of jurisdiction].) But, "the parties may not deprive courts of their jurisdiction over causes by private agreement." (*Smith, Valentino & Smith, Inc. v. Superior Court* (1976) 17 Cal.3d 491, 495.)

#### **IV. GENERAL DEMURRER TO PETITION – CONTRACTUAL WAIVER OF APPEAL RIGHTS**

The Court sustains, with leave to amend, Courtesy's Demurrer to the Petition for Writ of Administrative Mandate for Failure to State Facts Sufficient to Constitute a Cause of Action. (Code Civ. Proc. § 430.10(a).)

The Court summarized the parties' agreement concerning dispute resolution above. Paragraph 28 of the Agreement, described above, is an express and unambiguous waiver of the right to seek any form of appellate relief from the ALJ's determination. As the ALJ herself recognized, the provision even eliminated review of her decision by the Board itself.

An express waiver of the right to appeal from a judgment is enforceable in California. (*Pratt v. Gursey, Schneider & Co.* (2000) 80 Cal.App.4th 1105, 1108; *McConnell v. Merrill Lynch* (1985) 176 Cal. App. 3d 480, 488 ["a party may expressly waive its right to appeal subject to

only a few conditions: 1. The attorney must have the authority to waive a party's right to appeal. 2. The waiver must be express and not implied. 3. The waiver must not have been improperly coerced by the trial judge."]; accord, *City of Gardena v. Rikuo Corp.* (2011) 192 Cal.App.4th 595, 604.) By agreeing to Section 28, SOA and Courtesy contracted away their ability to seek relief from the ALJ's decision.

SOA's arguments against the enforceability of Paragraph 28 of the Agreement do not withstand scrutiny. Unlike *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351, 359, cited by SOA in the Petition (at para. 24), here SOA is not challenging the Stipulated Decision itself as failing to reflect the terms of the parties' actual agreement. *Rooney* involved the review of a court's decision to enforce a settlement pursuant to section 664.6 of the Code of Civil Procedure. There, the commissioner entered a plaintiff's proposed judgment to enforce the settlement without any input from the defendant, and without a hearing. As the Supreme Court explained, the problem was that the commissioner accepted the plaintiff's declarations:

as conclusive proof of the fact of default and the amount due and to enter the judgment without first giving defendants an opportunity to be heard in opposition to plaintiffs' showing. This was error. The stipulation does not provide that the court shall enter judgment for whatever amount is claimed in plaintiffs' declaration but that the court shall enter a judgment for the unpaid balance, together with attorney's fees and costs, for which plaintiffs "shall be entitled." Thus, the court must satisfy itself of the amount due and other facts prerequisite to entering judgment, and this it could not do without some form of hearing or trial.

(*Rooney, supra*, 10 Cal. 3d at 370.) Notwithstanding the parties' waiver of their right to appeal, the commissioner's procedural defect was therefore appealable.

SOA also points to *BMW of North America Inc. v. New Motor Vehicle Board* as support for its argument that appellate review is warranted here. There, the Court of Appeal granted a writ of mandate where the Board had acted "in excess of its jurisdiction" in allowing a protest in the first instance. (162 Cal. App. 3d 980, 984.) The protest in that case was made by a franchisee to challenge the grant of a new franchise nearby, but that was outside the 15-mile statutory distance that would permit a challenge under the New Motor Vehicle Board Act. (*Id.* at 990.) The franchisee argued that the grant of the new franchise would impermissibly modify his own franchise terms. (*Id.* at 990-91.) The Board agreed but the Court of Appeal reversed.

The Court of Appeal found:

the Board acted in excess of its jurisdiction. The Legislature has acted to regulate the relationship between franchisors and franchisees in the automobile industry, but has done so in a limited matter pursuant to clearly articulated and specifically expressed principles. Those principles provide that a franchisor may be required to continue unmodified an existing franchise agreement, or may be

precluded from establishing or relocating a dealer within 10 miles of an existing dealer. Beyond those two qualifications (and others not relevant here) the Board has been given no power to regulate the relationship between franchisors and franchisees, and with those exceptions the rule is still unfettered competition and freedom of contract. In precluding BMW from establishing the Thousand Oaks-Westlake dealer the Board disregarded rather than enforced the franchise contract between Watkins and BMW, and gave Watkins something that neither his contract nor the Act gave him, namely, an exclusive trading territory far in excess of his relevant market area.

(*BMW*, *supra*, 162 Cal. App. 3d at 994.) Unlike this case, the *BMW* case did not involve any agreement to waive rights to appeal. Nor did it involve enforcement of the parties' settlement agreement. Again, the parties here agreed that the ALJ would hear any dispute concerning Courtesy's compliance with the Stipulated Decision and Agreement, and that the ALJ's decision could not be appealed. This was not a process imposed upon SOA or Courtesy – they unambiguously agreed to it.

A due process defect like the one in *Rooney* would be reviewable here, by writ under section 1094.5 of the Code of Civil Procedure (which is another reason why the Court must overrule Courtesy's demurrer based on the alleged total lack of subject matter jurisdiction).

But, SOA is not alleging a severe due process defect in its Petition like the one in *Rooney* or a review that exceeds the ALJ's mandate as in *BMW*. Rather, SOA is challenging the substance of the ALJ's decision made pursuant to the parties' own settlement agreement procedures. SOA's Petition also cites an unpublished opinion of the Court of Appeal, which this Court cannot consider. (Cal. Rules of Court, rule 8.1105(a); *Schmier v. Supreme Court* (2000) 78 Cal.App.4th 703, 710 [unpublished opinions "cannot be cited as precedent by other litigants who are not parties thereto"].)

SOA contends in its Opposition that the express waiver of appeal rights is irrelevant because the ALJ's Confidential Decision is void for lack of subject matter jurisdiction. The lack of subject matter jurisdiction, also known as lack of fundamental jurisdiction, "may be raised at any point in a proceeding, including for the first time on appeal, or, for that matter, in the context of a collateral attack on a final judgment." (*Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 807.) This rule applies to "any tribunal," including tribunals operated by administrative agencies. (See *Tripplett*, *supra*, 25 Cal.App.5th at p. 562.)

The problem is that SOA's argument confuses the lack of fundamental jurisdiction from an act in excess of jurisdiction, which is "valid until set aside, and parties may be precluded from setting it aside by such things as *waiver*, estoppel, or the passage of time." (*Quigley*, *supra*, 7 Cal.5th at p. 813 [emphasis added].) Code of Civil Procedure section 1094.5(b), governing writ review, is framed in slightly different language, but an agency that acts "without" jurisdiction is equivalent to an agency that lacks fundamental jurisdiction.



The Board lacks plenary jurisdiction over franchisor-franchisee disputes. (*Mazda Motor of America, Inc. v. New Motor Vehicle Bd.* (2003) 110 Cal.App.4th 1451, 1459.) This case differs from *Mazda Motor*. But, as SOA admits, the ALI ended up with jurisdiction under Vehicle Code section 3050.7 by way of Courtesy's protest of SOA's attempted termination of its franchise pursuant to Vehicle Code section 3060. (Pet. ¶ 7 at p. 2.)

The Petition contends that ALI Matteuci lacked jurisdiction under Vehicle Code sections 3050.7 and 11713.3(g) to invoke the common law of contracts in order to refuse to strictly enforce certain portions of the Stipulated Decision. (Pet. ¶¶ 7-13, 75-79 at pp. 2-4, 22-24.) Nothing in those sections, however, expressly prohibits the ALI from applying the common law of contracts to interpret the text of a stipulated decision in order to determine whether specified conditions have been met. Subdivision (g)(3) of section 11713.3 merely operates as a carve-out to authorize certain acts which might otherwise appear to be prohibited under subdivisions (g)(1) and (g)(2). Paragraph 28 requires a hearing by the ALI applying standard principles of California contract law to determine whether Courtesy "has materially failed to comply with any of the Conditions set forth" in the Agreement. It also contemplates that the hearing could include an evidentiary component, since Paragraph 28(d) references an "expeditious" decision following "the close of evidence."

The Court also disagrees with SOA's proposed interpretation of Vehicle Code sections 3050.7 and 11713.3 as implicitly prohibiting the Board from applying the common law of contracts to the interpretation of stipulated decisions. SOA's argument is contrary to the principle that "[u]nless expressly provided, statutes should not be interpreted to alter the common law, and should be construed to avoid conflict with common law rules." (*Presbyterian Camp & Conference Centers, Inc. v. Superior Court* (2021) 12 Cal.5th 493, 503.) The Legislature's intent to override the common law must be "clear and unequivocal." (*Id.*) The mere existence of a "creature of statute" does not "suggest that it exists on a slate wiped clean of common law principles." (*Id.*)

At the pleading stage, the writ petition as drafted presents no material argument that ALI Matteuci went beyond the mandate the parties elected to give to her under Paragraph 28 of the Agreement by applying common law principles to the interpretation of the Stipulated Decision and Agreement. Since the Petition does not state a claim for the lack of fundamental jurisdiction, and does not allege facts sufficient to overcome the express waiver of appeal rights in Paragraph 28 of the Agreement, the Petition is subject to demurrer.

The defects in the Petition do not fully foreclose the possibility that SOA may be able to plead a theory as to why ALI Matteuci lacked fundamental jurisdiction to issue the Confidential Decision. It is also plausible that SOA may be able to state facts sufficient to plead around the express waiver of appellate rights in Paragraph 28. The Court will not sustain a demurrer without leave to amend if there is still a possibility that the defects in the operative complaint can be cured. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) SOA may file a First Amended Petition on or before February 3, 2023. (Code Civ. Proc. § 472a(c).)

## **V. COURTESY'S MOTION TO COMPEL**

### **A. Overview**

On August 22, 2018, Courtesy filed a protest against SOA before the Board. This caused the Board to open a "protest docket" to track the filings in that proceeding. (Phomsopha Decl., ¶ 3 at p. 2.) On March 20, 2019, Courtesy and SOA attempted to settle their dispute by entering into the Stipulated Decision described above, with its accompanying Agreement. On April 9, 2019, the Board filed an Order approving the Stipulated Decision.

SOA seeks to compel production of a "Staff Summary" authored by staff counsel Danielle Phomsopha, which was transmitted to the Board by electronic mail on March 29, 2019 in connection with the Board's evaluation and eventual approval of the parties' Stipulated Decision. The Board mentioned the Staff Summary on the protest docket and listed it on a privilege log, but did not include the Staff Summary in the proposed Administrative Record for these writ proceedings.

The Board's privilege log describes the Staff Summary as a "6-page discussion re (1) Procedural Summary, (2) Procedural Background, (3) Effect of Proposed Stipulated Decision, (4) Summary of Stipulated Decision, and (5) Related Matters." The privilege log identifies the attorney-client privilege, the attorney work product doctrine, and the deliberative process privilege as grounds for withholding the Staff Summary from discovery and omitting it from the Administrative Record.

Ms. Phomsopha states that in preparing the Staff Summary, she utilized her "legal skills and professional judgment as an attorney in summarizing the Stipulated Decision and related issues" for the benefit of her client, the Board. (Phomsopha Decl., ¶ 4 at p. 2.) She explained that the Staff Summary was prepared for the Board's review "in connection with their deliberations relating to adoption of the Stipulated Decision," and that such summaries "assist the Board's functioning and deliberations, especially because some of the materials that come before the Board are voluminous and include legal terminology." (*Id.*, ¶ 5 at p. 2.) The Summary was stamped with a "CONFIDENTIAL" watermark in an enlarged font on each page. (*Id.*) Counsel transmitted her Summary directly by email to certain Board members at the direction of the Board's executive director along with a one-page cover memo from the executive director and the Stipulated Decision itself. (*Id.*, ¶ 6 at pp. 2-3.)

### **B. SOA'S Ability to Compel Production**

A party who brings a petition for writ of administrative mandamus "is entitled to have the entire record of the administrative proceedings presented to the court for review." (*Chavez v. Civil Service Com.* (1978) 86 Cal.App.3d 324, 332.) SOA seeks to include the Staff Summary as part of the Administrative Record.

The question of what is the “entire record” before the Board in particular seems to fall into a lacuna in California administrative law. The Board was created in 1967, which means it is subject only to Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, but not the provisions of the successive chapter, Chapter 5. (See Gov. Code, § 11501 [applying Chapter 5 only to government agencies created on or after July 1, 1997].) Only nine sections in Chapter 5 are expressly made applicable to the Board. (Veh. Code, § 3066, subd. (a).) Government Code section 11523 is not among them; therefore, its broad definition of the “complete record” theoretically does not apply to the Board. Neither Chapter 4.5 nor the Vehicle Code sections governing the Board attempt to define the scope of the administrative record in this context.

In the absence of a statutory definition, the Court will apply the common-sense view that the “entire record” means the entire record on file with the agency in connection with the subject matter of the petition for administrative mandamus. Since the Staff Summary was listed on the protest docket, it was part of the record. The only relevant issue is whether the Board properly withheld it from the record on the basis of privilege.

### **C. The Board’s Properly Asserted the Attorney-Client Privilege and Deliberative Process Exemption**

The Court finds that the Board has met its burden of proof to establish that the Staff Summary is subject to the attorney-client privilege, the work product doctrine, and deliberative process privilege. Therefore, the Board properly withheld the Staff Summary from the administrative record.

First, the Staff Summary is subject to the attorney-client privilege. The record establishes the Staff Summary is a confidential communication from an in-house Board attorney to her client, the Board, in which she provided legal advice concerning the Board’s deliberations about whether to adopt the Stipulated Decision. (See *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 371.) This includes the declaration of the drafting attorney, and is also reflected in the privilege log’s description of the document (“Effect of Proposed Stipulated Decision”). A government agency “needs freedom to confer with its lawyers confidentially in order to obtain adequate advice.” (*Id.* at p. 380.) Neither the Public Records Act nor the Brown Act have abrogated the protection of the confidentiality afforded by the attorney-client privilege. (*Id.*)

The Court denies SOA’s request for partial production of the Staff Summary with redactions. The attorney-client privilege “bars discovery of the communication irrespective of whether it includes unprivileged material,” for there is no differentiation between factual and legal material with respect to privileged communications in this context. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 734.)

Second, the Court declines to make a final determination at this time as to whether the Staff Summary is subject to the attorney work product doctrine. A trial court should not require in camera inspection to resolve a claim of work product if the attorney-client privilege




clearly applies. (*Id.* at pp. 736-740.) An in camera inspection is not required given the facts here. The Court notes that as described in the privilege log, the Staff Summary sounds like it is mostly (if not entirely) subject to the attorney work product doctrine, which provides for "an absolute privilege against disclosure of writings containing the attorney's impressions, conclusions, opinions or legal theories." (*Labor & Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12, 33.)

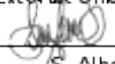
Third, the Staff Summary is subject to the deliberative process privilege. "Indiscriminate production of . . . administrative records would discourage . . . candid discussion" among persons at an administrative agency. (*Board of Registered Nursing v. Superior Court* (2021) 59 Cal.App.5th 1011, 1042.) This would "thereby undermine the agency's ability to perform its functions." (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1342.) The agency's "interest in confidentiality clearly outweighs" SOA's interest in obtaining the Staff Summary. (*Board of Registered Nursing, supra*, 59 Cal.App.4th at 1042.)

The fact that Vehicle Code section 3050.7 authorizes the deemed adoption of stipulated decisions does not affect the invocation of the deliberative process privilege. Section 3050.7 allows any member of the Board to object and require the Board to deliberate and vote on any particular stipulated decision. The adoption of a stipulated decision is not a purely ministerial process in which the Board has no discretion. Stipulated decisions can be voluminous and couched in legal terminology, and it is reasonable that the Board would normally rely upon a staff summary in deciding whether to investigate further the contents of any given proposed stipulated decision. The deliberative process privilege protects such "materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated." (*San Joaquin County Local Agency Formation Commission v. Superior Court* (2008) 162 Cal.App.4th 159, 170.)

IT IS SO ORDERED.

January 11, 2023

  
\_\_\_\_\_  
Michael M. Markman  
Judge, Superior Court of California  
Alameda County

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612		<b>FILED</b> Superior Court of California County of Alameda 01/12/2023 Chad Finke, Executive Officer / Clerk of the Court By:  Deputy S. Albert
PLAINTIFF/PETITIONER: Subaru Of America, Inc.		
DEFENDANT/RESPONDENT: New Motor Vehicle Board		
<b>CERTIFICATE OF MAILING</b>		CASE NUMBER: 22CV010968

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Amy M. Toboco  
NELSON MULLINS RILEY & SCARBOROUGH LLP  
19191 South Vermont Avenue, Suite 900  
Torrance, CA 90502

Gavin Hughes  
3436 American River Drive, Suite 10  
Sacramento, CA 95864

John T. McGlothlin  
Dept of Justice  
1515 Clay St, Ste 2000  
Oakland, CA 94612

Dated: 01/12/2023

Chad Finke, Executive Officer / Clerk of the Court

By:



S. Albert, Deputy Clerk

**CERTIFICATE OF MAILING**

1                                    **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

2            I, John David Wooten, declare that I am employed in the County of Sacramento, State of  
3 California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein.  
4 My business address is 3436 American River Drive, Suite 10, Sacramento, California 95864.  
5

6            I declare that on January 19, 2023, I caused to be served a true and complete copy of:

7  
8            ***REPLY IN SUPPORT OF MOTION FOR THE CALIFORNIA NEW MOTOR VEHICLE BOARD***  
9            ***TO CONSIDER THE DECLARATION OF SHAHRAM MIHANPAJOUH (JERRY PAJOUH) IN***  
10           ***SUPPORT OF PETITION***

11                                    ***Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico***

12                                    ***v.***

13                                    ***Subaru of America, Inc.***

14                                    **PETITION NO.: P-463-22**

15            By Electronic Mail:

16            Lisa M. Gibson  
17            Amy M. Toboco  
18            Nelson Mullins Riley & Scarborough LLP  
19            Pacific Gateway, Suite 900  
20            19191 South Vermont Ave  
21            Torrance, CA 90502  
22            Lisa.Gibson@nelsonmullins.com  
23            Amy.Toboco@nelsonmullins.com

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

25                                    Executed this 19 January 2023 in Sacramento, California.

26                                      
27                                    John David Wooten  
28

VIA EMAIL

Received  
June 20, 2022

FILED

New Motor Vehicle Board

Date: 6-20-22

By: dp

LAW OFFICES OF GAVIN M. HUGHES  
GAVIN M. HUGHES State Bar #242119  
ROBERT A. MAYVILLE, JR. State Bar #311069  
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E-mail: gavin@hughesdealerlaw.com

ATTORNEYS FOR PETITIONER

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, INC.,  
dba COURTESY SUBARU OF CHICO,

Petitioner,

v.

SUBARU OF AMERICA, INC.,

Respondent.

PETITION NO.: P-463-22

[REDACTED] PETITION

PUBLIC-REDACTS  
MATERIALS FROM  
CONDITIONALLY SEALED  
RECORD

Petitioner, Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico (“Courtesy”), files this petition under the provisions of the California Vehicle Code section 3050 subdivision (b)<sup>1</sup> and alleges as follows:

1. Courtesy is a new motor vehicle dealer selling Subaru vehicles and parts, is duly licensed as a vehicle dealer by the State of California, and is located at 896 East Ave., CA 95973; Petitioner's telephone number is (530) 345-9444. Courtesy is a licensee of the California Department of Motor Vehicles ("DMV") and also appears herein as a "person" pursuant to California Vehicle Code sections 470 and 3050(b).

2. Respondent, Subaru of America, Inc. (“SOA”), distributes Subaru products and is the franchisor of Petitioner. SOA is a licensee of the DMV authorized and licensed to do business and doing business in the State of California (Vehicle Distributor License No. 18593). SOA’s Main Location address for its license is 720 S Colorado Blvd., Suite 300N, Glendale, CO 80246; SOA’s phone number listed for its license is (720) 514-4200.

3. Petitioner 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. Petitioner files a redacted version of this Petition, Petitioner’s Motion to File Unredacted Petition Under Seal (“Motion”), and the Declaration of Robert A. Mayville, Jr. in Support of Petitioner’s Motion to File Unredacted Petition Under Seal (“Mayville Decl.”) and lodges an unredacted version of this Petition, the Motion, and the Mayville Decl. pending the Board’s ruling on the Motion.

## INTRODUCTION

5. Courtesy operates a Subaru franchise in Chico, California. Courtesy is well into the construction phase for multiple sales facilities and a combined service facility pursuant to agreements with franchisors including, BMW, Mercedes, Volvo, Subaru, Cadillac, Buick, and GMC (the “facility project”). To date, Courtesy has invested more than \$14 million in its facility project.

6. SOA unreasonably refuses to provide Courtesy electrical and structural specifications for

<sup>1</sup> All references to statutory code sections herein are to the California Vehicle Code unless otherwise stated.

Subaru brand signage and is also refusing to permit Courtesy to order the permanent signage required to be installed at the new facility ("Sign Package"). Courtesy is obligated to install the Subaru brand signage necessary to meet SOA facility image requirements, as required under the facility design approved by SOA. However, SOA refuses to provide the Sign Package in an effort to prevent Courtesy from securing final SOA approval and likely forming the basis for SOA to refuse to provide the OL 124 form required for DMV approval of the new facility location.

7. SOA is engaged in a course of conduct that ignores the Confidential Decision Resolving Stipulated Decision and Order Dispute in Protest Number PR-2570-18 ("Confidential Decision") from Administrative Law Judge Evelyn I. Matteucci ("ALJ Matteucci") holding [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. A true and correct copy of the Stipulated Decision is attached hereto as Exhibit 1. A true and correct copy of the Confidential Decision is attached hereto as Exhibit 2.

9. SOA's conduct subsequent to the issuance of the Confidential Decision is intended to coerce Courtesy to sell its Subaru franchise under the threat of being denied approval to commence operations at the new facility. Absent Board or DMV Occupational Licensing intervention, Courtesy will be condemned to operate from its temporary leased location even after the completion of its permanent facility.

10. Courtesy requests the Board refer this matter to the Occupational Licensing branch of the California Department of Motor Vehicles ("DMV") for investigation.

11. Courtesy requests the Board direct the DMV to conduct an investigation of SOA's violation of Sections 3060 and 11713.3 as described herein and make a written report on the results of the investigation.

**BACKGROUND**

12. Courtesy and SOA entered into the Stipulated Decision on March 20, 2019. The Board adopted the Stipulated Decision on April 9, 2019. The Stipulated Decision resolved a pending termination protest before the Board with Protest Number PR-2570-18 and associated civil litigation between Courtesy and SOA. [REDACTED]

[REDACTED]

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

17. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. Courtesy originally designed its facility project for Butte County building requirements. However, the City of Chico's "land speed" annexation of the property that included the facility project



1 resulted in unanticipated delays to Courtesy's permitting and construction efforts.<sup>2</sup> Courtesy's facility  
2 project was further delayed by the Camp Fire which destroyed the neighboring town of Paradise,  
3 California and materially impacted the City of Chico's resources, including those involved with  
4 permitting and other approvals pertaining to Courtesy's facility project. The COVID-19 Pandemic  
5 caused further delays. While the City continued efforts to conduct business throughout the pandemic,  
6 the City of Chico was physically closed to the public from the onset of the COVID-19 Pandemic until  
7 April 2021.

8 19. [REDACTED]

9 [REDACTED]  
10 [REDACTED] Delays to the facility project have frustrated  
11 Courtesy as much, if not more so, than any of Courtesy's franchisors. The project delays significantly  
12 harmed Courtesy and would have been avoided were it possible to do so. At no time did Courtesy  
13 suspend its efforts, even upon the onset of the COVID-19 Pandemic.

14 20. [REDACTED]

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 21. [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 22. Following discovery, deposition designations, briefing, and witness testimony, ALJ  
25 Matteucci issued the March 24, 2022, Confidential Decision. [REDACTED]

26 [REDACTED]  
27 \_\_\_\_\_  
28 <sup>2</sup> The annexation occurred in November 2017 and was completed in approximately a third the usual  
time.

1 REDACTED

2  
3 23. ALJ Matteucci's Confidential Decision is binding and non-appealable. REDACTED

4  
5  
6  
7  
8  
9  
10  
11  
12 24. As part of Courtesy's efforts to construct the facility project, including the permanent  
13 Subaru facility, Courtesy requires electrical and structural specifications for Subaru signs (the "Sign  
14 Package" as referenced above). The Sign Package is necessary for Courtesy's contractors to construct  
15 the Subaru facilities that are part of Courtesy's facility project. Moreover, Courtesy must be permitted  
16 to order the required Subaru brand signage in advance of the project's completion to ensure the signage  
17 is available to be installed upon completion. Courtesy first requested the Sign Package on March 28,  
18 2022. On April 4, 2022, Courtesy sent a follow up email concerning its March 28 request. Courtesy  
19 again requested the Sign Package on or about May 10, 2022. Copies of Courtesy's March 28, 2022,  
20 April 4, 2022, and May 10, 2022, requests are attached hereto as Exhibit 3. Thereafter, on May 10, 2022,  
21 SOA's counsel provided Courtesy an email refusing to Provide Courtesy the Sign Package. A true and  
22 correct copy of SOA's May 10, 2022, email is attached hereto as Exhibit 4.

23 25. SOA is unlawfully attempting to constructively terminate the Courtesy Subaru franchise  
24 despite the binding, non-appealable Confidential Decision issued by ALJ Matteucci denying SOA's  
25 request to terminate Courtesy.

26 26. SOA's May 10, 2022, email claims it will not provide the electrical and structural  
27 specifications because it has filed a writ in Superior Court seeking to overturn ALJ Matteucci's alleged  
28 "unauthorized determination." SOA claims it will not provide the specifications because Courtesy's

1 dealer principal (Mr. Pajouh) is allegedly required to “mitigate his damages” based on SOA’s pending  
2 writ petition.

3 27. SOA’s writ petition is meritless. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 28. Moreover, even if SOA had some basis to appeal or seek a writ concerning ALJ  
8 Matteucci’s binding, non-appealable Confidential Decision,<sup>3</sup> SOA is prohibited by law from treating  
9 Courtesy as terminated unless and until ALJ Matteucci’s Confidential Decision is actually overturned.  
10 SOA cannot treat Courtesy as *soon to be terminated* simply by filing a writ petition of the non-appealable  
11 Board decision. Similarly, SOA is prohibited by law from modifying Courtesy’s Dealer Agreement by  
12 refusing to provide the Sign Package necessary to complete the permanent facility. (*See* Cal. Veh. Code  
13 § 3060.)

14 29. SOA’s argument Courtesy is obligated to mitigate its damages is an alleged legal defense  
15 to any damages Courtesy might allege in a subsequent lawsuit. SOA cannot assert mitigation of damages  
16 to prevent Courtesy from incurring costs necessary to complete the ongoing facility project—authorized  
17 and required by the Stipulated Decision.

18 30. Following SOA’s refusal to provide Courtesy the Subaru Sign Package, Courtesy  
19 provided SOA a letter dated May 11, 2022, urging SOA to reconsider its position and immediately  
20 provide Courtesy the complete Sign Package required for its ongoing facility project. A true and correct  
21 copy of Courtesy’s May 11, 2022, letter is attached hereto as Exhibit 5.

22 31. Courtesy’s May 11, 2022, letter also reiterated SOA must treat Courtesy in good faith  
23 unless and until the franchisee-franchisor relationship is terminated. The letter further noted ALJ  
24 Matteucci’s Confidential Decision was binding and non-appealable. The letter also raised Courtesy’s  
25 concern SOA may subsequently rely on its writ petition to refuse to provide Courtesy an OL 124 upon  
26 Courtesy’s completion of the permanent facility. (*See* Exhibit 5.)

27  
28 \_\_\_\_\_  
<sup>3</sup> As noted above, SOA has no basis to challenge the Confidential Decision.

32. In response to Courtesy's May 11, 2022, letter, SOA provided a May 25, 2022, letter. The May 25 letter again confirms SOA refuses to provide Courtesy the necessary Sign Package despite the Confidential Decision finding SOA cannot terminate Courtesy's Subaru franchise. SOA now characterizes Courtesy's facility as "a building that should not be built." SOA goes on to state, "SOA encourages your client to cease and desist with the building, terminate or sell the franchise, and allow SOA the opportunity to appoint a retailer that is willing to perform its obligations both fully and timely." A true and correct copy of SOA's May 25, 2022, letter is attached hereto as Exhibit 6.

33. [REDACTED]

[REDACTED]

34. SOA's May 25, 2022, letter also makes clear SOA will refuse to cooperate with Courtesy in completing construction of the permanent facility and suggests SOA will withhold the OL 124, necessary to authorize Courtesy to operate from the new facility. SOA's refusal to provide the Subaru Sign Package also threatens to further delay completion of the permanent facility. The required signage is necessary for Courtesy to receive final approval of the constructed facility and the achievement of all branding elements by SOA's third-party-vendor, Feltus Hawkins. SOA's conduct demonstrates its intent to refuse to permit Courtesy to relocate to the new facility and instead, remain at the temporary leased facility while its newly constructed facility sits vacant. SOA is seeking to constructively terminate Courtesy while disingenuously relying on SOA's writ as purported justification for its unlawful acts. It is also an unlawful effort to modify Courtesy's Dealer Agreement without notice.

35. The Board cannot permit SOA to willfully ignore the explicit requirements of Vehicle

<sup>4</sup> [REDACTED]

1 Code section 3060. As a licensee of the DMV, SOA must be required to treat each of its franchisees in  
2 good faith during a pending termination proceeding unless and until the franchisee is in fact terminated  
3 by order of the Board.

4 36. Courtesy respectfully requests the Board direct the DMV to conduct an investigation into  
5 SOA's conduct subsequent to the Confidential Decision. The Board should direct the DMV to conduct  
6 an investigation into SOA's alleged violations of Vehicle Code sections 3060 and 11713.3 through its  
7 refusal to provide Courtesy the Sign Package. The Board should further request the DMV provide the  
8 Board a written report concerning the results of the investigation. Pursuant to Section 3050 subdivision  
9 (b)(3), the Board would have the option to order the DMV to take appropriate action against SOA's  
10 license status.

11 **FIRST VIOLATION:**

12 **SOA violates California Vehicle Code section 11713.3(l) by treating Courtesy's Dealer**

13 **Agreement as terminated or modified in violation of Section 3060**

14 37. Petitioner incorporates by reference each of the allegations alleged in the preceding  
15 paragraphs as if specifically alleged herein.

16 38. California Vehicle Code section 11713.3 subdivision (l) makes it unlawful for a  
17 manufacturer, manufacturer branch, distributor, or distributor branch to directly or indirectly "modify,  
18 replace, enter into, relocate, terminate, or refuse to renew a franchise in violation of Article 4  
19 (commencing with Section 3060) or Article 5 (commencing with Section 3070) of Chapter 6 of Division  
20 2." (Cal. Veh. Code § 11713.3 subd. (l).)

21 39. California Vehicle Code section 3060 subdivision (a) prohibits a franchisor from  
22 terminating or refusing to continue any existing franchise unless the franchisor complies with notice  
23 requirements contained in Section 3060(a). (Cal. Veh. Code § 3060, subd. (a).) Moreover, the franchisor  
24 may not terminate the franchise while a protest and Board hearing is pending, if the franchisee files a  
25 Section 3060(a) termination protest. (Cal. Veh. Code § 3060, subd. (a)(2).)

26 40. California Vehicle Code section 3060 subdivision (b) prohibits a franchisor from  
27 modifying or replacing a franchise with a succeeding franchise if the modification or replacement would  
28 substantially affect the franchisee's sales or service obligations or investment unless the franchisor

1 complies with notice requirements continued in Section 3060(b). (Cal. Veh. Code § 3060, subd. (b).)  
2 Moreover, in the event of a protest, the franchisor may not replace the franchise until a protest filed by  
3 a franchisee is resolved. (Cal. Veh. Code § 3060, subd. (b)(1).)

4 41. California Vehicle Code section 11705 permits the DMV after notice and hearing to  
5 suspend or revoke the license issued to a distributor upon determining the licensee has “[v]iolated any  
6 provision of Article 1 (commencing with Section 11700 [and including Section 11713.3]) of, or Article  
7 1.1 (commencing with Section 11750) of, Chapter 4 of Division 5 or any rule or regulation adopted  
8 pursuant thereto.” (Cal. Veh. Code § 11705, subd. (a)(10).)

9 42. Here, SOA violates Section 11713.3 subdivision (l) by treating Courtesy’s Dealer  
10 Agreement and the Stipulated Decision as terminated and modifying Courtesy’s Dealer Agreement by  
11 refusing to cooperate in good-faith with Courtesy concerning ongoing efforts to complete the permanent  
12 facility, pursuant to the terms of each agreement.

13 43. [REDACTED]

17 44. [REDACTED]

25 45. [REDACTED]

1 [REDACTED]

2 46. By refusing to provide Courtesy the Sign Package, SOA is unlawfully interfering with  
3 the Stipulated Decision and the Dealer Agreement. SOA's position that Courtesy's permanent facility  
4 "should not be built" shows SOA is treating Courtesy's Dealer Agreement as terminated [REDACTED]  
5 [REDACTED]. SOA is treating Courtesy  
6 as terminated pending its writ petition despite the express provisions of Section 3060(a) requiring SOA  
7 to continue Courtesy's Dealer Agreement in good faith unless and until terminated pursuant to Section  
8 3060(a).

9 47. In addition, by refusing to provide the Sign Package, SOA is modifying the Stipulated  
10 Decision and Courtesy's Dealer Agreement by [REDACTED]  
11 [REDACTED]. This modification will substantially affect  
12 Courtesy's investment as well as its sales and service obligations because it will be unable to complete  
13 and utilize a permanent facility in which Courtesy has already invested over \$14 million.

14 48. SOA will claim it has not terminated the Courtesy franchise because it permits it to  
15 operate at its current location. However, SOA is well aware Courtesy cannot operate from the temporary  
16 location indefinitely. SOA's efforts to prevent Courtesy's relocation to the permanent location is the  
17 deliberate constructive termination of Courtesy's franchise.

18 49. SOA failed to provide statutory notice of its treatment of Courtesy as terminated nor  
19 SOA's modification of the Stipulated Decision and Courtesy's Dealer Agreement, as required by Section  
20 3060. SOA's refusal to provide Courtesy the Sign Package violates Section 3060.

21 50. As a result of SOA's violation of Section 3060, SOA is also in violation of Vehicle Code  
22 section 11713.3 subdivision (l) which makes it unlawful for SOA to violate Section 3060. (Cal. Veh.  
23 Code § 11713.3, subd. (l).)

24 51. Because SOA is in violation of Section 11713.3(l), the DMV is permitted by law to  
25 suspend or revoke SOA's distributor license. (Cal. Veh. Code § 11705, subd. (a)(10).) This Board may  
26 order the DMV to exercise its authority to suspend or revoke SOA's distributor license based on SOA's  
27 violation of Section 3060. (Cal. Veh. Code § 3050, subd. (b)(3).)

28 52. As a matter of public policy, this Board should not ignore SOA's willful violation of



1 Section 3060. If SOA is permitted to ignore the Stipulated Decision, Dealer Agreement, and Section  
2 3060 by refusing to provide Courtesy the Sign Package and treating Courtesy as *soon to be terminated*,  
3 SOA will continue to ignore the Board's jurisdiction and authority as well as California law. For  
4 example, SOA's arguments contained in its May 25, 2022, letter apply equally to issuing Courtesy an  
5 OL 124 once its permanent facility is completed. SOA, and any other franchisor, must be required to  
6 treat a franchisee in good faith while a Board decision in the franchisee's favor is pending a writ petition.<sup>5</sup>

7 53. Courtesy respectfully requests the Board direct the DMV to conduct an investigation of  
8 SOA's violation of Sections 3060 and 11713.3 as described herein and make a written report on the  
9 results of the investigation. Upon receipt of the DMV's written report, Courtesy requests the Board  
10 make a determination whether or not to order the DMV to take action against SOA's license.

11 **SECOND VIOLATION:**

12 **SOA violates California Vehicle Code section 11713.3(d) by seeking to directly or indirectly**  
13 **require or attempt to require Courtesy to sell its Subaru franchise by refusing to provide the**  
14 **Sign Package**

15 54. Petitioner incorporates by reference each of the allegations alleged in the preceding  
16 paragraphs as if specifically alleged herein.

17 55. California Vehicle Code section 11713.3 subdivision (d) makes it unlawful for a  
18 manufacturer, manufacturer branch, distributor, or distributor branch to directly or indirectly "prevent  
19 or require, or attempt to prevent or require, by contract or otherwise, a dealer, or an officer, partner, or  
20 stockholder of a dealership, the sale or transfer of a part of the interest of any of them to another person."  
21 (Cal. Veh. Code § 11713.3, subd. (d)(1).)

22 56. California Vehicle Code section 11705 permits the DMV after notice and hearing to  
23 suspend or revoke the license issued to a distributor upon determining the licensee has "[v]iolated any  
24 provision of Article 1 (commencing with Section 11700 [and including Section 11713.3]) of, or Article  
25 1.1 (commencing with Section 11750) of, Chapter 4 of Division 5 or any rule or regulation adopted  
26 pursuant thereto." (Cal. Veh. Code § 11705, subd. (a)(10).)

27 57. Here, SOA is requiring or attempting to require Courtesy to "cease and desist with the  
28

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<sup>5</sup> As noted above, SOA writ petition in this instance is unauthorized and meritless.

1 building, terminate or *sell the franchise....*” (See Exhibit 6 (emphasis added).) SOA alleges without  
2 support that Courtesy agreed to sell its Subaru franchise and that the sale of Courtesy’s franchise “would  
3 be very profitable for Courtesy and significantly more productive than litigation.” (*Id.*)

4 58. SOA’s letter and refusal to provide the Sign Package is an effort “by contract or  
5 otherwise” to force Courtesy to sell its franchise. SOA’s letter is a thinly veiled threat to continue to  
6 litigate against Courtesy unless and until Courtesy sells the franchise. Moreover, as described in SOA’s  
7 letter, SOA’s refusal to provide the Sign Package is designed to force Courtesy to terminate or sell its  
8 Subaru franchise.

9 59. SOA’s actions violate Section 11713.3(d)(1) based on SOA requiring or attempting to  
10 require, by contract or otherwise, a dealer [Courtesy], to sell or transfer Courtesy’s entire interest in its  
11 Subaru franchise to another person. (See Cal. Veh. Code § 11713.3, subd. (d)(1).)

12 60. Because SOA is in violation of Section 11713.3(d)(1), the DMV is permitted by law to  
13 suspend or revoke SOA’s distributor license. (Cal. Veh. Code § 11705, subd. (a)(10).) This Board may  
14 order the DMV to exercise its authority to suspend or revoke SOA’s distributor license based on SOA’s  
15 violation of Section 11713.3. (Cal. Veh. Code § 3050, subd. (b)(3).)

16 61. Courtesy respectfully requests the Board direct the DMV to conduct an investigation of  
17 SOA’s violation of Sections 3060 and 11713.3 as described herein and make a written report on the  
18 results of the investigation. Upon receipt of the DMV’s written report, Courtesy requests the Board  
19 make a determination whether or not to order the DMV to take action against SOA’s license.

20  
21  
22  
23  
24 [intentionally left blank]  
25  
26  
27  
28


1 **REQUEST FOR RELIEF**

2 62. Courtesy respectfully requests the Board exercise its jurisdiction as described in this  
3 Petition as it relates to the Stipulated Decision, the Confidential Decision, Courtesy's Dealer Agreement,  
4 and California Vehicle Code sections 3060 and 11713.3. Courtesy respectfully requests:

5 A. The Board direct the DMV to conduct an investigation of SOA's violation of  
6 Sections 3060 and 11713.3 as described herein and make a written report on the results of the  
7 investigation. Upon receipt of the DMV's written report, Courtesy requests the Board make a  
8 determination whether or not to order the DMV to take action against SOA's license pursuant to  
9 California Vehicle Code section 3050 subdivision (b)(3).

10  
11  
12 Dated: June 20, 2022

LAW OFFICES OF  
GAVIN M. HUGHES

13  
14 By   
15 Gavin M. Hughes  
16 Robert A. Mayville, Jr.  
17 Attorneys for Petitioner  
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# EXHIBIT 1

1 Lisa M. Gibson, Bar No. 194841  
2 Crispin L. Collins Bar No. 311755  
3 NELSON MULLINS RILEY & SCARBOROUGH  
4 19191 South Vermont Ave., Suite 900  
5 Torrance, California 90502  
6 Telephone: 424.221.7403  
7 Facsimile: 424.221.7405  
8 Email: lisa.gibson@nelsonmullins.com  
9 crispin.collins@nelsonmullins.com

10 Attorneys for Respondent  
11 Subaru of America, Inc.

12 STATE OF CALIFORNIA  
13 NEW MOTOR VEHICLE BOARD

14 In The Matter Of The Protest Of:

Protest No. PR-2570-18

15 COURTESY AUTOMOTIVE GROUP,  
16 INC., dba COURTESY SUBARU OF  
17 CHICO,

Protestant,

v.

18 SUBARU OF AMERICA, INC.,  
19 Respondent.

**[PROPOSED] STIPULATED  
DECISION AND ORDER OF THE  
BOARD RESOLVING PROTEST AND  
LAWSUIT**

20 Pursuant to Sections 3050.7, 3060, 3061, 3066, and 3067 of the California Vehicle Code,  
21 Respondent Subaru of America, Inc. ("SOA" or "Respondent"), on the one hand, and Protestant  
22 Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico ("Chico" or "Protestant"), on the  
23 other hand, hereby enter into the following agreement (the "Stipulated Decision") resolving the  
24 above-captioned Protest. This Stipulated Decision is dated March 20, 2019.

25 SOA and Chico (the "Parties") hereby request that the California New Motor Vehicle Board  
26 (the "Board") issue an order approving the Stipulated Decision as a Stipulated Decision and Order  
27 of the Board, and that the Board reserve jurisdiction solely to enforce its Order if requested by  
28 either party hereto.

I.

**THE PARTIES**

1. Protestant Chico is a new motor vehicle dealer licensed by the California Department of Motor Vehicles. Chico is a corporation organized and existing under the laws of California, with its principal place of business at 2520 Cohasset Road, Chico, California 95973. Its principal place of place is the location of its BMW, Buick, Cadillac and GMC dealerships. Chico operates as a SOA dealership pursuant to a Subaru Dealer Agreement, executed on or about May 5, 2015 and as amended on December 1, 2017, December 21, 2017 and May 8, 2018 (the "Dealer Agreement"). Chico is represented in this matter by Gavin M. Hughes, Law Offices of Gavin M. Hughes, 3436 American River Dr., Ste. 10 Sacramento, CA 95864.

2. Respondent SOA is a distributor of new motor vehicles, and holds an occupational license issued by the California Department of Motor Vehicles. It distributes new SOA vehicles to dealers located in California, as well as in other states. SOA is a corporation organized and existing under the laws of New Jersey, with its principal place of business at One Subaru Drive, Camden, New Jersey 08103 and is authorized to do business in the State of California. SOA is represented in this matter by Lisa M. Gibson and Crispin L. Collins of Nelson, Mullins, Riley & Scarborough, 19191 South Vermont Ave., Suite 900, Torrance, California 90502.

II.

**FACTUAL AND PROCEDURAL BACKGROUND**

3. The Dealer Agreement authorized, among other things, Chico to sell Subaru vehicles and other authorized products ("Subaru Products") at 2562 Cohasset Road, Chico, California 95973 ("Sales Premises") and to service Subaru Products and maintain its parts and general office operations at 2520 Cohasset Road, Chico, California 95973 ("Service Premises", collectively "the Dealership Premises"). Section 11 of the Dealer Agreement identifies the Dealership Premises as the only authorized locations and also identifies the specific use of each facility as either the Sales Premises or the Service Premises.

4. On April 30, 2015, Chico entered into a Subaru Dealership Sign Lease Agreement ("Sign Lease Agreement") with Subaru Leasing Corp ("SLC") a wholly-owned entity of SOA.

1 Pursuant to the Sign Lease Agreement, Chico leases two signs from SLC. SLC owns and continues  
2 to own these signs to this date. Chico agreed pursuant to protect the signs from “damage, defacing  
3 or marring.” Chico also agreed that it would not allow any “banners, signs, lights or materials of  
4 any kind whatsoever” to be affixed to the signs owned by SLC.

5 5. On or about August 7, 2018, in a face-to-face meeting at the Dealership Premises,  
6 Chico informed Mr. Scott Farabee, Zone Director of the San Francisco Zone for SOA, and SOA  
7 learned for the first time of Chico’s pending intent to relocate its Subaru sales operations from the  
8 Sales Premises to an authorized location.

9 6. During that meeting and by letter dated August 9, 2018, Chico was notified that the  
10 relocation of the Sales Premises was unauthorized, without SOA’s consent, and would constitute a  
11 material breach of the Dealer Agreement. In the August 9<sup>th</sup> letter, SOA made a formal demand that  
12 the Subaru operations remain at the Sales Premises or SOA would be forced to seek any remedies  
13 available to it under the terms of the Dealer Agreement and relevant California law, up to and  
14 including termination of the Dealer Agreement.

15 7. On or about August 11, 2018, Chico vacated the Sales Premises and moved all  
16 Subaru sales operations to 2522 Cohasset Road, Chico, California 95763 (the “Unauthorized  
17 Premises”).

18 8. Upon information and belief, during 2016 the property for the Sales Premises was  
19 sold to another entity directly or indirectly owned or controlled by Mr. Brian Bowen, the principal  
20 operating the competing Nissan and Hyundai dealerships. Sometime after this sale, Chico’s lease  
21 for the Sales Premises was on a month-to-month basis having expired long before the August 7,  
22 2018 meeting with SOA representatives informing them that Chico was relocating to the  
23 Unauthorized Premises.

24 9. Chico had the obligation to maintain a lease for the Sales Premises and the failure  
25 to do so constituted a material breach under Section 17.1.8 of the Dealer Agreement.

26 10. The Sales Premises are currently occupied by a Hyundai dealer and are under  
27 renovation for the purposes of operating a Hyundai dealership. The Subaru constellation logo and  
28 name have been removed from the fascia of the Sales Premises. They have been replaced with the



Hyundai designation. The Subaru pylon sign in front of the Sales Premises has been obliterated and covered with a banner or "shroud" bearing the Hyundai trademarks over the Subaru name and logo.

11. The Dealer Agreement, among other things, authorized Chico to use any trademark, service mark, collective mark, certification mark, logo, insignia, product designation, slogan, fictitious name, or trade name now or at any time adopted, used or claimed by SOA ("Marks") and anything similar which is likely to be confused with or contains a significant part of element of any such Mark.

12. Under Section 13(c) of the Dealer Agreement, it provides that the consent of SOA is required for the relocation of Chico's Subaru operations to any location other than the Dealership Premises.

13. SOA's written decision to withhold consent was promptly communicated by SOA to Chico in the August 9, 2018 letter.

14. On or about August 13, 2018, SOA provided Chico with notice of SOA's intent to terminate the Dealer Agreement (the "NOT") for its unauthorized relocation of the dealership facilities to the Unauthorized Location;

15. In response to the NOT on or about August 22, 2018 and pursuant to section 3060 of the California Vehicle Code, Chico filed a protest with the New Motor Vehicle Board of the State of California ("Board"), No. PR- 2570-18 (the "Protest");

16. In addition, SOA filed a lawsuit in the Eastern District of California, Case No. 2-18-cv-02778-KJM-KJN, (the "Lawsuit");

17. SOA and Chico have negotiated the issues between them and desire to resolve the Protest and Lawsuit without the need for further litigation.

### III.

#### STIPULATION

The Parties have entered into a confidential agreement (the "Confidential Agreement") to resolve the above-captioned Protest and Lawsuit. A true and correct copy of the Confidential Agreement is attached hereto as Exhibit 1.

1 18. The Parties hereby request that the Board issue an order approving the  
2 Confidential Agreement and its terms as a Stipulated Decision and Order of the Board, and that  
3 the Board reserve jurisdiction solely to enforce its Order in the future if requested by either party  
4 hereto.

5 19. The Parties further request that the Board issue an order maintaining the  
6 Confidential Agreement and its terms and conditions under confidential seal, so that they are not  
7 disclosed or made available to any third parties, including but not limited to, members of the  
8 public, dealer members of the Board or the motor vehicle industry. This request for  
9 confidentiality of compromise and settlement documents promotes the public policy of  
10 encouraging early, efficient settlement of disputes, and helps to conserve judicial and  
11 administrative resources. This request for confidentiality is also consistent with the provisions of  
12 Sections 6254.5 (e) and 6276.28 of the Government Code.

13 **IN WITNESS WHEREOF, the Parties have entered into this Stipulated Decision and**  
14 **Order as of the date last signed below.**

15 DATED: 3/19/19, 2019

COURTESY AUTOMOTIVE GROUP, INC. DBA  
COURTESY SUBARU OF CHICO

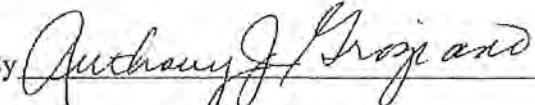
17  
18 By 

19 Print Name: Shahram Mihampajouh

20 Title: President

21  
22 DATED: March 20, 2019

SUBARU OF AMERICA, INC.

24 By 

25 Print Name: Anthony J. Graziano

26 Title: Vice President, Western Region  
27  
28

1 **APPROVED AS TO FORM AND SUBSTANCE:**

2 DATED: March 20, 2019

NELSON, MULLINS, RILEY & SCARBOROUGH

3  
4 By 

5 Lisa M. Gibson  
6 Crispin L. Collins  
7 Attorneys for Subaru of America, Inc.

8 DATED: March 19, 2019

LAW OFFICES OF GAVIN M. HUGHES

9  
10 By 

11 Gavin M. Hughes, Esq.  
12 Attorneys for Courtesy Automotive Group,  
13 Inc. dba Courtesy Subaru of Chico  
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Remainder of Exhibit redacted  
and omitted from  
[Redacted] Petition

# EXHIBIT 2

Redacted and omitted from  
[Redacted] Petition

# EXHIBIT 3



## Facility Signs

Jerry Pajouh <jpajouh@me.com>

Mon 3/28/2022 11:31 AM

To: Smit, Ray <rsmi@subaru.com>

Good morning Ray, I hope you're doing well.

I am reaching out regarding our new facility signs. I need a full package with detailed specs so I can provide this information to our Electrical and General Contractors. They need details for each sign as soon as possible in order to not delay the completion of our project.

Thank you advance,

Jerry Pajouh  
CEO / Dealer Principal  
Courtesy Automotive Center  
BMW Buick Cadillac GMC Mercedes-Benz Subaru Volvo  
Sales Service Parts Collision  
2520 Cohasset Road  
Chico, CA 95973  
o (530) 345-9444  
c (559) 824-2026  
jpajouh@me.com

## Subaru Signage

Jerry Pajouh <[jpajouh@me.com](mailto:jpajouh@me.com)>

Mon 4/4/2022 5:14 PM

To: Smit, Ray <[rsmi@subaru.com](mailto:rsmi@subaru.com)>

Good afternoon, Ray. I hope you are well.

I am again reaching out regarding our new facility signs. As I explained in my March 28 email, I need the full package with detailed specs for the new Subaru signage. My Electrical and General Contractors keep asking for this information. Please provide this information as soon as possible. I am trying to avoid delay wherever possible. Hopefully you are already aware the Board ruled the prior project deadlines are excused. Please work with me on this.

Thank you,

Jerry Pajouh  
CEO / Dealer Principal  
Courtesy Automotive Center  
BMW Buick Cadillac GMC Mercedes-Benz Subaru Volvo  
Sales Service Parts Collision  
2520 Cohasset Road  
Chico, CA 95973  
o (530) 345-9444  
c (559) 824-2026  
[jpajouh@me.com](mailto:jpajouh@me.com)

## Re: Subaru Signage

Jerry Pajouh <jpajouh@me.com>

Mon 5/9/2022 3:16 PM

To: Smit, Ray <rsmi@subaru.com>

Cc: Gavin M. Hughes <gavin@hughesdealerlaw.com>; Farabee, Scott <sfarab@subaru.com>

Hello Ray,

Below please see the General Contractors request for Subaru Sign specs. The complete sign package is needed for all Subaru Required Signs for our dealership. I also sent the below email requesting this information on April 4 with no response from you.

I appreciate a speedy response with all required information.

Jerry Pajouh  
CEO / Dealer Principal  
Courtesy Automotive Center  
BMW Buick Cadillac GMC Mercedes-Benz Subaru Volvo  
Sales Service Parts Collision  
2520 Cohasset Road  
Chico, CA 95973  
o (530) 345-9444  
c (559) 824-2026  
[jpajouh@me.com](mailto:jpajouh@me.com)

Jerry –

We are at the point of needing to install exterior sheathing on the Subaru/Volvo dealership building. We need the backing and electrical requirements for all exterior mounted signs on the building ASAP.

Please let me know how quickly we can get our hands on this information.

Thanks,

**James Seegert**  
President

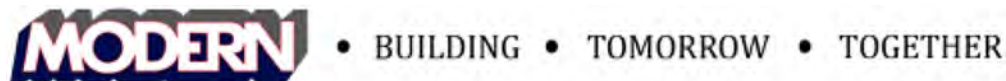
### **Modern Building, Inc.**

PO Box 772 | Chico, CA 95927

(530) 891-4533 Office

(530) 891-6834 Fax

(530) 518-7200 Cell



[Website](#) | [Facebook](#)

On Apr 4, 2022, at 5:14 PM, Jerry Pajouh <[jpajouh@me.com](mailto:jpajouh@me.com)> wrote:

Good afternoon, Ray. I hope you are well.

I am again reaching out regarding our new facility signs. As I explained in my March 28 email, I need the full package with detailed specs for the new Subaru signage. My Electrical and General Contractors keep asking for this information. Please provide this information as soon as possible. I am trying to avoid delay wherever possible. Hopefully you are already aware the Board ruled the prior project deadlines are excused. Please work with me on this.

Thank you,

Jerry Pajouh  
CEO / Dealer Principal  
Courtesy Automotive Center  
BMW Buick Cadillac GMC Mercedes-Benz Subaru Volvo  
Sales Service Parts Collision  
2520 Cohasset Road  
Chico, CA 95973  
o (530) 345-9444  
c (559) 824-2026  
[jpajouh@me.com](mailto:jpajouh@me.com)

# EXHIBIT 4

**RE: Sign Request -- Chico**

Lisa Gibson &lt;lisa.gibson@nelsonmullins.com&gt;

Tue 5/10/2022 1:22 PM

To: Gavin M. Hughes &lt;gavin@hughesdealerlaw.com&gt;

Cc: Robert Mayville &lt;mayville@hughesdealerlaw.com&gt;; Amy Toboco &lt;amy.toboco@nelsonmullins.com&gt;

Dear Gavin,

Please ignore my prior email. I was mistaken about the request and have received some clarification.

It appears that Mr. Pajouh is requesting electrical and structural specifications on future building signs, not the pylon sign. As you know, SOA intends to terminate the retailer's dealer agreement pursuant to its rights under the Stipulated Decision and in accordance with its notices of non-compliance thereunder. In support of this position, we have recently filed a writ in Superior Court for the County of Alameda seeking the court's review of the unauthorized determination by the Board-appointed ALJ and requesting it to order termination of the Subaru dealer agreement. As you also know, we have cautioned that Mr. Pajouh proceeds with any building at his own risk. SOA's position is that Mr. Pajouh should not be building either Subaru sales or service facilities while litigation about the future of his dealer agreement is still pending.

Thus, providing Mr. Pajouh with the information he requests is contrary to our legal position and to any requirement on Mr. Pajouh's part to mitigate his damages. Should the Superior Court grant SOA's writ and order termination of the retailer's dealer agreement, SOA does not wish to be exposed to any claim that the retailer incurred building costs related to the continuing construction of a permanent Subaru dealership that will be terminated. Given this exposure, SOA will not be forwarding the requested information at this time.

However, should your client wish to release and hold SOA harmless to any and all claims relating to his failure to mitigate damages, we may be able to discuss that further. It would be something that I would need to first discuss with SOA, so please let me know if there's any interest on your client's part to provide a release. Nothing in SOA's position should be construed as preventing Mr. Pajouh from continuing his Subaru operations from the temporary facilities in accordance with the current dealer agreement up to and until the time we have a decision from the Superior Court and, therefore, is without prejudice to his present position as an authorized Subaru retailer. It is consistent, nevertheless, with minimizing the risk of his incurring unnecessary damages while the parties are still in litigation.

Should you have any questions, please do not hesitate to contact me.

Best regards,

Lisa



---

**LISA M. GIBSON** PARTNER

[lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)

19191 SOUTH VERMONT AVENUE | SUITE 301

TORRANCE, CA 90502

T 424.221.7405 M 310.989.3130 F 424.221.7499

[NELSONMULLINS.COM](http://NELSONMULLINS.COM) [VCARD](#) [VIEW BIO](#)

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**From:** Lisa Gibson

**Sent:** Tuesday, May 10, 2022 7:10 AM

**To:** Gavin M. Hughes (gavin@hughesdealerlaw.com) <gavin@hughesdealerlaw.com>

**Cc:** Robert Mayville <mayville@hughesdealerlaw.com>; Amy Toboco <amy.toboco@nelsonmullins.com>

**Subject:** FW: 25' Subaru Pylon Sign

Good morning Gavin,

Mr. Pajouh is requesting the same information from Ray Smit of SOA's San Francisco Zone Office that I provided to you (see below and attached) last July. Is there some reason that you did not forward this information to your client? I request that you do.

Best regards,

Lisa



---

LISA M. GIBSON **PARTNER**

[lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)

19191 SOUTH VERMONT AVENUE | SUITE 301

TORRANCE, CA 90502

T 424.221.7405 M 310.989.3130 F 424.221.7499

[NELSONMULLINS.COM](http://NELSONMULLINS.COM) [VCARD](#) [VIEW BIO](#)

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**From:** Lisa Gibson

**Sent:** Friday, July 30, 2021 9:07 AM

**To:** Gavin M. Hughes ([gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)) <[gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)>

**Cc:** Amy Toboco <[amy.toboco@nelsonmullins.com](mailto:amy.toboco@nelsonmullins.com)>; Robert Mayville <[mayville@hughesdealerlaw.com](mailto:mayville@hughesdealerlaw.com)>

**Subject:** 25' Subaru Pylon Sign

Hello Gavin,

Per our discussion, attached are the electrical and structural specs for a 25' pylon. We are providing this with the understanding that approval for the sign is subject to both the outcome of the pending non-compliance matter and the execution of a standard sign lease agreement. No approval should be deemed expressly or impliedly by my providing these specifications.

Best regards,

Lisa





LISA M. GIBSON **PARTNER**

[lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)

19191 SOUTH VERMONT AVENUE | SUITE 900

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[NELSONMULLINS.COM](http://NELSONMULLINS.COM) [VCARD](#) [VIEW BIO](#)

### Confidentiality Notice

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# EXHIBIT 5



Law Offices of  
Gavin M. Hughes

HughesDealerLaw.com

3436 American River Drive, Suite 10  
Sacramento, CA 95864  
gavin@hughesdealerlaw.com  
(916) 900-8022

May 11, 2022

Lisa Gibson, Esq.  
Nelson Mullins Riley Scarborough LLP  
19191 S. Vermont Avenue, Suite 900  
Torrance, CA 90502

Via email  
lisa.gibson@nelsonmullins.com

Re: *Courtesy Subaru Sign Package.*

Lisa:

Thank you for your emails of May 10, 2022. However, SOA's conduct toward Courtesy Subaru is both troubling and unlawful. Pursuant to the Board's March 24, 2022 decision ("Decision"), Courtesy Subaru remains a Subaru franchisee and has not been terminated. SOA's disagreement with the result of the Board's Decision does not alter the fact that California law requires SOA to continue to act in good faith in its ongoing franchisee-franchisor relationship with Courtesy Subaru.

Once again, the plain language from paragraph 28 (b) from Exhibit 1 to the Stipulated Decision provides, "Any such timely request will be submitted for *binding, non-appealable determination* to an ALJ appointed by the Board..." (Emphasis added.) Moreover, paragraph 28 (c) unambiguously provides "'Binding, non-appealable" means that each Party adopts the ALJ's decision as a *final, binding settlement of the matter at issue and waives any and all recourse, right of action, or appeal* with respect to the resulting ruling and/or any resulting termination, to any individual, forum, or entity of any kind or nature whatsoever, including, without limitation, any state or federal agency, any state or federal court, or any other governmental, judicial, quasi-judicial, or private entity or forum. The Parties *expressly waive* any claim that the Board itself should consider the ALJ's decision, should reach its own decision, or otherwise involve itself in resolving the issue or dispute." (Emphasis added.) SOA's writ is without merit.

Leaving aside the merit of SOA's writ, Courtesy Subaru's facility project is rapidly moving toward completion. The facility will be complete before the writ is even heard by the Court. Courtesy Subaru demands SOA provide the complete sign package. SOA's refusal to provide the sign package is a bad-faith attempt to prevent Courtesy Subaru from completing the agreed to facility to the extent necessary to schedule the final Feltus Hawkins inspection and approval.

We are concerned SOA may subsequently refuse to provide Courtesy Subaru the OL 124 form necessary for the DMV to issue the occupational license for the new facility, upon completion of the facility. As stated above, the facility will likely be complete before the Court considers SOA's writ. It appears SOA intends to withhold the required sign package to prevent Courtesy Subaru from completing the final inspection. Moreover, SOA's disingenuous position on the withholding of the sign package suggests it may apply this same flawed reasoning to a decision to withhold the issuance of the OL 124 form, even if Courtesy Subaru installs the required Subaru signage.

We urge SOA to reconsider its position and immediately provide Courtesy Subaru the complete sign package required for its ongoing facility project. At the very least, SOA should err on the side of caution and seek to limit its growing exposure.

Please provide a response by May 19, 2022. Courtesy Subaru reserves all rights and remedies available through the New Motor Vehicle Board, Occupational Licensing, and in a court of competent jurisdiction.

Sincerely,

Law Offices of Gavin M. Hughes



Gavin M. Hughes

cc Amy Toboco, Esq.  
Jerry Mihanpajouh

# EXHIBIT 6

May 25, 2022

**Via E-mail**

Gavin M. Hughes  
Law Offices of Gavin M. Hughes  
3436 American River Drive  
Suite 10  
Sacramento, CA 95864

RE: Courtesy Auto Group, Inc. dba Courtesy Subaru of Chico

Gavin:

This is in response to your letter to me dated May 11, 2022.

There is nothing unlawful about Subaru of America, Inc.'s ("SOA") response that, while litigation is still pending, it will not provide a sign package for a facility that should not be built. Courtesy has signs at its existing location and this is all that SOA is obligated by contract and law to provide.

As you know, the writ has been filed and you will have the opportunity to respond. SOA is well aware of Courtesy's contentions and they are all rejected. ALJ Matteucci acted without jurisdiction and we will seek to overturn the decision. In the interim, SOA encourages your client to cease and desist with the building, terminate or sell the franchise, and allow SOA the opportunity to appoint a retailer that is willing to perform its obligations both fully and timely.

If Courtesy wishes to actually do what it promised SOA and sell the Subaru franchise, please do not hesitate to contact me. It's a solution that would be very profitable for Courtesy and significantly more productive than litigation.

Best regards,



Lisa M. Gibson

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My business address is 3436 American River Drive, Suite 10, Sacramento, California 95864.

I declare that on June 20, 2022, I caused to be served a true and complete copy of:

**[REDACTED] PETITION**

ν.

***Subaru of America, Inc.***

**By US Mail:**

CT Corporation System  
330 N. Brand Blvd., Suite 700  
Glendale, CA 91203-2336  
[Agent for Service of Process for  
Subaru of America, Inc.]

**By Electronic Mail:**

Lisa M. Gibson  
Amy M. Toboco  
Nelson Mullins Riley & Scarborough LLP  
Pacific Gateway, Suite 900  
19191 South Vermont Ave  
Torrance, CA 90502  
Lisa.Gibson@nelsonmullins.com  
Amy.Toboco@nelsonmullins.com

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

Executed this 20 June 2022, Sacramento, California.

*Robert Mayville, Jr.*  
Robert A. Mayville, Jr.



VIA EMAIL

New Motor Vehicle Board

Received  
10-28-22

**FILED**

New Motor Vehicle Board

Date: 10-28-22

By: RPP

LAW OFFICES OF GAVIN M. HUGHES  
GAVIN M. HUGHES State Bar #242119  
ROBERT A. MAYVILLE, JR. State Bar #311069  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
Telephone: (916) 900-8022  
E-mail: gavin@hughesdealerlaw.com

ATTORNEYS FOR PETITIONER

**STATE OF CALIFORNIA**

**NEW MOTOR VEHICLE BOARD**

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, Inc., dba  
COURTESY SUBARU OF CHICO,

Petitioner,

v.

SUBARU OF AMERICA, INC.,

Respondent.

**PETITION NO: P-463-22**

**DECLARATION OF KIMBERLY  
WRIGHT IN SUPPORT OF PETITION**

I, Kimberly Wright, declare as follows:

1. I am a Project Engineer for Modern Building, Inc. ("Modern Building"), the general contractor for the multi-franchise sales and service facilities for Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico ("Courtesy") located in Chico, California. I work under the direction of James Seegert, the Responsible Managing Officer for the project and president of Modern Building. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them under oath if called as a witness.

2. I have been a project engineer for Modern Building for two years.

3. As part of Modern Building's efforts to complete construction of Courtesy's multi-franchise facility project, I have attempted to secure site-specific shop drawings to show the specific location of Subaru signage on Courtesy's Subaru facility. In order to complete construction on the Subaru building, we need to know specific locations of the signs on the building in order to prepare proper structural support and access to electricity at those locations.

4. Attached hereto as Exhibit 1 is an example of the type of sign specifications Modern Building needs to complete construction of the facilities. Exhibit 1 is a true and correct copy of signage specifications for Courtesy's Cadillac facility. The Cadillac site specific shop drawings contained in Exhibit 1 show the precise placement of all signs on the Cadillac building as well as all signage specifications.

5. I reviewed the March 2018 Design Intent Deliverable ("DID") package from Feltus Hawkins Design ("Feltus Hawkins") attached as Exhibit A to the Declaration of Dean A. Bakkum in Support of Respondent Subaru of America, Inc.'s Response to Petition ("Bakkum Declaration"). The DID package does not provide all the specifications required to complete construction—specifically, the DID package does not provide information concerning the specific location of all Subaru signs to be installed on the building.

6. Compared to the document attached as Exhibit 1, the DID package shows sizes and electrical requirements for the signs but does not confirm where on the Subaru facility all the signs will be installed. For example, PDF pages 24 and 95-99 of the Bakkum Declaration show sign specifications, however, the page showing where the Subaru signs will be installed does not show. For example, the placement of the 36" Illuminated Channel Letter set saying "SUBARU" on PDF page 24 of the DID package (top drawing) is not described in terms of how far from the ground or roof the sign will be or how far in the horizontal direction from the icon tower and star cluster the sign will be located (or any other similar way of determining the placement of the sign on the building). In fact, compared to Exhibit 1, none of the signs on PDF page 24 of the DID package show where specifically, with measurements in relation to other features of the building, the signs will be installed on the Subaru facility.

///

1           7.       Modern Building requires a site-specific shop drawing for the Subaru facility in order to  
2 know the locations at Courtesy's Subaru facility that will need to be built to accommodate the Subaru  
3 signage. Modern building cannot complete construction without knowing exactly where the Subaru  
4 signs need to be installed.

5           8.       On September 16, 2022, I personally reached out by email to Roger Grieco for  
6 Philadelphia Sign (Subaru of America, Inc.'s sign vendor) to obtain the foregoing site-specific signage  
7 information Modern Building requires in order to be able to complete construction on Courtesy's Subaru  
8 facility.

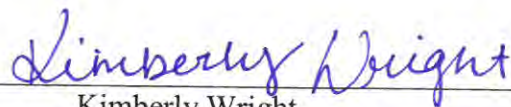
9           9.       Mr. Grieco responded Philadelphia Sign provides "this information to Subaru of America,  
10 Inc., who in turn, provides it to the retailer. As a result, please request the site sign specification  
11 information from Courtesy Automotive directly." I requested the information from Courtesy, however,  
12 to my understanding, Courtesy does not possess the information beyond the DID package discussed  
13 above. A true and correct copy of my email exchange with Mr. Grieco is attached hereto as Exhibit 2.

14          10.       In order for Modern Building to be able to complete construction of the Subaru facility,  
15 we need the same information contained in Exhibit 1 for the Subaru facility. To date, Modern Building  
16 has not received the signage specifications necessary to complete construction of the Subaru Facility.

17          I declare under penalty of perjury under the laws of the State of California that the foregoing is  
18 true and correct.

19          Executed this October 2022 at Chico, California.

20  
21  
22       Dated: 10/28/ 2022

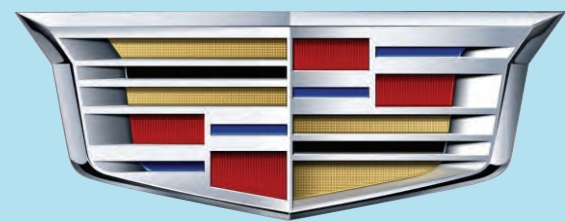


Kimberly Wright  
Project Engineer  
Modern Building, Inc.

# EXHIBIT 1

# Cadillac Corporate Identity Signage

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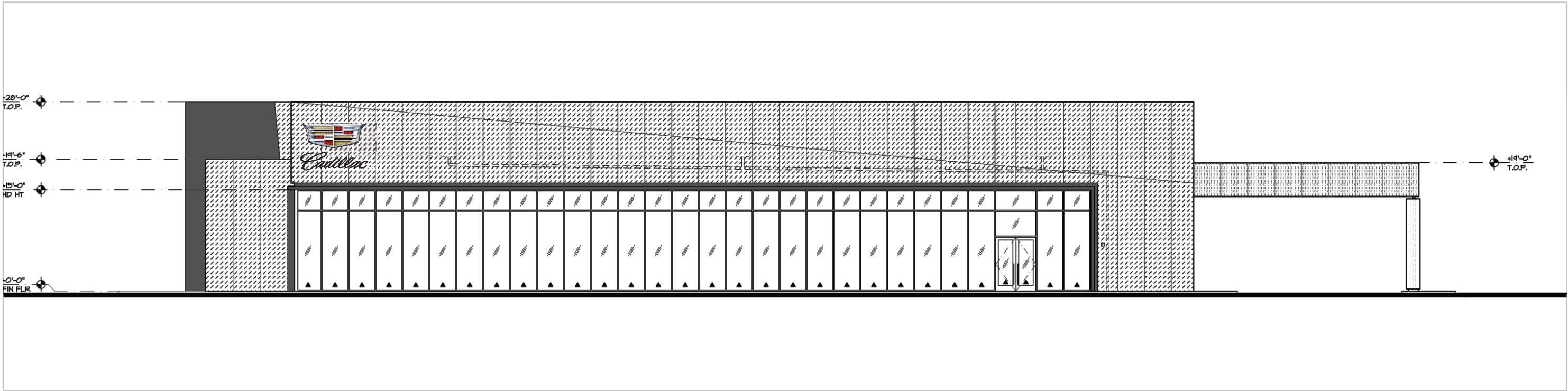
*Cadillac*

Dealer Signage Package

**CADILLAC OF CHICO**  
**CHICO, CA**  
**MAY 2021**



# Cadillac Corporate Identity Signage



## PACKAGE

The Dealer Signage Package is issued to the Dealer Principal for review and approval. This document outlines the proposed FI signage for the Dealership.

## APPROVAL

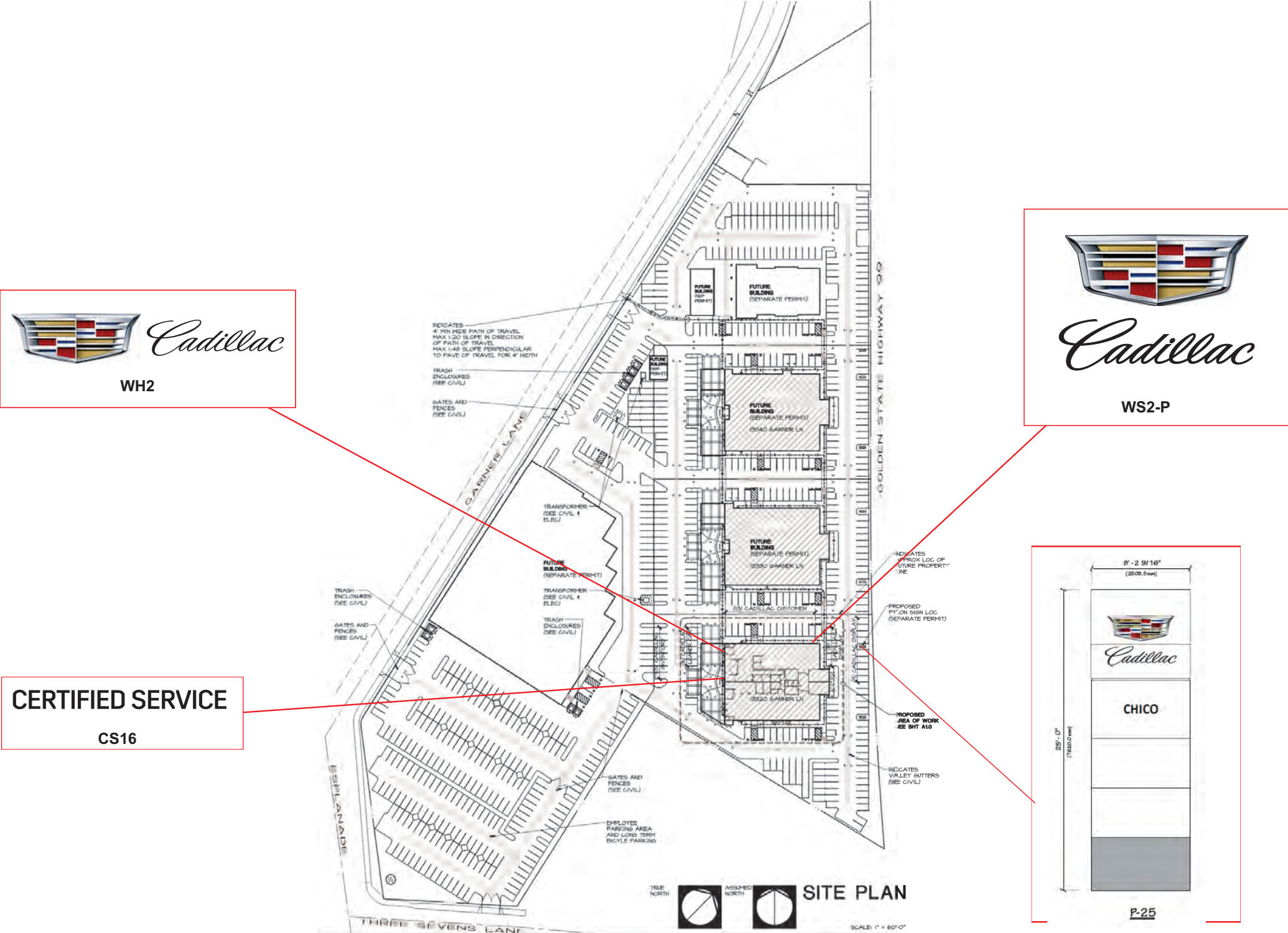
Dealer Principal is to review sign placement, sign size and enclosed quote. Once the Dealer Principal approves the sign package, Dealer Principal is to sign off on each enclosed rendering showing sign placement as well as the enclosed quote. Dealer Principal is to return to Architectural Graphics, Inc. copies of the approved renderings as well as signed quote and issue the 50% deposit payment.

## NEXT STEPS

Upon receipt of the deposit payment, Architectural Graphics Inc. will proceed with permitting the signs. Once all signs are permitted, AGI will coordinate manufacturing, shipping and installing the signs based on FI building readiness.



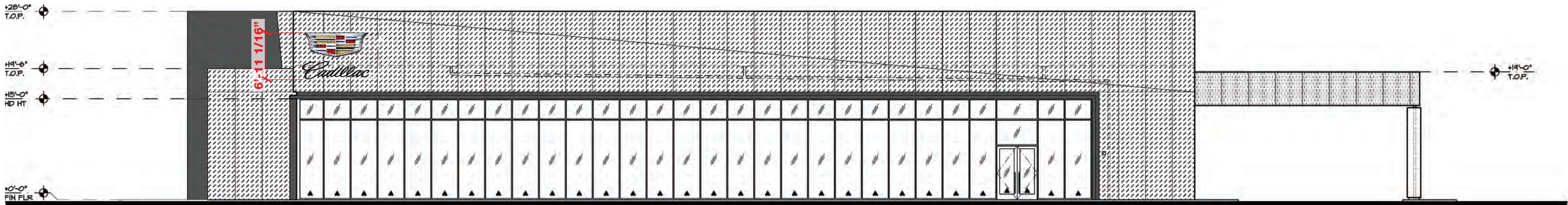
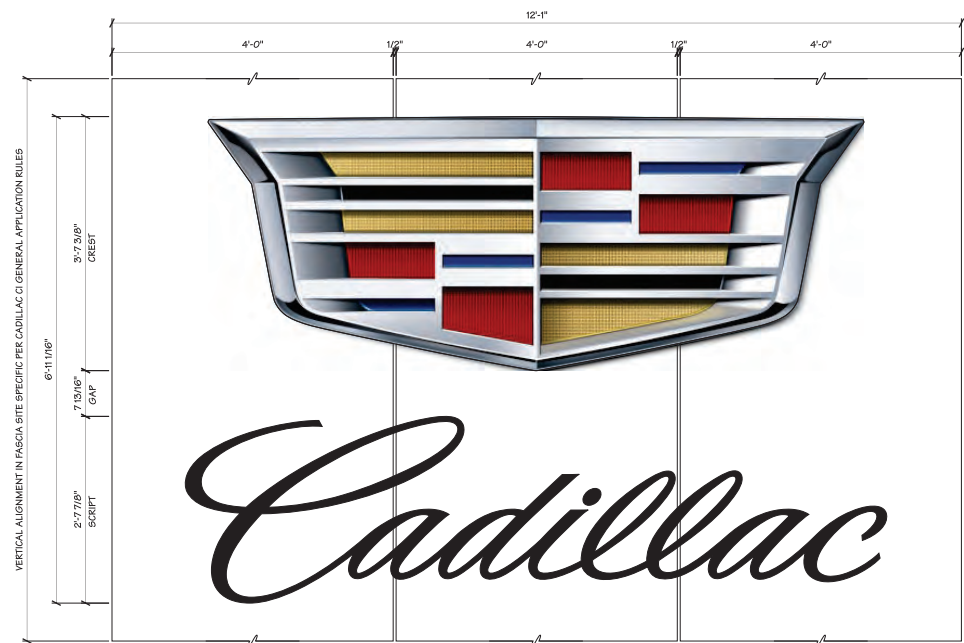
SITE MAP





ELECTRICAL REQUIREMENTS: Each sign requires a dedicated 120v circuit

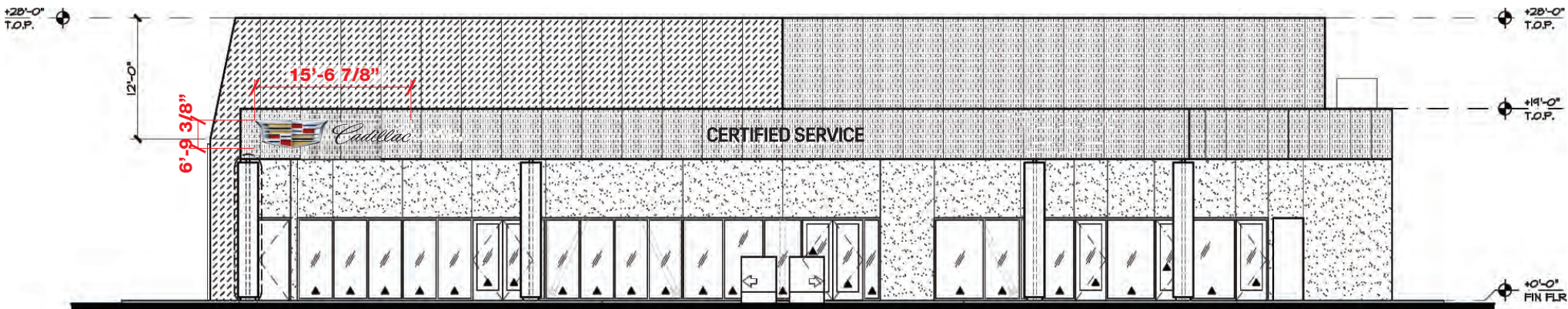
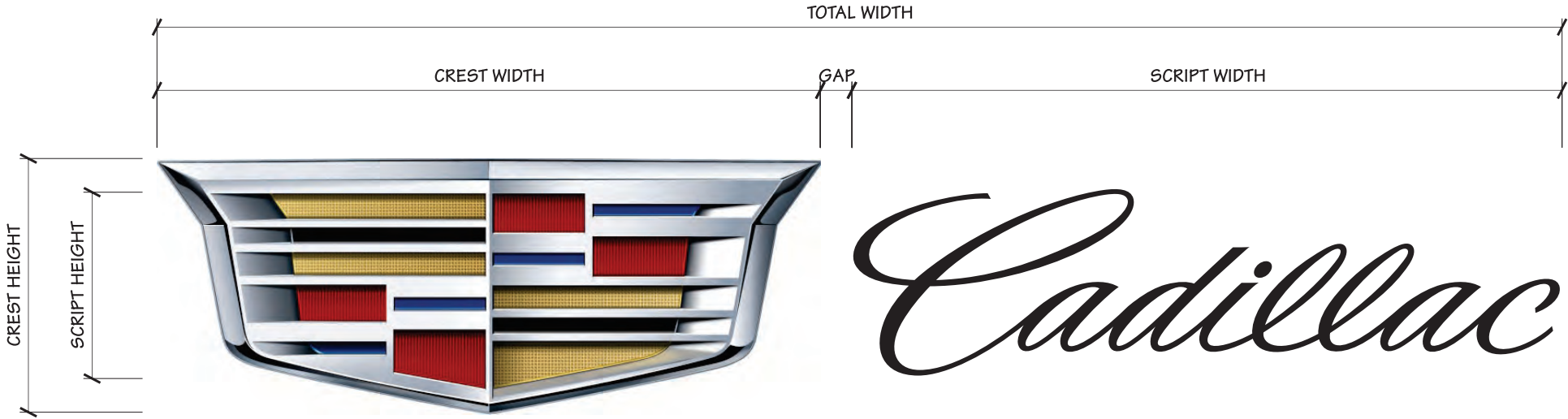
STACKED SIZE	CREST		SCRIPT		LOCK-UP	
	WIDTH (ft-in)	HEIGHT (ft-in)	WIDTH (ft-in)	HEIGHT (ft-in)	GAP (ft-in)	TOTAL HEIGHT (ft-in)
WS2-P	9'-3 15/16"	3'-7 3/8"	9'-11 3/4"	2'-7 7/8"	7 13/16"	6'-11 1/16"



NORTH

ELECTRICAL REQUIREMENTS: Each sign requires a dedicated 120v circuit

HORIZONTAL SIZE	CREST		SCRIPT		LOCK-UP		WEIGHT	AMPS
	WIDTH (ft-in)	HEIGHT (ft-in)	WIDTH (ft-in)	HEIGHT (ft-in)	GAP (ft-in)	TOTAL WIDTH (ft-in)		
WH2 (STANDARD)	6' - 9 3/8"	2' - 7 1/8"	8' - 5 5/8"	2' - 2 11/16"	0' - 3 7/8"	15' - 6 7/8"	139 lbs.	1.05
	2066.9mm	790.6mm	2581.3mm	677.9mm	98.4mm	4746.6mm		



WEST



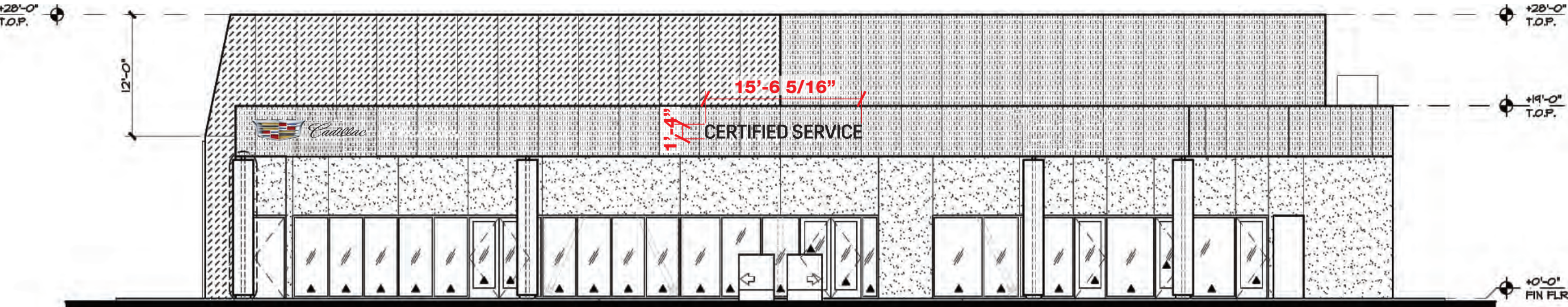
ELECTRICAL REQUIREMENTS: Each sign requires a dedicated 120v circuit

SIZE	CERTIFIED SERVICE	
	HEIGHT (ft-in)	WIDTH (ft-in)
CS16	1' - 4"	15' - 6 5/16"
	406.4mm	4735.3mm

15'-6 5/16"

1'-4"

**CERTIFIED SERVICE**



**WEST**

## Cadillac Corporate Identity Signage



GM-CAD-WSS-P-2

PUSH THROUGH- 2 3' 7.373" x 9' 3.931" Crest with 2' 7.66" x 11' Cadillac Script

GM-CAD-WSH-2

HORIZONTAL- 2' 6.216" x 6' 5.917" Crest with 2' 1.378" x 8' .314" Cadillac Script

GM-CAD-CS-16

16" Tall Certified Service Letters

Sub-Total: \$27,240.22  
Estimated Tax: \$1,191.97

**Total: \$28,432.19**

### Terms and Conditions

- 1) 50% Deposit due with approval of enclosed sign package. Deposits are non-refundable. Final payment due at completion, with signed work verification form.
- 2) Dealer's electrician to provide dedicated 120volt, 20amp circuit within 6 feet of every new sign to be installed. New circuit is not required for replacement signage.
- 3) Quote total includes code check, survey, permit, product, freight and installation charges. Permit costs included in this proposal are an estimate. AGI will invoice the client for the actual cost of the permit.
- 4) This proposal includes installation labor costs during normal working hours (Monday through Friday, 8:00 am to 5:00 pm) and assumes unfettered access to the site.
- 5) Unless specifically identified in the proposal, the cost to attend variance hearings, architectural review boards, and other hearings held by approving agencies and pay any application fees they may charge is not included in this proposal.
- 6) Final invoice will include any applicable charges for required overtime work, additional trip charges and non-standard installation fees with client notification and approval.
- 7) Sales tax and/or use tax is an estimate based on current tax rates. The invoiced sales and/or use tax will be based on the tax rates in effect at the time of billing.
- 8) Standard manufacturing time is five weeks from approval of this proposal and/or permit approval, if required.
- 9) This proposal assumes that AGI and the Client will be able to coordinate the construction schedule so that AGI can complete its scope of work in a continuous manner.
- 10) This proposal assumes AGI's standard engineering for known wind load conditions according to the International Building Code and ASCE -7. More stringent conditions imposed by municipalities or third party engineers may result in additional charges.
- 11) AGI's scope of work assumes standard building construction techniques. AGI's technical surveys do not incorporate destructive investigation methods and knowledge of concealed building conditions are outside the scope of work unless specifically identified by the Client.



Dealer Approval:  
\*\*\*Signature Required\*\*\*

Date:

5/10/2022

# EXHIBIT 2

**From:** Roger Grieco <[rgrieco@philadelphiasign.com](mailto:rgrieco@philadelphiasign.com)>  
**Date:** September 16, 2022 at 2:00:53 PM PDT  
**To:** Kimberly Wright <[kimberly@modernbuildinginc.com](mailto:kimberly@modernbuildinginc.com)>  
**Subject:** Re: Chico Courtesy Subaru

Dear Ms. Wright,

We provided this information to Subaru of America, Inc., who in turn, provides it to the retailer. As a result, please request the site sign specification information from Courtesy Automotive directly. The retailer should be able to provide you with this requested information.

Sincerely,

**Roger Grieco**

Project Manager | PHILADELPHIA SIGN  
O [856-266-2082](tel:856-266-2082)

Connect with us: [SIGN WITH US TODAY](#)



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**From:** Kimberly Wright <[kimberly@Modernbuildinginc.com](mailto:kimberly@Modernbuildinginc.com)>

**Date:** Friday, September 16, 2022 at 2:18 PM

**To:** Roger Grieco <[rgrieco@PhiladelphiaSign.com](mailto:rgrieco@PhiladelphiaSign.com)>

**Subject:** Chico Courtesy Subaru

Hi Roger,

I am the project engineer on the new Courtesy Automotive project, and am looking for site specific signage for the Subaru Building. Is this something you could provide for me?

Please let me know.

**Kimberly Wright**

Project Engineer

**Modern Building, Inc.**

PO Box 772 | Chico, CA 95927

(530) 891-4533 Office

(530) 891-6834 Fax

(530) 519-0752 Cell



• BUILDING • TOMORROW • TOGETHER



1                                    **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

2            I, Robert A. Mayville, Jr., declare that I am employed in the County of Sacramento, State of  
3 California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein.  
4 My business address is 3436 American River Drive, Suite 10, Sacramento, California 95864.  
5

6            I declare that on October 28, 2022, I caused to be served a true and complete copy of:

7            ***NOTICE OF MOTION AND MOTION FOR THE CALIFORNIA NEW MOTOR VEHICLE***  
8            ***BOARD TO CONSIDER THE DECLARATION OF KIMBERLY WRIGHT IN SUPPORT OF***  
9            ***PETITION***

10                                    ***and***

11                                    ***DECLARATION OF KIMBERLY WRIGHT IN SUPPORT OF PETITION***

12                                    ***Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico***

13                                    ***v.***

14                                    ***Subaru of America, Inc.***

15                                    **PETITION NO.: P-463-22**

16  
17 By Electronic Mail:

18 Lisa M. Gibson  
19 Amy M. Toboco  
20 Nelson Mullins Riley & Scarborough LLP  
21 Pacific Gateway, Suite 900  
22 19191 South Vermont Ave  
Torrance, CA 90502  
Lisa.Gibson@nelsonmullins.com  
Amy.Toboco@nelsonmullins.com

23  
24 I declare under penalty of perjury that the foregoing is true and correct.

25 Executed this 28 October 2022 in Sacramento, California.

26                                      
27 Robert A. Mayville, Jr.

VIA EMAIL

New Motor Vehicle Board

Received

July 20, 2022

FILED

New Motor Vehicle Board

Date: 7-20-22

By: dp

Lisa M. Gibson (SBN 194841)  
Amy M. Toboco (SBN 149508)  
NELSON, MULLINS, RILEY & SCARBOROUGH LLP  
19191 South Vermont Avenue, Suite 900  
Torrance, CA 90502  
Telephone: 424.221.7400  
Facsimile: 424.221.7499  
Email: [lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)  
[amy.toboco@nelsonmullins.com](mailto:amy.toboco@nelsonmullins.com)

Attorneys for Respondent  
SUBARU OF AMERICA, INC.

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, INC.  
dba COURTESY SUBARU OF CHICO,

Petitioner,

v.

SUBARU OF AMERICA, INC.,

Respondent.

Petition No. P-463-22

**RESPONDENT SUBARU OF  
AMERICA, INC.'S VERIFIED  
RESPONSE TO PETITION**

**[Declarations of Dean A. Bakkum,  
Raymond Smit and Lisa M. Gibson; and  
Opposition to Petitioner's Motion to File  
Unredacted Petition Under Seal or, in the  
Alternative, Motion to Strike Petitioner's  
Motion Filed Concurrently Herewith]**

Pursuant to California Code of Regulations, Title 13, Section 558, Respondent Subaru of America, Inc. ("SOA") submits the following Verified Response to the Petition ("Petition")<sup>1</sup> filed by

<sup>1</sup> SOA responds to and opposes both the [Redacted] Petition filed by Courtesy and the [Unredacted] Petition lodged by Courtesy subject to the Motion to Seal. SOA has also filed an Opposition to Courtesy's Motion to Seal and lodging of the [Unredacted] Petition and has objected to the disclosure of the terms of the Stipulated Decision or the Confidential Decision of ALJ Matteucci in the [Unredacted] Petition or in this proceeding.

Petitioner Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico (“Courtesy”) and alleges as follows:

### **RESPONSE TO PETITION**

1. Respondent Subaru of America, Inc. (“SOA”) is a corporation duly organized and existing under the laws of the State of New Jersey; is licensed by the California Department of Motor Vehicles as a “distributor” of Subaru brand motor vehicles, genuine parts, and accessories; and is a distributor of Subaru products across the United States. SOA’s principal place of business is located at One Subaru Drive, Camden, New Jersey 08103, telephone number (800) 782-2783.

2. SOA is represented in this matter by Lisa M. Gibson and Amy M. Toboco of Nelson, Mullins, Riley & Scarborough LLP, 19191 South Vermont Avenue, Suite 900, Torrance, California 90502, telephone number (424) 221-7400.

### **INTRODUCTION**

3. Courtesy’s Petition<sup>2</sup> is based upon inaccurate and misleading statements regarding SOA’s alleged actions, the scope and status of a confidential decision issued by an Administrative Law Judge of the New Motor Vehicle Board (the “Board”) and fails to demonstrate any statutory violations by SOA which would warrant the relief sought in the Petition.

4. The attempt to invoke the Board’s jurisdiction to initiate such a serious action (as an investigation of SOA) with the Department of Motor Vehicles (“DMV”) is reckless and potentially harmful to all Subaru dealer licensees in California, including Courtesy. Ironically, the relief that Courtesy ultimately seeks, if fully granted by way of an investigation, would result in termination of itself. As the Board is well aware, it does not have jurisdiction to adjudicate licensee versus licensee disputes. However, this Petition is a very thinly-veiled attempt at just that—to adjudicate a Courtesy versus SOA dispute, one that is presently pending in no less than two other judicial forums.

5. For example, the Petition is premised upon the assertion that SOA has acted improperly and inconsistent with the [Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit (“Confidential Stipulated Decision”), which contained Exhibit 1 to

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<sup>2</sup> All references to “Petition” in this Response shall refer to the [Redacted] Petition filed by Courtesy.

Confidential Agreement to Stipulated Decision and Order of the Board and the Confidential Decision Resolving Stipulated Decision and Order Dispute in Protest No. PR-2570-18 (“Confidential Decision”) issued by Administrative Law Judge Evelyn I. Matteucci (“ALJ”) in an underlying Board proceeding. However, the Confidential Decision is not a final determination (without further recourse) on the merits of the underlying proceeding and is also the subject of a pending Petition for Writ of Administrative Mandate filed by SOA in the Alameda Superior Court challenging the ALJ’s findings. Contrary to Courtesy’s unsupported assertions, the Confidential Decision is appealable and properly before the Court on the Writ Petition. Further, SOA does not consent and has not consented to the disclosure to the Board or the use of the Confidential Stipulated Decision or the Confidential Decision in this proceeding. Moreover, Exhibit 5 to Courtesy’s Redacted Petition improperly contains references, by the exact cite to a paragraph and quote of the language in the Confidential Stipulated Decision, without SOA’s consent. As such, Courtesy has violated the Confidential Stipulated Decision and the requirement of the Board that the Confidential Stipulated Decision remain under seal.

6. Any issues raised in the Petition about the appealability or breach of the Confidential Decision are also the subject matter of a federal lawsuit now pending as *Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico v. Subaru of America, Inc.*, United States District Court, Eastern District of California, Case No. 2:22-cv-00997-WBS-DMC.

7. Significantly, the Petition is devoid of a single allegation that supports that SOA has either terminated or modified Courtesy’s *franchise*, which is selling Subaru products with Subaru-branded signage without interruption at 896 East Avenue in Chico, California. This location is the sole location authorized for both the franchise (the written Dealer Agreement between the parties) and Courtesy’s occupational license. However, Courtesy is asking the Board to order the DMV to speculatively investigate some *future* and *unauthorized* franchise. See Vehicle Code Section 331, Definition of “Franchise.”

8. Thus, the representation that there is a current matter in controversy about a “Sign Package” is entirely misleading. The permanent facility is incomplete. (Petition, ¶47). Yet, Courtesy is asking this Board to take action *now* to seek an investigation by the DMV which could

1 potentially *revoke* SOA's license for something that has not occurred and may never occur given  
2 that the Confidential Decision is under appeal.

3 9. In addition, the Petition incorrectly asserts that SOA has failed to provide Courtesy a  
4 Subaru Sign Package which is necessary for Courtesy to complete construction of its permanent  
5 Subaru facility. As set forth in the Declarations of Dean A. Bakkum and Raymond Smit, SOA  
6 provided the necessary sign specifications to Courtesy over 4 years ago, in or about March, 2018.  
7 Contrary to Courtesy's assertions, anything more than those specifications is not necessary for the  
8 continued construction, or completion, of Courtesy's facility. Therefore, Courtesy's assertion that  
9 SOA has violated Vehicle Code sections 3060 and 11713.3 by failing to provide the sign  
10 specifications is meritless.

11 10. Moreover, Courtesy's assertion that SOA is preventing Courtesy from ordering and  
12 installing signs is false. Neither Courtesy, nor any other SOA retailer, orders and installs Subaru-  
13 branded signs directly from the sign vendor. All Subaru-branded signs are ordered, installed and  
14 owned by Subaru Leasing Corp. ("SLC"), a wholly-owned subsidiary of SOA. Accordingly, SOA  
15 cannot prevent Courtesy from what is an impossibility to begin with. Courtesy has made this false  
16 statement despite being a party to a Sign Lease Agreement with SOA which unambiguously sets  
17 forth the ownership and installation process for Subaru-branded signs.

18 11. SOA objects in the strongest terms to Courtesy's improper use and disclosure of  
19 settlement communications between counsel (Petition, ¶57, Ex. 6). Clearly these communications  
20 were part of ongoing oral and written settlement communications between counsel. (See,  
21 Declaration of Lisa M. Gibson, ¶¶2-8). The use of such communications as a basis to invoke a  
22 licensing investigation against SOA is abhorrent to the Evidence Code, contrary to public policy  
23 considerations to encourage settlement of disputes and wholly improper. Cal. Evid. Code §1152

24 12. Therefore, in this Response, SOA requests that the Board deny the Petition on the  
25 following grounds: (a) the Petition is not verified by Petitioner and consists of inadmissible hearsay  
26 evidence; (b) the Board is without jurisdiction to adjudicate a licensee versus licensee dispute, (c)  
27 the Petition is premised upon the ALJ's findings contained in the Confidential Decision which is  
28 not a final determination and is subject to a pending appeal; (d) SOA has already provided Courtesy

1 with the sign specifications and Courtesy cannot establish that SOA violated Vehicle Code sections  
2 11713.3 or 3060 or any other statutory provision or contractual obligation; (e) the Petition involves  
3 a dispute between a distributor and a single dealer and does not implicate any other dealers, the  
4 motor vehicle industry as a whole or the public and therefore does not warrant involvement by the  
5 DMV; (f) the DMV does not have authority to investigate an alleged breach of the Stipulated  
6 Decision or Confidential Decision of the Board or a matter based on a distributor's litigation and  
7 settlement communications between counsel; (g) the Petition appears to be designed to frustrate  
8 SOA's efforts to obtain relief in the pending writ proceeding and in response to Subaru's exercise  
9 of its rights under a letter of credit provided by Courtesy; (h) the Petition is premised on settlement  
10 discussions which are inadmissible as evidence in any proceeding; and (i) there are pending  
11 proceedings (the writ petition filed by SOA challenging the ALJ's Confidential Decision and a civil  
12 lawsuit for damages filed by Courtesy against SOA) which involve overlapping issues and which,  
13 if determined in SOA's favor, would preclude the action sought by Courtesy in this Petition.

14 13. In addition, SOA requests an opportunity to be heard at the New Motor Vehicle Board  
15 meeting at which this Petition will be considered.

### 16 **FACTUAL BACKGROUND**

#### 17 **Courtesy's Failure to Fulfill its Obligations From its Inception as a Dealer**

18 14. Since approximately 2015, Courtesy has failed to carry out its contractual obligations  
19 as a Subaru dealer and has breached nearly every facility obligation it owed to SOA. From its  
20 inception as a Subaru dealer, Courtesy did not perform its obligations under its original Facility  
21 Addendum dated May 5, 2015 (the "2015 Facility Addendum").

22 15. More specifically, Courtesy failed to: (a) lease dealership property by 05/05/2016;  
23 (b) purchase property for its Subaru dealership facility by 05/05/2016; (c) complete Design Intent  
24 for the facility with SOA's approved architectural firm by 08/05/2016; (d) submit facility drawings  
25 (interior, exterior, elevation) to SOA and SOA's architectural firm by 11/05/2016; (e) obtain permits  
26 for the facility project by 02/5/2017; (f) break ground on the facility project by 05/05/2017; and (g)  
27 resolve all of the facility deficiencies by 12/05/2017. (Ex. 4 to Courtesy's Complaint, attached to  
28 SOA's Request for Official Notice as Exhibit 2).

1           16.     Following Courtesy's repudiation of every one of its obligations under its original  
2 Facility Addendum, on or about August 11, 2018, Courtesy then vacated its sales premises and  
3 moved all Subaru sales operations to an unauthorized location without SOA's consent. This resulted  
4 in the abandonment of the previously authorized sales premises and use of those premises by a  
5 Hyundai dealer which also resulted in the removal of SOA's signage and trademarks.  
6 ( [Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit, ¶¶4-10,  
7 Ex. 1 to Complaint, attached to SOA's Request for Official Notice as Exhibit 2).

8           17.     Thereafter, SOA was forced to issue a notice of termination for the unauthorized  
9 relocation of the dealership facilities and file a lawsuit for Courtesy's trademark violations in  
10 allowing SOA's signs to be defaced and marred. ( *Id.* at ¶¶14, 16).

11           18.     Notwithstanding Courtesy's renunciation of its basic obligations to conduct Subaru  
12 dealership operations at the authorized sales premises and to display Subaru trademarks at an  
13 unauthorized location, SOA issued two extensions of the 2015 Facility Addendum's expiration date  
14 in order to allow the parties additional time to negotiate a settlement of the parties' disputes.  
15 (Amendment to Existing Facility Addendum, Ex. 4 to Complaint, attached to Request for Official  
16 Notice as Exhibit 2).

17           **Signage Specifications Provided to Courtesy for the New Dealership Facility**

18           19.     With respect to Courtesy's proposed new Subaru dealership facility, SOA retained  
19 Feltus Hawkins Design ("FHD"), a company which performs and creates design intents for the  
20 construction of Subaru dealerships nationwide. FHD created a design intent deliverable ("DID")  
21 binder for Courtesy which it provided to SOA. (Declaration of Dean A. Bakkum ¶2.)

22           20.     The DID binder was provided to SOA's San Francisco Zone office on or about March  
23 26, 2018 and contained drawings, photographs and information required to establish the design  
24 intent for incorporating the Subaru Facility Image into Courtesy's facility. The information  
25 included references to sign positioning in multiple places in the binder and five pages in the binder  
26 were devoted to the structural and electrical specifications for the Subaru branded signs for  
27 Courtesy. Structural and electrical specifications for signage are included in every DID binder and  
28 provided to every Subaru dealer. There have been no significant changes to these specifications



1 for Courtesy since the DID binder was finalized in March, 2018. (*Id.* at ¶2, 3, 7).

2 21. The DID binder included Mr. Bakkum's contact information so that Courtesy could  
3 contact him with any questions or requests for additional information about the DID. A sign  
4 approval package with SOA is not a prerequisite for Mr. Bakkum to provide additional information  
5 about a DID to a dealer or its architects, including sign structural and electrical specifications. (*Id.*  
6 at ¶4, 5).

7 22. To date, Courtesy has never contacted Mr. Bakkum with any questions or requested  
8 any additional information about the DID from FHD. The DID binder prepared by FHD also  
9 contained contact information for Philadelphia Sign Company, the vendor that is responsible for the  
10 Subaru Sign program. (*Id.* at ¶5, 6).

11 23. In addition, Raymond Smit, the Zone Retailer Development Manager for the San  
12 Francisco Zone of SOA, who is responsible for coordinating and delivering DID binders to dealers  
13 in his zone, delivers a hard copy of the DID binder, which contains the sign structural and electrical  
14 specifications, to Subaru dealers upon receipt from FHD. The DID binders are delivered to dealers  
15 either by hand-delivery or overnight mail and an electronic version is forwarded by email. Mr. Smit  
16 has never been contacted by anyone at Courtesy regarding the failure to receive its DID binder.  
17 (Declaration of Ray Smit ¶1-4.)

18 24. Moreover, Subaru dealers do not order Subaru-branded signs directly from vendors  
19 or own them. Rather, SLC orders and owns the signs, then leases them to its dealers pursuant to an  
20 executed Subaru Dealership Sign Lease Agreement. The signs are held in inventory by the sign  
21 vendor until they are ready to be installed at a dealership. Subsequently, another vendor retained  
22 by SOA installs the signs, not the dealer and the dealer does not pay the monthly lease payment for  
23 signs until they are installed. Signs for a new dealership construction are not installed until a facility  
24 is near operational. (*Id.* at ¶7).

25 25. Pursuant to its Subaru Dealer Agreement, Courtesy currently has an executed sign lease  
26 agreement with SOA for the signs at Courtesy's authorized dealership located at 896 East Avenue  
27 in Chico, California. (*Id.* at 9). Accordingly, contrary to the allegations in the Petition, Courtesy  
28 has been provided with all applicable signage for its authorized facility and was provided with the

1 applicable sign and electrical specifications for the new dealership facility under construction in  
2 early 2018 but has never followed up with SOA or FHD regarding any questions about those  
3 previously provided specifications.

4 **The Confidential Stipulated Agreement**

5 26. On or about March 20, 2019, as part of a settlement between Courtesy and SOA in  
6 the Board Protest filed by Courtesy in response to SOA's notice of termination, the parties entered  
7 into a [Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit  
8 ("Confidential Stipulated Decision"), which contained Exhibit 1 to Confidential Agreement to  
9 Stipulated Decision and Order of the Board. (Petition, ¶8, Exhibit 1).

10 27. The Confidential Stipulated Decision was adopted by Order of the California New  
11 Motor Vehicle Board pursuant to Vehicle Code section 3050.7 on April 9, 2019 ("Board Order  
12 Adopting Stipulated Decision and Order"). (Petition ¶8, Exhibit 2).

13 28. As set forth in SOA's Opposition to Courtesy's Opposition to Motion to Seal or, In  
14 the Alternative, Motion to Strike filed concurrently herewith, SOA does not consent to Courtesy's  
15 disclosure of Exhibit 1 to Confidential Agreement to Stipulated Decision and Order of the Board  
16 attached to the Confidential Stipulated Decision or the ALJ's Confidential Decision to the Board.

17 **The Facility Addendum**

18 29. On or about October 17, 2019, Courtesy and SOA entered into a Facility  
19 Addendum To Conditional Subaru Dealer Agreement in connection with Courtesy's Subaru dealer  
20 agreement ("2019 Facility Addendum"). (Ex. 3 to Complaint, attached Request for Official Notice  
21 as Exhibit 2.). By its terms, the Facility Addendum provided for certain construction benchmarks  
22 which Courtesy was required to meet for its dealership facility. (*Id.*)

23 30. Pursuant to the 2019 Facility Addendum, Courtesy was obligated to construct a new  
24 Subaru dealership at the agreed-upon Permanent Facility according to the following deadlines: (a)  
25 Courtesy to submit completed construction drawings and site plans to SOA for its prior written  
26 approval, pursuant to which the Permanent Facility complies with Subaru's projected Signature  
27 Image Facility Standards for a dealership facility, and such plans are approved in writing by SOA  
28 in advance of construction; (b) Courtesy to obtain necessary zoning, permits and necessary

1 governmental approvals to provide for the construction of the Permanent Facility on or before  
2 December 1, 2019; (c) Courtesy to commence construction of the Permanent Facility on or before  
3 January 31, 2020; (d) Courtesy to complete construction of the Permanent Facility and obtains all  
4 necessary licenses and permits as to the Subaru sales facility at the Permanent Facility by no later  
5 than January 31, 2021; (e) Courtesy to obtain a Final Review Verification letter from Feltus  
6 Hawkins, SOA's designated architectural review firm, for compliance upon completion of the  
7 remodeling, which Verification was to be provided by Feltus Hawkins by March 1, 2021. (*Id.*)

8 31. Following Courtesy's continued failure to miss the 2019 Facility Addendum  
9 deadlines, on or about May 21, 2020, Courtesy and SOA entered into an Amendment to Existing  
10 Facility Addendum to Conditional Subaru Dealer Agreement ("2020 Facility Addendum"). (Ex. 4  
11 to Complaint, attached to Request for Official Notice as Exhibit 2). The 2020 Facility Addendum  
12 acknowledged that Courtesy had missed benchmarks contained in the original Facility Addendum  
13 set forth new construction benchmarks.

14 32. At the time of the execution of the 2020 Facility Addendum dated May 21, 2020,  
15 Courtesy had yet to obtain the necessary permits or commence construction. (*Id.*) In fact, Courtesy  
16 has acknowledged that it did not break ground for the Subaru dealership facility until June, 2021  
17 (over a year later). (Complaint, ¶82, attached to Request for Official Notice as Exhibit 2). Thus,  
18 by the time that Courtesy had merely "broken ground," the agreement between the parties required  
19 that construction was to have already been *completed* six (6) months earlier. (2020 Facility  
20 Addendum, Ex. 4 to Complaint, attached to Request for Official Notice as Exhibit 2.) The 2019  
21 Facility Addendum also clearly provided that the failure to meet any facility deadline constituted a  
22 material breach of Courtesy's obligations. (2019 Facility Addendum, p. 3, ¶5, Ex. 3 to Complaint,  
23 attached to Request for Official Notice as Exhibit 2).

24 33. Notwithstanding that Courtesy had again failed to fulfill its obligations under the 2019  
25 Facility Addendum, SOA provided Courtesy with yet another and final opportunity to meet its  
26 facility obligations by way of the 2020 Facility Addendum. Pursuant to the express terms of the  
27 2020 Facility Addendum, Courtesy agreed to commence construction nine months prior to the  
28 "ground-breaking" that occurred much later in June, 2021. (2020 Facility Addendum, Ex. 4 to

1 Complaint, attached to Request for Official Notice as Exhibit 2). At the time of the “ground-  
2 breaking”, therefore, Courtesy was obligated to have the facility completed by December 31,  
3 2021—only six months later. (*Id.*)

4 34. Pursuant to the terms of the 2020 Facility Addendum, paragraph 5 of the 2019 Facility  
5 Addendum remained in full force and effect. (*Id.*). By its terms, any failure to complete construction  
6 of the facility by the agreed-upon date expressly constituted a material breach of the latter facility  
7 addendum. Thus, not only did SOA have a reasonable basis to believe that failing to meet the agreed-  
8 upon date to complete the facility was a material breach of the Facility Addendum, Courtesy *agreed*  
9 and knew that it was too.

10 35. Both the 2020 Facility Addendum and the Letter of Credit provided that the mere  
11 failure to fulfill the obligations under the Facility Addendum constituted a sufficient basis to make  
12 demand under the Letter of Credit. (Exs. 4 and 6 to Complaint, attached to Request for Official  
13 Notice as Exhibit 2). Notwithstanding that the failure to meet the construction completion deadline  
14 was a material breach, the Letter of Credit did not require Courtesy’s *material* failure or breach, but  
15 simply required Courtesy’s failure to fulfill its obligations. (*Id.*) Courtesy has conceded that it still  
16 has not fulfilled its obligations to complete the Subaru dealership facility, and that, “construction of  
17 the permanent facility is ongoing” and, therefore, not completed. (Complaint, ¶86, attached to  
18 Request for Official Notice as Exhibit 2).

19 **The Administrative Law Judge’s Decision and the Pending Writ Petition Before the Alameda**  
20 **County Superior Court**

21 36. On May 9, 2022, SOA filed a Petition for Writ of Administrative Mandate pursuant  
22 to California Code of Civil Procedure section 1094.5 on the grounds that the ALJ lacked jurisdiction  
23 to make the determination contained in the Confidential Decision, the ALJ’s determination was not  
24 supported by the evidence, and SOA was denied a fair hearing in the Board proceeding. The Writ  
25 Petition is currently pending in the Superior Court of the State of California, County of Alameda as  
26 *Subaru of America, Inc. v. New Motor Vehicle Board*, Case No. 22CV010968. A true and correct  
27 copy of the redacted Writ Petition is attached to SOA’s Request for Official Notice as Exhibit 1.

28 ///

37. Other than an initial Case Management Conference, no proceedings have taken place on the Writ Petition. A continued Case Management Conference is scheduled for August 30, 2022.

**Courtesy's Complaint Against SOA in the Butte County Superior Court**

38. On May 10, 2022, Courtesy served upon SOA a Complaint for Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Account Stated, Violation of Unfair Competition Law, Intentional Misrepresentation, Negligent Misrepresentation and Unjust Enrichment ("Complaint") against SOA in the Superior Court of California, County of Butte, Case No. 22CV00702 (the "Lawsuit"). A true and correct copy of Courtesy's Complaint in the Lawsuit is attached to SOA's Request for Official Notice as Exhibit 2. On June 6, 2022, SOA removed the action to the United States District Court for the Eastern District of California and the action is now pending as *Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico v. Subaru of America, Inc.*, USDC Eastern District, Case No. 2:22-cv-00997-WBS-DMC.

39. In the Lawsuit, Courtesy's claims are premised upon the allegations, facts and findings in the underlying Board proceeding and the terms of the Confidential Decision issued by ALJ Matteucci, all of which are now the subject of the pending Writ Petition filed by SOA. More specifically, despite the pending Writ Petition, among other things, Courtesy's Complaint alleges that SOA has acted improperly and in violation of the Confidential Stipulated Decision and the ALJ's Confidential Decision by failing to pay attorneys' fees to Courtesy as a result of the Board proceeding, that Courtesy is the prevailing party in that proceeding, that Confidential Decision was not appealable.

40. On June 15, 2022, SOA filed a Motion to Dismiss Complaint, or in the alternative, Motion to Stay Action in the Lawsuit on the grounds that Courtesy's claims are not ripe because they are dependent on the outcome of the pending Writ Petition and because the Complaint fails to state a claim for relief. In the alternative, SOA requested an order from the Court staying the Lawsuit pending the outcome of the Writ Petition because Courtesy's claims are necessarily dependent on the outcome of the Writ Petition. Specifically, if the Writ Petition is determined in favor of SOA, then Courtesy's claims against SOA in the Lawsuit are moot. On July 20, 2022, the District Court granted SOA's Motion to Stay and stayed the Lawsuit pending the outcome of the

1 Writ Petition. A true and correct copy of the Court's Order is attached to SOA's Request for Official  
2 Notice as Exhibit 4.

3 **THE PETITION SHOULD BE SUMMARILY DISMISSED BECAUSE THE BOARD**  
4 **LACKS JURISDICTION TO HEAR LICENSEE VERSUS LICENSEE DISPUTES.**

5 41. The Board does not have jurisdiction to adjudicate licensee versus licensee disputes.  
6 These disputes need to be resolved in the courts. *Mazda Motor of America, Inc., v. California New*  
7 *Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal.  
8 App. 4<sup>th</sup> 1451.

9 **THE PETITION SHOULD BE SUMMARILY DISMISSED BECAUSE IT IS NOT**  
10 **VERIFIED BY COURTESY AND CONSISTS OF INADMISSIBLE HEARSAY.**

11 42. Courtesy's Petition is procedurally defective because it is not verified by Courtesy  
12 and the information contained therein constitutes inadmissible hearsay. In similar proceedings  
13 before the Board, the Board has ruled that the unverified petitions consisted of hearsay evidence  
14 and those petitions were dismissed without prejudice. *See*, Minutes of the New Motor Vehicle  
15 Board meeting on October 10, 2019 in *Mitsubishi Motors North America, Inc. v. NextMotors*  
16 *Corporation*, Petition No. P-461-19, a true and correct copy of which is attached to the Request for  
17 Official Notice as Exhibit 3. For the same reason, Courtesy's unverified Petition should be  
18 dismissed in this matter.

19 **THE PETITION SHOULD BE SUMMARILY DISMISSED BECAUSE SOA HAS NOT**  
20 **CONSENTED TO THE DISCLOSURE OF THE CONFIDENTIAL STIPULATED**  
21 **DECISION OR THE ALJ'S CONFIDENTIAL DECISION.**

22 43. As set forth in SOA's Opposition to Motion to Seal or, In the Alternative, Motion to  
23 Strike filed concurrently herewith, SOA does not consent to the disclosure or use of the Confidential  
24 Stipulated Decision or the ALJ's Confidential Decision or any of the terms contained therein in this  
25 proceeding. On that basis, Courtesy's Petition, which is based on the Confidential Stipulated  
26 Decision and the ALJ's Confidential Decision, should be dismissed.

27 ///

28 ///

**THE BOARD SHOULD EXERCISE ITS DISCRETION TO DENY THE PETITION  
BECAUSE THE PETITION DOES NOT WARRANT REFERRAL TO THE DMV.**

**Referral to the DMV is Inappropriate Because the Allegations in the Petition Are Based on  
the Confidential Decision Which is Not a Final Determination and Is Subject to a Pending  
Writ Petition.**

44. In the Petition, Courtesy erroneously contends that SOA has acted improperly with regard to the Confidential Decision by refusing to provide Courtesy with “electrical and structural specifications for Subaru signs (the “Sign Package”) which Courtesy contends are necessary to construct the Subaru facilities. (Petition ¶24.) Courtesy also contends that it first requested the Sign Package on March 28, 2022 but that SOA has refused to provide the Sign Package. Courtesy also contends that SOA has acted with the intent “to coerce Courtesy to sell its Subaru franchise under the threat of being denied approval to commence operations at the new facility.” (Petition ¶9). Courtesy alleges that “[a]bsent Board or DMV Occupational Licensing intervention, Courtesy will be condemned to operate from its temporary leased location even after completion of its permanent facility.” (*Id.*) In its prayer for relief, Courtesy requests that the Board refer the matter to the DMV for investigation and, after receipt of the DMV’s investigation report, make a determination whether or not to order the DMV to take licensing action against SOA.

45. Courtesy also incorrectly asserts that the Confidential Decision is binding and non-appealable. (Petition ¶23). However, Plaintiff cannot overcome the fact that no such final determination has yet been made by the Board or any court and that the Confidential Decision in the Board proceeding is presently under review by the Superior Court.

46. Although there is no case law interpreting Section 3050.7, the body of law surrounding California Code of Civil Procedure Section 664.6 is analogous and helpful to interpreting Section 3050.7. Similarly, Code of Civil Procedure Section 664.6 states, in relevant part, “If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”

47. Even if a settlement is intended to be final and non-appealable by its terms, well-established case law still provides an avenue to appeal a judgment that fails to enforce a stipulated



1 settlement. “A settlement stipulation may also include an express waiver of the right to appeal;  
2 however, such a provision does ‘not preclude an appeal to determine whether or not the judgment  
3 was authorized by the stipulation.’” (*Boychuk v. Ingersoll* (Cal. Ct. App. Feb. 28, 2006) No.  
4 D045820, 2006 WL 465349, at \*4, citing *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d  
5 351, 359, emphasis added.

6 48. Contrary to Courtesy’s allegations in the Petition, the issue of the appealability of the  
7 Stipulated Decision has not been determined and is specifically before the Alameda County Superior  
8 Court in the Writ Petition.

9 49. Therefore, if the Board were to grant the relief sought in the Petition, it would be  
10 required to overlook the pending Writ Petition, or somehow examine and make a determination as  
11 to the merits of the Writ Petition in favor of Courtesy, in order to find a reasonable basis for a  
12 statutory violation and justify a referral to the DMV. Such action by the Board would be contrary  
13 to the relevant facts and law and beyond the scope of the Board’s jurisdiction.

14 **Courtesy Cannot Demonstrate that SOA Has Violated Vehicle Code Section 11713.3 or 3060**  
15 **or Engaged in Any Other Wrongdoing Which Would Warrant An Investigation by the DMV**  
16 **or the Suspension of SOA’s License.**

17 50. Vehicle Code section 3050(b) provides that the Board shall “[c]onsider any matter  
18 concerning the activities or persons applying for or holding a license as a new motor vehicle dealer,  
19 manufacturer, . . . distributor, . . . pursuant to Chapter 4 (commencing with Section 11700) of  
20 Division 5 submitted by an person.” Veh. Code §3050(b)(2) (emphasis added).

21 51. Section 3050(b) provides that, after the consideration of any matter pursuant to  
22 subsection (b), the Board *may* “[d]irect the department to conduct investigation of matters *that the*  
23 *board deems reasonable*, and make a written report on the results of the investigation to the board  
24 within the time specified by the board.” Veh. Code §3050(b)(1) (emphasis added).

25 52. Section 3050(b) also provides that, after the consideration of any matter pursuant to  
26 subsection (b), the Board *may* “[o]rder the department to exercise any and all authority or power  
27 that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or  
28 revocation of the license of any new motor vehicle dealer, manufacturer, . . . distributor, . . . as that

1 license is required under Chapter 4 (commencing with Section 11700) of Division 5.” Veh. Code  
2 §3050(b)(3) (emphasis added).

3 53. With regard to the suspension or revocation of a distributor’s license, Section 11705  
4 of the Vehicle Code sets forth certain grounds for such action by the DMV, including, but not limited  
5 to, a violation of “any provision of Article 1 (commencing with Section 11700) of, or Article 1.1  
6 (commencing with Section 11750) of, Chapter 4 of Division 5 or any rule or regulation adopted  
7 pursuant thereto.” Veh. Code §11705(a)(10).

8 54. Courtesy’s Petition is premised on the claim that SOA has violated Vehicle Code section  
9 11713.3(l) by treating Courtesy’s Dealer Agreement as terminated or modified in violation of  
10 section 3060. Courtesy also asserts that SOA has attempted to coerce Courtesy into selling its  
11 dealership in violation of Vehicle Code section 11713.3(d) by refusing to provide the Sign Package.  
12 However, Courtesy cannot demonstrate any statutory violation by SOA or any other conduct which  
13 could grant jurisdiction to the DMV to conduct an investigation or to suspend SOA’s distributor’s  
14 license.

15 55. In the Petition, in connection with the allegations of the First Violation, Courtesy  
16 contends that SOA has violated Vehicle Code sections 11713.3(l) and 3060 by “treating Courtesy’s  
17 Dealer Agreement and the Stipulated Decision as terminated and modifying Courtesy’s Dealer  
18 Agreement by refusing to cooperate in good-faith with Courtesy concerning ongoing efforts to  
19 complete the permanent facility, pursuant to the terms of each agreement.” (Petition ¶42.) Courtesy  
20 then contends that “[b]y refusing to provide Courtesy the Sign Package, SOA is unlawfully  
21 interfering with the Stipulated Decision and the Dealer Agreement” and is “treating Courtesy’s  
22 Dealer Agreement as terminated. . . .” (Petition ¶46.) Courtesy also contends that “SOA is  
23 modifying the Stipulated Decision and Courtesy’s Dealer Agreement” by “refusing to provide the  
24 Sign Package.” (Petition ¶47.) As a result, Courtesy contends that SOA has violated Vehicle Code  
25 section 3060 by failing provide statutory notice of its treatment of Courtesy as terminated or its  
26 modification of the Stipulated Decision and Courtesy’s Dealer Agreement by its refusal to provide  
27 Courtesy the Sign Package. (Petition ¶49). Courtesy also contends that “[a]s a result of SOA’s  
28 violation of 3060, SOA is also in violation of section 11713.3(l) which makes it unlawful for SOA

1 to violate 3060.” (Petition ¶50.) Based on these allegations, Courtesy requests that the Board order  
2 the DMV to conduct an investigation of SOA’s violations of sections 3060 and 11713.3 and  
3 exercise its authority to suspend or revoke SOA’s distributor license. (Petition ¶¶51, 53.)

4 56. Courtesy also improperly alleges that SOA is prohibited by law from modifying  
5 Courtesy’s Dealer Agreement by refusing to provide the Sign Package necessary to complete the  
6 permanent facility.” (Petition ¶28). Courtesy alleges that “[a]bsent Board or DMV Occupational  
7 Licensing intervention, Courtesy will be condemned to operate from its temporary leased location  
8 even after completion of its permanent facility.” (*Id.*)

9 57. Contrary to Courtesy’s unsupported and unverified allegations, as outlined above,  
10 SOA has not refused to provide the Sign Package and did, in fact, provide the required electrical  
11 and sign specifications to Courtesy in early 2018. Nor does any of the allegations reference a single  
12 word, provision, sentence, punctuation or syllable that has been modified in the Subaru Dealer  
13 Agreement.

14 58. Specifically, as set forth in the Declarations of Dean Bakkum and Raymond Smit, the  
15 drawings, photographs and information necessary to establish the design intent for incorporating  
16 the Subaru Facility Image into the a dealer’s facility, were provided to Jerry Pajouh, the dealer  
17 principal of Courtesy, in or about March, 2018. (Bakkum Declaration ¶3; Smit Declaration ¶2).  
18 Additionally, the Sign Package is not a necessary element for the construction or completion of the  
19 Subaru facility at this time because there are no structural or electrical specifications provided in  
20 the Sign Package that have not already been provided in the DID binder. (Smit Declaration ¶¶3, 5-  
21 6). Therefore, there is absolutely no basis for a finding that SOA violated either Section 3060 or  
22 11713.3 of the Vehicle Code by failing to provide the Sign Package or that SOA is acting to prevent  
23 Courtesy from completing its dealership facility. Likewise, there is no basis for Courtesy’s  
24 contention that SOA’s alleged conduct somehow constitutes an improper termination or  
25 modification of its Dealer Agreement.

26 59. Because Courtesy cannot make a threshold (reasonable) showing that SOA has  
27 violated any provisions of the Vehicle Code, both the Board and the DMV lack jurisdiction to take  
28 action on Courtesy’s Petition in this matter.

60. Furthermore, if Courtesy believes that SOA has violated the terms of the Stipulated Decision, the Confidential Decision or modified/terminated the Dealer Agreement, pursuant to the terms of those agreements, Courtesy may file a notice of non-compliance or protest with Board directly. The DMV does not have jurisdiction over these contractual disputes between a dealer and a distributor. Referral to the DMV and suspension of a distributor's license are not authorized remedies for such disputes between a dealer and distributor.

**The Petition Does Not Implicate Any Issues Involving Other Dealers, the Motor Vehicle Industry or the Public and Therefore Does Not Warrant DMV Involvement or License Suspension.**

61. The Petition requests that "the Board direct the DMV to conduct an investigation of SOA's violations of Section 3060 and 11713.3" and "make a determination whether or not to order the DMV to take action against SOA's license." (Petition ¶61). However, as outlined above, the Petition involves a private dispute between Courtesy and SOA and does not demonstrate any violation of Sections 3060 or 11713.3 or any other statutory violation by SOA. Further, the alleged conduct involving any dealers other than Courtesy. Courtesy's attempt to transform a private dispute into a termination or modification of its Dealer Agreement or other statutory violation is unavailing. Because the Petition involves a private issue between a single dealer and a distributor, and Courtesy cannot establish any statutory violation by SOA, it does not justify DMV investigative or licensing action.

62. Similarly, the private dispute between Courtesy and SOA does not implicate any significant issue affecting multiple licensees, the motor vehicle industry as a whole or the general public. Moreover, the Petition improperly relies on the terms of the Confidential Decision in support of its request for relief which is not a final decision and is presently the subject of the Writ Petition. Accordingly, referral to the DMV would be improper, unauthorized and would result in the unnecessary waste of time, valuable state resources and potential harm to all Subaru dealer licensees.

///

///

1           63. Further, Courtesy may still file a notice of non-compliance with the Stipulated  
2 Decision if it believes that SOA has violated the terms of that agreement. The alleged breach of the  
3 Stipulated Decision and the Dealer Agreement are also the subject of the Lawsuit filed by Courtesy  
4 which is now pending in the District Court and in the Writ Petition in the Alameda Superior Court.  
5 As such, Courtesy has other forums within which to directly resolve any private disputes it has with  
6 SOA.

7           64. Additionally, if the Writ Petition and Lawsuit are resolved in favor of SOA, and the  
8 Confidential Decision is overturned, Courtesy's claims in this Petition which are dependent on terms  
9 of the Stipulated Decision and Confidential Decision and SOA's actions related thereto, would be  
10 rendered moot. On this basis, the Board should refrain from taking action on the Petition.

11 **The Petition Lacks Merit and Appears to Have Been Improperly Filed in Response to SOA's**  
12 **Execution on the Letter of Credit and Filing of the Writ Petition.**

13           65. As stated above, there is no basis for granting of the Petition because SOA has not  
14 violated Sections 3060 or 11713.3 of the Vehicle Code, or any other statutory provisions. In fact,  
15 SOA has acted in accordance with its obligations by providing the Sign Package to Courtesy in 2018  
16 and the Sign Package is not a necessary item for continued construction at SOA's dealership facility  
17 at this time.

18           66. Because there is no basis for the Petition, it appears to have been filed in response to  
19 Subaru's exercise of its rights under the Letter of Credit and to frustrate SOA's efforts to obtain  
20 relief in the pending Writ Petition. Further, the Petition improperly relies on the contents of  
21 communications between SOA and its counsel and Courtesy and its counsel which are standard  
22 litigation and negotiation communications. Moreover, as outlined above, SOA's actions in  
23 connection with both the Letter of Credit and the Writ Petition are appropriate and supported by the  
24 contractual and statutory provisions relevant to this matter. Therefore, Courtesy's filing of the  
25 baseless Petition is akin to a SLAPP lawsuit whereby Courtesy is attempting to retaliate against and  
26 harass SOA for executing the Letter of Credit, to frustrate SOA's efforts to pursue the Writ Petition  
27 and to curb the ability of SOA's counsel to take litigation positions in its ongoing communications  
28 with Courtesy's counsel.

67. Courtesy should not be permitted to curtail SOA's contractual and statutory rights to enforce the Letter of Credit and file the Writ Petition challenging the Confidential Decision or its counsel's communications in pending litigation. Although the Board does not have express authority to take action under California's anti-SLAPP provisions, Code of Civil Procedure section 425.16 *et seq.*, the Petition should be denied based on the same reasoning in this matter.

**The Petition's Improper Disclosure and Use of Settlement Negotiations and Statements Made in Relation Thereto is Impermissible by Law.**

68. Courtesy's alleged Second Violation is premised upon the erroneous assertion that SOA has improperly required Courtesy to sell its Subaru franchise by refusing to provide the Sign Package in violation of Vehicle Code section 11713.3(d).

69. Moreover, Courtesy's allegations with respect to the Second Violation are improperly premised upon confidential settlement discussions and litigation communications between counsel for the parties. In addition, these communications between counsel provide no support for Courtesy's unsupported and speculative contentions that SOA's conduct in refusing to provide the Sign Package was "intended to coerce Courtesy to sell its Subaru franchise under the threat of being denied approval to commence operations at the new facility" and is part of an effort to "prevent Courtesy from securing final SOA approval and likely forming the basis for SOA to refuse to provide the OL 124 form required for DMV approval of the new facility location." (Petition ¶¶6, 9.) Courtesy has provided no evidence to support these baseless and speculative contentions.

70. Courtesy should not be permitted to disclose and use a settlement communication between counsel. (*See* Petition, ¶57, Ex. 6). Clearly these communications were part of ongoing oral and written settlement communications between counsel. (Declaration of Lisa M. Gibson, ¶¶2-8). The use of such communication is contrary to the Evidence Code and public policy considerations to encourage settlement of disputes and improper. Cal. Evid. Code §1152

71. An offer of compromise is not admissible evidence. *Cano v. Tyrrell* (1967) 256 Cal.App.2d 824.

72. It is not permissible to show that a party to litigation has offered to compromise the case, and such rule not only excludes offer to compromise but also all negotiations with relation

thereto. *Armstrong v. Kline* (1944) 64 Cal.App.2d 704; *Farrington v. A. Teichert & Son* (1943) 59 Cal.App.2d 468; *Boyes v. Evans* (1936) 14 Cal.App.2d 472.

73. The Board should be supportive of the frank exchange between counsel to pursue negotiations, statements and settlement discussions and not allow such good faith attempts to become the basis of a DMV investigation of a licensee simply because Courtesy did not like SOA's settlement offer. Courtesy's attempt to use these communications is improper and contrary to public policy.

**REQUEST THAT PETITION BE DENIED**

74. For the reasons outlined above, there is no factual or statutory basis for the Board to grant the relief sought by Courtesy in the Petition or for referral to the DMV for investigation or licensing action. Doing so would also result in the unnecessary waste of valuable resources of the Board and the DMV. Finally, the Petition appears to have been filed for the improper purpose of penalizing SOA for executing the Letter of Credit and filing the Writ Petition. Accordingly, Respondent Subaru of America, Inc. respectfully requests that the Board dismiss the Petition and exercise its discretion not to refer this matter to the DMV for investigation or further action.

Dated: July 20, 2022

Respectfully submitted,

**NELSON MULLINS RILEY & SCARBOROUGH LLP**

By:



Lisa M. Gibson  
Amy M. Toboco  
Attorneys for Respondent  
SUBARU OF AMERICA, INC.



VERIFICATION

I, Anthony J. Graziano, am Regional Vice President for the Western Region for Respondent Subaru of America, Inc. in the above-captioned matter. I have read RESPONDENT SUBARU OF AMERICA, INC.'S RESPONSE TO PETITION and am familiar with its contents. I am informed and believe, and on that basis allege, that the matters set forth in said Response are true and correct.

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

Executed on July 19, 2022 at Denver, Colorado.

  
Anthony J. Graziano

**PROOF OF SERVICE  
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Nelson Mullins Riley & Scarborough LLP and my business address is 19191 South Vermont Avenue, Suite 900, Torrance, CA 90502.

On July 20, 2022 I served the foregoing document entitled

**RESPONDENT SUBARU OF AMERICA, INC.'S VERIFIED RESPONSE TO  
PETITION**

on all the appearing and/or interested parties in this action by placing a true copy thereof as follows:

**LAW OFFICES OF GAVIN M. HUGHES**

Gavin M. Hughes  
Robert A. Mayville, Jr.  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
T: (916) 900-8022  
E-mail: [gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)  
[mayville@hughesdealerlaw.com](mailto:mayville@hughesdealerlaw.com)

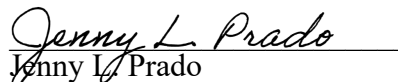
*Counsel for Petitioner*

**NEW MOTOR VEHICLE BOARD**

1507 21st Street, Suite 330  
Sacramento, CA 95811  
Email: [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov)  
[robin.parker@nmvp.ca.gov](mailto:robin.parker@nmvp.ca.gov)  
[danielle.phomsopha@nmvp.ca.gov](mailto:danielle.phomsopha@nmvp.ca.gov)

**[X] BY ELECTRONIC TRANSMISSION:** I transmitted a PDF version of this document by electronic mail to the party(s) identified above and/or on the attached service list using the email address(es) indicated.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was Executed on July 20, 2022 at Torrance, California.

  
Jenny L. Prado

VIA EMAIL

New Motor Vehicle Board

Received  
July 20, 2022

FILED

New Motor Vehicle Board

Date: 7-20-22

By: dp

Lisa M. Gibson (SBN 194841)  
Amy M. Toboco (SBN 149508)  
NELSON, MULLINS, RILEY &  
SCARBOROUGH  
19191 South Vermont Avenue, Suite 900  
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[amy.toboco@nelsonmullins.com](mailto:amy.toboco@nelsonmullins.com)

Attorneys for Respondent  
SUBARU OF AMERICA, INC.

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, INC.  
dba COURTESY SUBARU OF CHICO,

Petitioner,

v.

SUBARU OF AMERICA, INC.,

Respondent.

Petition No. P-463-22

**DECLARATION OF DEAN A.  
BAKKUM IN SUPPORT OF  
RESPONDENT SUBARU OF  
AMERICA, INC.'S RESPONSE TO  
PETITION**

1 I, Dean A. Bakkum, declare and state as follows;

2 1. I am employed by Feltus Hawkins Design (“FHD”) which is the company retained by  
3 Subaru of America, Inc. (“SOA”) for performing design intents for the construction of Subaru  
4 dealerships nationwide. I am currently the Director of Operations at FHD, and my prior position  
5 was Design Director. I have worked at FHD for over thirteen years and was the person responsible  
6 for finalizing the design intent deliverable (“DID”) binder for Courtesy Subaru of Chico (the  
7 “Retailer”) while I was Design Director.

8 2. The DID binder contains drawings, photographs and information required to establish  
9 the design intent for incorporating the Subaru Facility Image into the Retailer’s facility. There are  
10 references to sign positioning in multiple places in the binder, however, there are specifically five  
11 pages included in the binder that are devoted to the structural and electrical specifications for the  
12 Subaru branded signs for this Retailer. The complete DID binder for this Retailer is attached to this  
13 declaration as Exhibit “A” and it includes these five pages of sign specifications.

14 3. On or about March 26, 2018, I signed a cover letter addressed to the Retailer and  
15 subsequently sent the DID binder by Federal Express to Ray Smit at SOA’s San Francisco Zone  
16 offices located in Pleasanton, California.

17 4. In the DID binder, my contact details were provided for the Retailer to contact me  
18 with any questions or requests for additional information about the DID. Mr. Pajouh has neither  
19 contacted me with any questions nor requested additional information about the DID.

20 5. A sign approval package with SOA is not a prerequisite for the purpose of my  
21 providing additional information about the DID, including sign structural and electrical  
22 specifications. I have answered questions from Subaru retailers or their architects about the DID  
23 in the past and continue to do so in the present.

24 6. Also included in the DID binder are contact details for Philadelphia Sign Company,  
25 the vendor that is responsible for the Subaru Sign program.

26 7. Structural and electrical specifications for signage are included in every DID binder  
27 and provided to every Subaru retailer. There have been no significant changes to these  
28

1 specifications since the DID binder for this Retailer was finalized in March, 2018.

2 I declare under penalty of perjury under the laws of the State of California that the foregoing  
3 is true and correct.

4 Executed on July 18, 2022, at Nashville, Tennessee.

5   
6 Dean A. Bakkum

# **EXHIBIT A**



Courtesy Subaru of Chico  
Chico, CA

Design Intent





FELTUS HAWKINS DESIGN

INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT

March 26, 2018

Shahram Mihanpajouh  
**Courtesy Subaru of Chico**  
2520 Cohasset Road  
Chico, CA 95973

Mr. Mihanpajouh,

Please find enclosed the Design Intent Deliverable package for Courtesy Subaru of Chico. This package incorporates the new Subaru Facility Image components, which include the exterior design and materials, interior material and finishes, and layout of furniture and millwork into your facility.

This package includes typical specifications and material samples for the furnishings for the required areas of your facility. We can also provide office furniture for all other areas in your retail center. There are 2 Levels of furniture available for the new program as shown in the furniture section. When you are ready to review furniture, we will layout the furniture Level that fits your needs and provide you an exact furniture quotation. We can discuss all optional areas at that time.

Important Notes:

1. The facility plans included in the D.I.D. are being compared to the current Minimum Standards and Operating Guidelines (MSOG) to confirm compliance. The MSOGs are updated annually, usually in March. If your project will not be completed before the MSOG is updated, you should consider exceeding minimum requirements for anticipated growth. Your Subaru zone personnel can assist with estimated growth calculations.
2. The current finish schedule takes precedence over all previous finish schedules; if you are not sure you have the most current schedule, confirm with FH Design or Subarunet/Retail Environment/Signature Facility Program/Finish Schedule. These documents have been created by FH Design to illustrate the design intent as approved by SUBARU OF AMERICA, INC. (SOA). Any desired exceptions to the specifications or finish schedule must be approved in writing by FH Design and SOA. Please submit exception requests, along with drawing, specifications and samples as needed to FH Design for review.
3. This Design Intent Documentation is valid for 18 months from the date of this letter. If meaningful construction has not begun within 15 months from the date of this letter, your facility plans must be reassessed to confirm compliance. A reassessment fee will be charged to the Retailer. Please contact your Subaru zone personnel for additional information.

If you have any questions or need additional information, please contact me.

Sincerely,

Dean A. Bakkum  
Senior Director



FELTUS HAWKINS DESIGN

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FH DESIGN TEAM CONTACT INFORMATION

---

DEAN BAKKUM

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dbakkum@fhdesign.com  
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615-250-8391

LYDIA MELTON

Project Coordinator  
lmelton@fhdesign.com  
615-320-8251

---

INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT

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This binder contains the drawings, photographs, and information required to establish the **design intent** for incorporating the Subaru Facility Image into this facility. The binder includes the following:

**Assessment Information:** Meeting notes, dealer's needs, and photo documentation, if available, are included in this section to represent the existing conditions of the facility and to determine the needs of the dealership.

**Design Intent:** Reduced sized copies of the proposed plan and elevations are included in this section of the binder for easy reference. 1/8" scale prints of the floor plan and elevations are included as a separate set. A rendering to show the new facility will also be shown in this section.

**Building Finishes:** The required specifications and placement of building finishes for the Subaru Facility Image are listed in the Finish and Color Schedule. Samples of the major finishes are enclosed.

**Image Elements:** This section contains photographs of required merchandising elements necessary to fulfill the Subaru Facility Image Program. Required Image Elements are also located on the floor plan. You can also go to [subaru.dcim.com](http://subaru.dcim.com) for Requirements and order information.

**Furniture:** Included in this section are typical furniture 3-d layouts and a furniture cost estimation summary. Actual pricing will be generated at time of order after a furniture review to determine Level of furniture and individual needs of Dealership.

**Millwork / Fixtures:** This section includes millwork drawings for areas such as the Greeter and Cashier.

**Signage Elements:** Pylons and channel set letters provided by Philadelphia Sign Company 856-829-1460.

*Typically, this design intent information is provided to the architect or design/build firm for use in preparing the construction and permitting documents.*

## **SUBARU FACILITY DESIGN PROGRAM – SUMMARY REPORT**

ON SITE DESIGN INTENT REVIEW MARCH 23<sup>RD</sup> & 24<sup>TH</sup>.

COURTESY SUBARU OF CHICO – CHICO, CA

PREPARED BY: MICHAEL VENTOURAS 03/04/18.

### **REPORT:**

Present for the kick off meeting were Jerry Pajouh, local architect, Lisa Kline and myself. I started the meeting by presenting the Subaru image program and explained the survey process. We then developed a design program. Scope of work for this project is to design a new facility to meet Retailer's needs, Subaru's Image and Minimum Standard requirements. At this point the project is required to meet Exclusive requirements.

The site for this project is to be shared with Subaru, Volvo, BMW, Mercedes, Cadillac, Buick/GMC, Body Shop / Service & Parts bldg. and Used Car showroom for all brands. The area that we are working with is 9.6 acres. Local Architect had already started the design process and presented site plan, floor plan and elevations. To get everything on this site, the Architect came up with duplex like showrooms and lined them up on the site like row houses. He proposed one building to house service, parts and body shop for all franchises and another building for Used Cars (all brands). The plan is very tight with no room for future growth. The plans do not meet Exclusivity requirements and I was very concerned that we would not meet Minimum Standard requirements as well. The showroom layout presented was basic and Jerry explained that we could set up the interior space as we needed.

Lisa and I explained that this plan would not satisfy Subaru's requirements, but Jerry was adamant that we worked with space shown. I explained that I could not present a solution that did not meet Subaru's requirements and that tomorrow's presentation had to reflect Exclusive facility, MS requirements and Image requirement.

After the meeting, Lisa and I visited the site. I then started the design process. By the next morning I had proposed floor plan, site plan and elevations. Jerry was not happy with solution but requested some revisions. I explained that I would complete revisions and email them to everyone for review. I also explained that I would not move forward with final DID's until I received approval to move forward.

During the course of the design process. Subaru changed this project to meet Separate Touch Point facility requirements. Several months later and, after generating several proposed plans, Lisa gave me a plan to move forward with that was designed by local the Architect. She requested a few additional revisions and told me to complete final plans.

These plans were not designed by myself, only some of the interior layout. I modified the elevations to meet Subaru's requirements. Otherwise, these plans are designed completely by Local Architect.

### **SITE:**

Subaru pylon sign is shown on site plan.

Off-site parking is required.

### **BUDGET:**

Budget was not provided.

### **ECO FRIENDLY PROGRAM:**

Jerry seemed interested in Eco Friendly program.

### **Furniture & Finishes:**

All new furniture and finishes are required

### **Express Service:**

They are interested in Express Service. Plans show express lane and service stalls.



FELTUS HAWKINS DESIGN

## Pre-Design Questionnaire -

Date: March 03, 2018

## Courtesy Subaru

Chico, CA

### Image

Facility	Description	Dealer Commitment
I1	Subaru Signature Facility Exterior Image	Phase 2
I2	Subaru Signature Facility Interior Image	Phase 2

### Sales

Facility	Description	Existing	Proposed
F1	Subaru New Vehicle Showroom Area Designation	Exclusive	Exclusive
F2	Subaru New Vehicle Showroom Units		7
F3	Subaru New Vehicle Showroom Area	na	2937
F4	Certified Subaru Sales Manager Office Area		438
F5	Certified Subaru F & I Manager Office Area		198
F6	Certified Subaru Sales Consultant Area		556
F7	General Office Area		na
F8	E-Commerce/CRM		
*			

### Lounge

Facility	Description	Existing	Dealer Commitment
C1	Subaru Customer Lounge Area Designation	Exclusive	Exclusive
C2	Subaru Customer Lounge Area	na	1275
C3	Internet Access/ WiFi Access	Y	Y

INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT

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**Pre-Design Questionnaire**  
**Courtesy Subaru of Chico**  
Page 2 of 4

**Service**

Facility	Description	Existing	Dealer Commitment
S1	Subaru Service Stalls (Dedicated)	na	9
S2	Subaru Service Lifts (Dedicated)	na	9
S3	Subaru Service Advisor Area Designation	Exc	3

**Storage**

Facility	Description	Existing	Dealer Commitment
SS1	Subaru New Vehicle Display & Storage (Dedicated Spaces)		29
SS2	Subaru Used Vehicle Storage (Dedicated Spaces)		shared
SS3	Subaru Service Vehicle Storage (Dedicated Spaces)		24
SS4	Subaru Service Customer Parking (Dedicated Spaces)		6
SS5	Subaru Sales Customer Parking (Dedicated Spaces)		14
SS6	Subaru Employee Parking		Off-site
SS7	Subaru Technician Lockers		y
SS8	Subaru Tool Storage Area		y
SS9	Subaru Parts Storage Area		1606
	Secure Parts Delivery Area	Y	Y
	Service Drive		922

**General Services**

	Existing No.	Proposed No.
Lunchroom	na	Y
Restrooms (Women)		1
Sinks		1
Toilets		1
Restrooms (Men)		1
Sinks		1
Toilets		1
Urinals		0

Additional Comments:
<b>Off-site parking required.</b>

## G. Building and Lot Area Summary

Please provide estimated square footage for existing and required spaces.

	Existing	Proposed
Showroom		2937
Offices		
Service Reception		922
Parts		1606
Service (Mechanical)		4135 Subaru only
Body Shop		na
Building Area (Total)		na
New Unit Display		49
New Unit Storage		
Pre-Owned Display		shared
Sales Customer Parking		14
Service Parking		34
Employee Parking		Off-site
Total Vehicles		83 Subaru only
Paved Lot Area (Total)		na

Additional Comments:



## Subaru Pre-Design Questionnaire

### Employee Synopsis

Dept/ Position	Quantity	Dept/ Position	Quantity
<b>New Car Sales</b>		<b>Customer Service</b>	
Sales Manager	1	Greeter	0
Sales Consultants	7	Cashier	0
F & I Manager / Dir	2	Customer Svc Mgr	
F & I Consultants	-	<b>Service</b>	-
Fleet/Leasing Mgr.	-	Svc Manager	1
Business Dev Mgr	-	Shop Foreman	0
<b>Used Car Sales</b>		Dispatch	0
Sales Manager		Warranty Clerk	0
Sales Consultants		Technicians	
F & I Consultants		Detailing	
		Porter	
<b>Administration</b>		Service Adv's	3
Dealer	0	<b>Parts</b>	
Dealer Admin		Parts Manager	
General Manager	1	Tech Counter	
GM Admin		Retail Counter	
Controller	0	Wholesale Counter	
Office Manager	0	Shipping/Receiving	Y
Clerical	0	Stocking Clerk	-
		<b>Body Shop</b>	
		Manager	
		Technicians	

















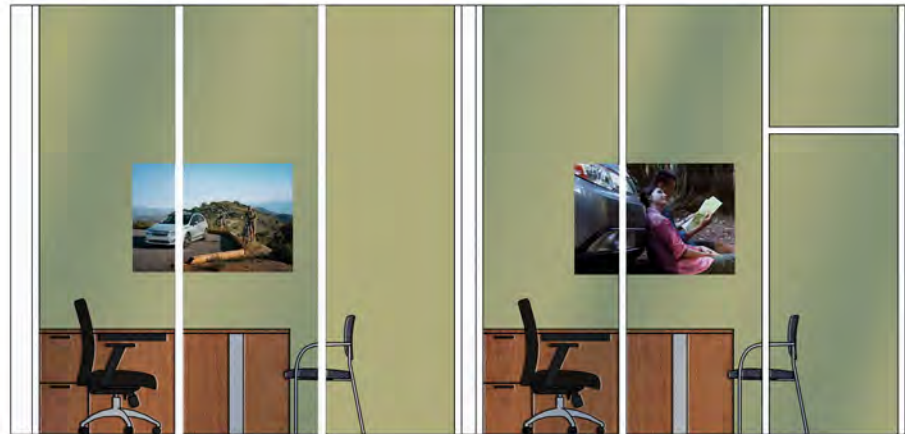


FELTUS HAWKINS DESIGN  
INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT

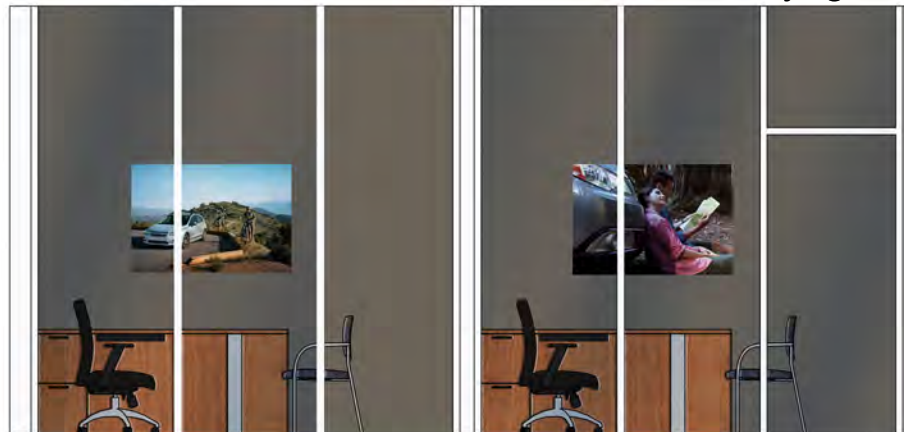




Accent Color: SW 6236 Grays Harbor



Accent Color: SW 6423 Ryegrass



Accent Color: SW 7047 Porpoise

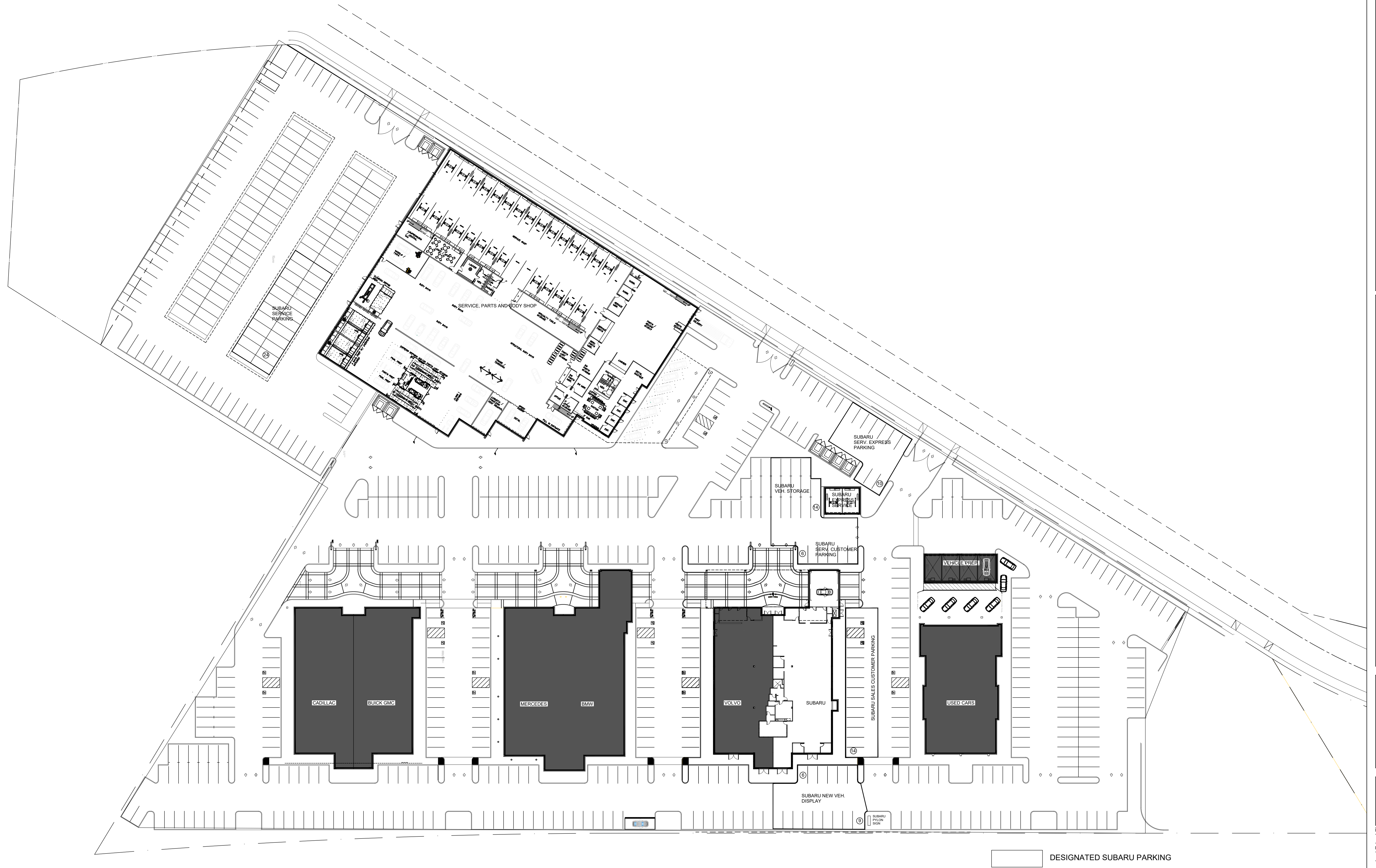


FELTUS HAWKINS DESIGN



**SUBARU**





## PROPOSED SITE PLAN

1" = 40'-0"

FELTUS HAWKINS DESIGN  
1207A McGavock St.  
Nashville, TN 37203  
615.244.4328  
www.fhdesign.com



## Proposed Site Plan COURTESY SUBARU of CHICO

CA

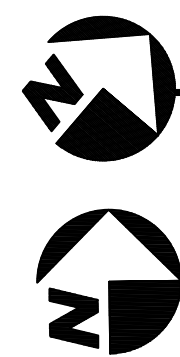
Chico

This design intent drawing is intended only to communicate the design direction as suggested by SUBARU. It is not to be interpreted as an architectural drawing nor is it intended to be relied upon as guidance for pricing, permitting and/or construction. These drawings do not represent or imply compliance with local or national building codes, fire regulations, zoning ordinances, the Americans with Disabilities Act, or other applicable codes.

FHD project # 17021-1  
drawn by MGV  
checked by LHM

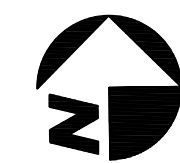
issue 03/03/18

revision  
△  
△  
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PROPOSED FLOOR PLAN - SHOWROOM

1/8"



PLAN NORTH

SUBARU MINIMUM STANDARDS GUIDELINES					RECOMMENDED ITEMS
	2017 STANDARDS	2020 FOX	PROPOSED	DEFICIENT/NOTES	
SALES					① Floor Mounted Outlet
New Vehicle Showroom Units	4		7		② Wallpaper Graphic
New Vehicle Showroom Area	1,500 S.F.		2,937 S.F.		③ Wall Mounted Stretch Frame Graphic
Certified Subaru Sales Manager Office Area	319 S.F.		438 S.F.	Includes GM office	REQUIRED ITEMS
Certified Subaru F&I Manager Office Area	165 S.F.		198 S.F.		④ Performance Pylons
Certified Subaru Sales Consultant Area	360 S.F.		556 S.F.		⑤ Aluminum Poster Frames
General Office Area	VERIFY SP AV		na		⑥ Digital or Graphic Wheel Stands
LOUNGE					⑦ Service Media Center
Customer Waiting Area	320 S.F.		1,275 S.F.		⑧ Accessory Display
SERVICE					⑨ Digital Showroom Display
Service Stalls (Dedicated)	8	8	9	2 Subaru Express	
Service Lifts (Dedicated)	5	5	9		
Service Writers	2		3		
STORAGE					
New Vehicle Display & Storage (Dedicated Spaces)	100		29	Off-site parking required	
Used Vehicle Storage (Dedicated Spaces)	59		0	See shared Used Car	
Service Vehicle Storage (Dedicated Spaces)	24		24		
Service Customer Parking (Dedicated Spaces)	4		6		
Sales Customer Parking (Dedicated Spaces)	5		14		
Employee Parking	VERIFY SP AV		off-site		
Parts Storage Area	1,600 S.F.	1,600 S.F.	1,606 S.F.		

FELTUS HAWKINS DESIGN  
1207A McGavock St.  
Nashville, TN 37203  
615.244.4328  
www.fhdesign.com

Fh

Proposed Floor Plan - Showroom

COURTESY SUBARU OF CHICO

Chico

CA

This design intent drawing is intended only to communicate the design direction as suggested by SUBARU. It is not to be interpreted as an architectural drawing nor is it intended to be relied upon as guidance for pricing, permitting and/or construction. These drawings do not represent or imply compliance with local or national building codes, fire regulations, zoning ordinances, the Americans with Disabilities Act, or other applicable codes.

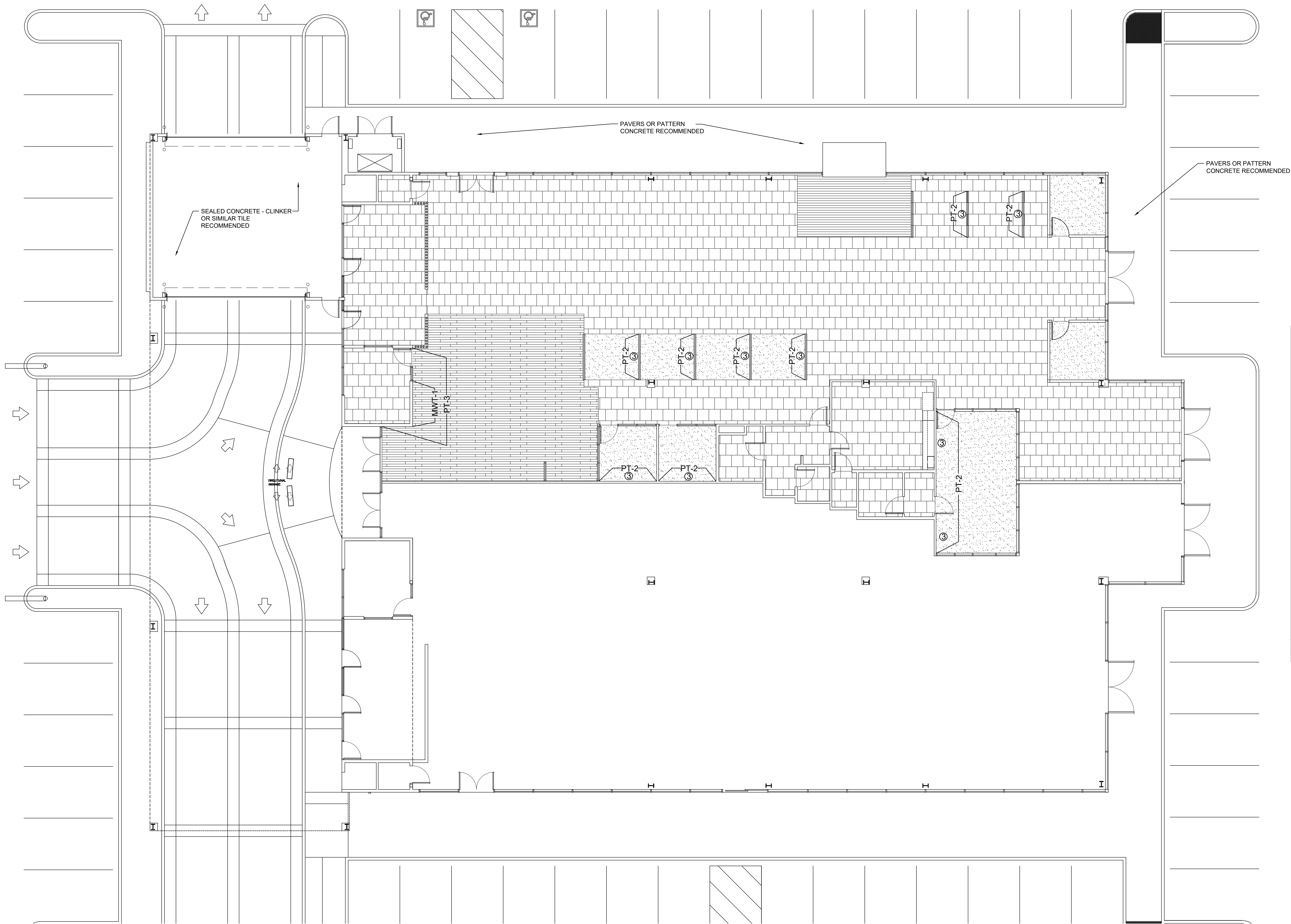
FHD project # 17021-1

drawn by MGW

checked by LHM

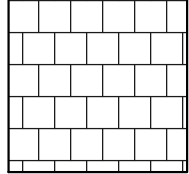
issue 03/03/18

revision

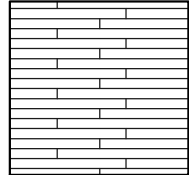


PROPOSED FLOOR FINISH PLAN

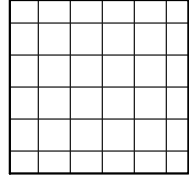
1/8"



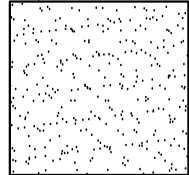
Porcelain Tile



Wood Floor



Porcelain Tile



Carpet

See Finish Schedule for finish requirements and specifications.

Proposed Floor Finish Plan

COURTESY SUBARU OF CHICO

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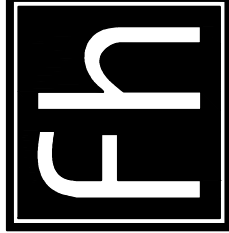
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FHD project #	17021-1
drawn by	MGV
checked by	LHM

issue 03/03/18

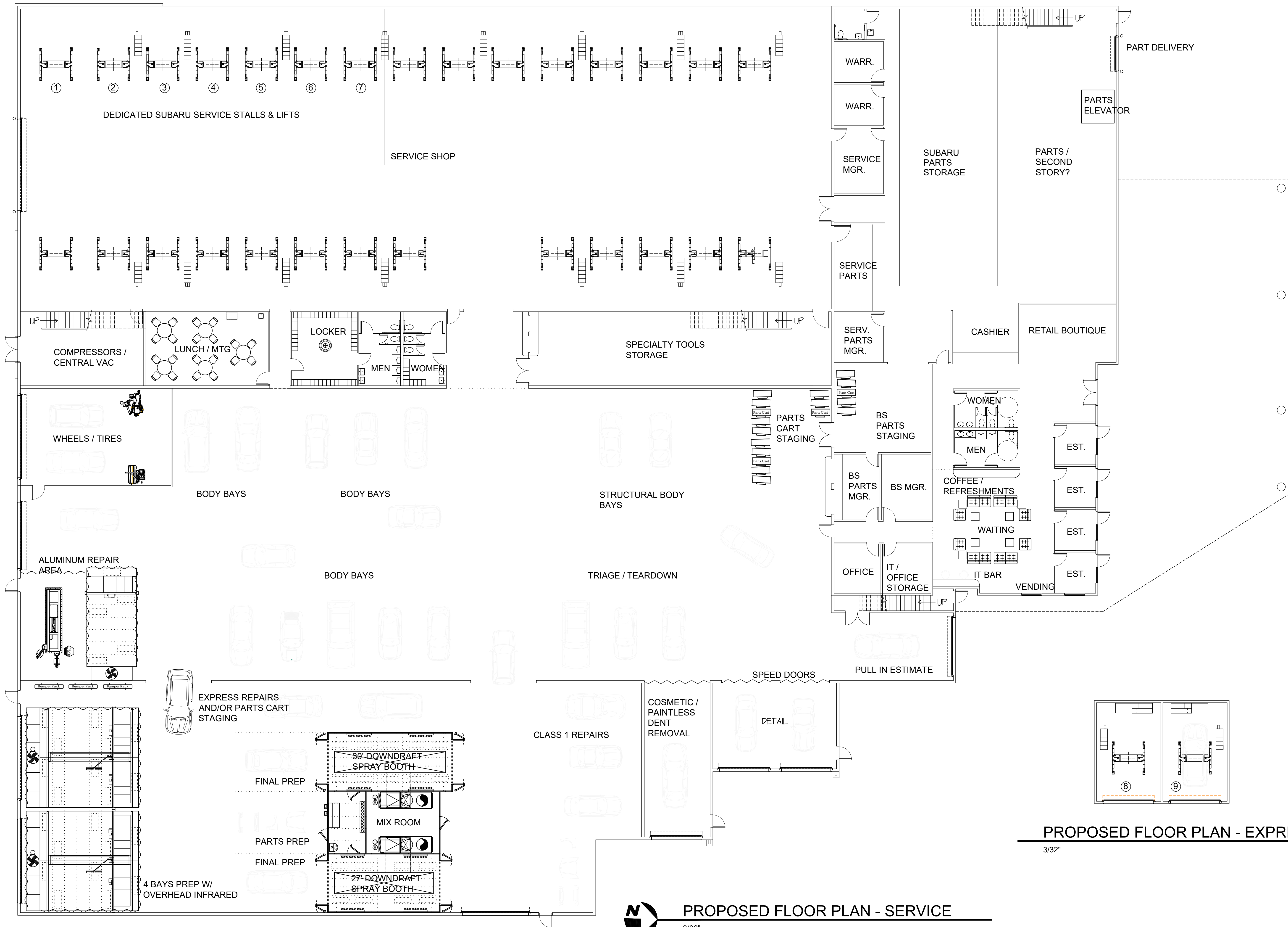
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FELTUS HAWKINS DESIGN

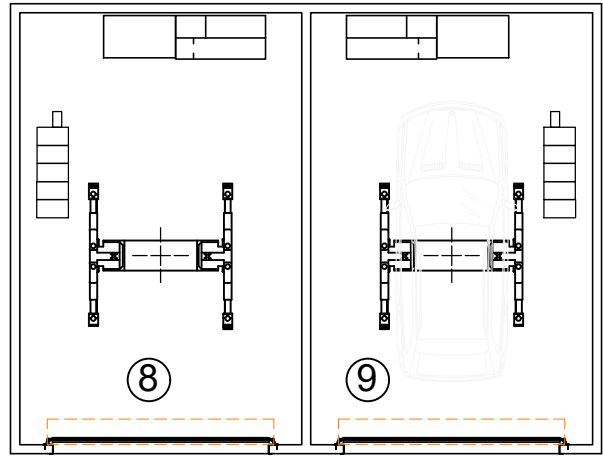
1207A McGavock St.  
Nashville, TN 37203  
615.244.4328  
www.fhdesign.com





PROPOSED FLOOR PLAN - SERVICE

3/32"



PROPOSED FLOOR PLAN - EXPRESS

3/32"

FELTUS HAWKINS DESIGN

1207A McGavock St.  
Nashville, TN 37203

615.244.4328  
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FH

Proposed Floor Plan - Service

COURTESY SUBARU OF CHICO

Chico

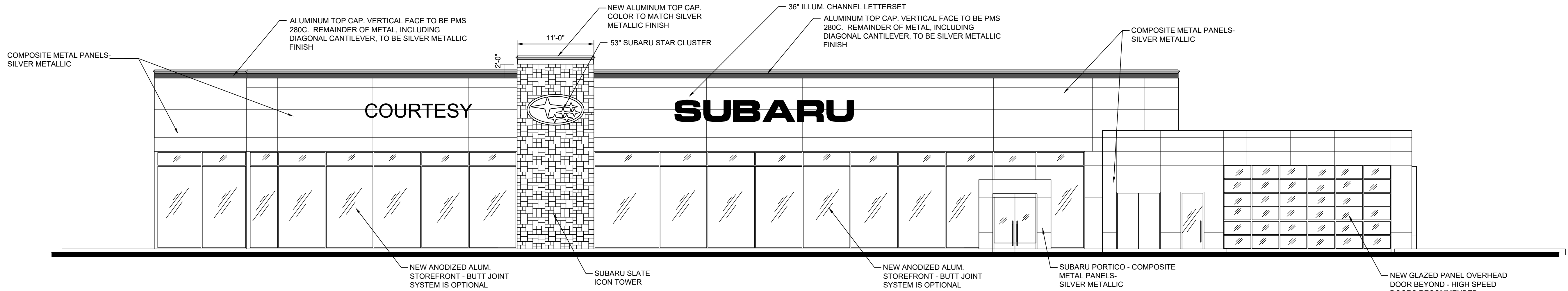
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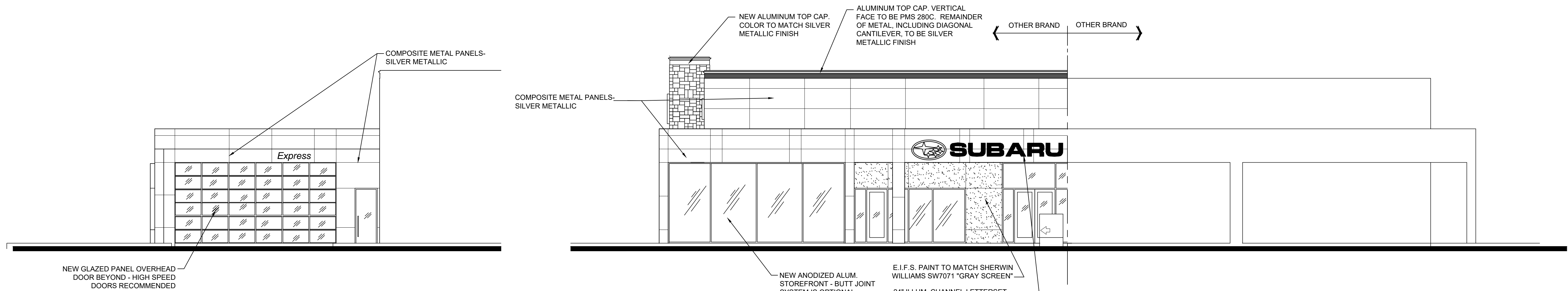
issue 03/03/18

revision



PROPOSED NORTH ELEVATION

1/8" = 1'-0"

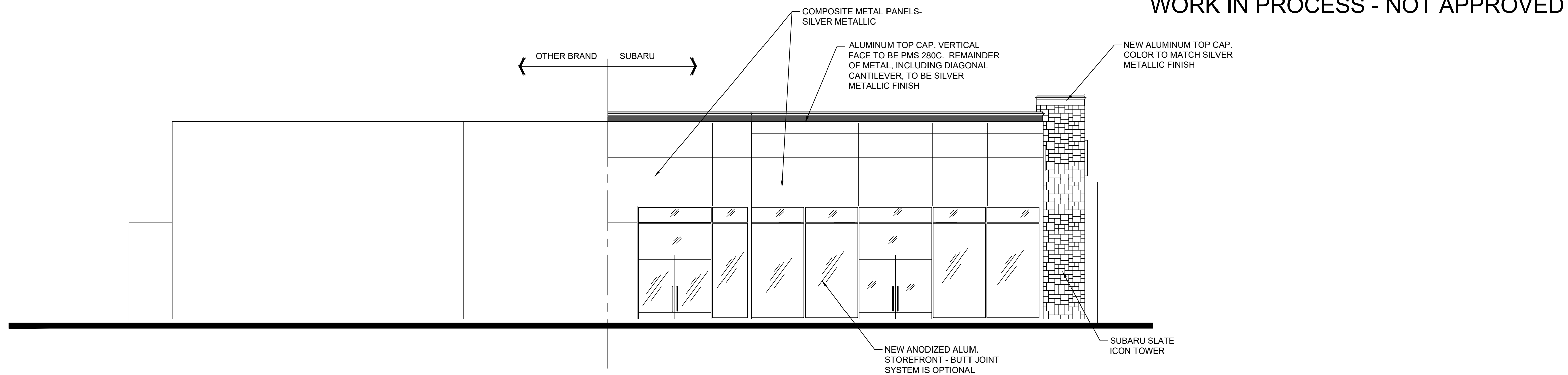


PROPOSED SOUTH ELEVATION

1/8" = 1'-0"

PROPOSED WEST ELEVATION

1/8" = 1'-0"



PROPOSED EAST ELEVATION

1/8" = 1'-0"

WORK IN PROCESS - NOT APPROVED



NAME	CEILING	FLOOR	BASE	WALL NORTH	WALL SOUTH	WALL EAST	WALL WEST	TRIM	CASEWORK COUNTER	CASEWORK CABINET	NOTES
SHOWROOM	ACT-1	CT-1	CB-1	GL-1	PT-1	GL-1	PT-1	PT-1			1,2,3,6,7,11
SALES 1/SALES MANAGER	ACT-1	CA-1	VB-1	GL-2	PT-2	PT-1	PT-1/ GL-2	PT-1			1,2,3,6,11
SALES 2-5	ACT-1	CA-1	VB-1	N/A	N/A	PT-2/ GL-2	PT-2/ GL-2	PT-1			1,2,3,6,11
SALES 6-7	ACT-1	CT-1	CB-1	N/A	N/A	PT-2/ GL-2	PT-2/ GL-2	PT-1			1,2,3,6,7,11
F&I 1-2	ACT-1	CA-1	VB-1	GL-1/ GL-2	GL-1/ GL-2	GL-1	GL-2	PT-1			1,2,6
VEHICLE DELIVERY	ACT-1	CT-1	CB-1	GL-1/ GL-2	PT-1	GL-1/ PT-1	GL-2	PT-1			1,2,3,6,7,11
GENERAL MANAGER	ACT-1	CA-1	VB-1	GL-2	GL-2	GL-2	PT-2	PT-1			1,2,6,11
RESTROOMS/CORRIDOR /TOILET	PT-1	CT-1	CWT-1/ CWT-2	PT-1	PT-1	PT-1	PT-1	PT-1	NS-1		1,6,9
CUSTOMER LOUNGE/ REFRESHMENTS	ACT-1	WF	CB-1	N/A	PT-1	PT-1/ GL-2	PT-1/ PT-3/ MWT-1	PT-1	NS-1	PL-3	1,2,3,6,7,10, 11
SERVICE MANAGER	ACT-1	CT-1	CB-1	PT-1/ GL-2	PT-1	PT-1/ GL-2	PT-1/ GL-2	PT-1			1,2,3,6,7
SERVICE WRITE-UP	ACT-1	CT-1	CB-1	PT-1	PT-1/ GL-2	PT-1	PT-1/ GL-2	PT-1			1,2,3,6,7
SERVICE DRIVE	EXPOSED	SC/CT- 2/CT-3	PT-1	PT-1	PT-1	PT-1	PT-1	PT-1			1,2
BREAK ROOM	ACT-1	CT-1	CB-1	PT-1	PT-1	PT-1	PT-1	PT-1	PL-1 or PL-2	PL-4	1,3,6,7
IT	ACT-1	CT-1	CB-1	PT-1	PT-1	PT-1	PT-1	PT-1			1,6,7

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**NOTES:**

1. ALL INTERIOR DOORS TO BE STAINED TO MATCH NEVAMAR BLOSSOM CHERRY WC5581.
2. ALL INTERIOR AND EXTERIOR GLAZING TO BE CLEAR.
3. WALLCOVERING (WC1) MAY BE SUBSTITUTED FOR PAINT (PT1).
4. RESTROOM PARTITIONS AND FIXTURES TO BE STAINLESS STEEL.
5. CUSTOM MILLWORK, REFER TO MILLWORK SECTION.
6. SHERWIN WILLIAMS SW7065 ARGOS LATEX SEMI-GLOSS CAN BE SUBSTITUTED FOR PT-1 ON TRIM.
7. SEE PROPOSED FLOOR PATTERN PLAN FOR MORE INFORMATION.
8. NOT USED.
9. RESTROOM FLOOR AND WALL TILE TO MATCH SHOWROOM FLOOR TILE.
10. MOSAIC WALL TILE OPTIONAL AS A BACKSPLASH BEHIND THE REFRESHMENT/COFFEE BAR AREA.
11. REFER TO FINISH PLAN FOR ACCENT PAINT LOCATIONS.

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SURFACE	CODE	MATERIAL	MANUFACTURER	MFR. PHONE NO.	PRODUCT INFORMATION
CEILING	DW	DRYWALL			TO BE SPECIFIED BY LOCAL ARCHITECT. PAINT TO MATCH ACT1.
CEILING	ACT-1	ACOUSTICAL CEILING TILE	ARMSTRONG		ULTIMA BEVELED TEGULAR/ #1901/ COLOR: WHITE/ 24" X 24"/ BEVELED TEGULAR TILE/ FINE TEXTURE/ PRELUDE XL 15/16 EXPOSED TEE GRID
CEILING	ACT-2	ACOUSTICAL CEILING TILE	ARMSTRONG		CORTEGA/ #769/ COLOR: WHITE/ 24" X 48"/ EXPOSED TEE GRID
FLOORS	CT-1	PORCELAIN TILE	LOUISVILLE TILE	615-424-1977 Contact: Marty Vaughn	LOUISVILLE TILE CHARCOAL UNPOLISHED/ LTDSBUMAC-24UNP UNPOLISHED 24x24/ 1/8" OR 1/16" JOINT/ GROUT SYSTEM: LACTICRETE SPECTRALOCK, COLOR: #60 DUSTY GREY
FLOORS	CT-1 ALT	PORCELAIN TILE	AUTOSTONE	800-625-5314 Contact: Subaru Team	PREMIER.4 SERIES/ NATURAL/ UNPOLISHED 24x24/ 1/8" OR 1/16" JOINT/ LATICRETE PERMACOLOR SELECT, COLOR: CHARCOAL
FLOORS	CT-2	PORCELAIN TILE	AUTOSTONE	800-625-5314 Contact: Subaru Team	DRIVESERIES/ AS.DS.SMOKEGREY.0808.DRIVESERIES! / SMOKE GREY / LINE- BRIGHT-R/12.A+B+C / 8X8 / GROUT SYSTEM: NORTH AMERICAN ADHESIVES / AS.NA4800.EVERCOLOR.MPG / AS.SMOKYCOAL.536
FLOORS	CT-3	PORCELAIN TILE	AUTOSTONE	800-625-5314 Contact: Subaru Team	DRIVESERIES/ AS.DS.CARBONBLK.0808.DRIVESERIES! / CARBON BLACK / LINE- BRIGHT-R/12.A+B+C / 8X8 / GROUT SYSTEM: NORTH AMERICAN ADHESIVES / AS.NA4800.EVERCOLOR.MPG / AS.BLACKDIAMOND.539
FLOORS	CA-1	CARPET	BENTLEY MILLS	615-920-0160 Contact: Travis Harter	STYLE: 146439-001: /CONSTRUCTION: TUFTED TEXTURED LOOP/18" X 36" TILE/ BACKING: AFIRMA HARDBACK/ ANTRON LUMENA TYPE 6,6 NYLON/ INSTALLATION: BRICK PATTERN, HEATHBOND ULTRA GREEN 2300 TILE ADHESIVE
FLOORS	CA-1 ALT	CARPET	MOHAWK GROUP	615-218-7313 Contact: Elizabeth Paxton	STYLE: FORWARD VISION GL135 / COLOR: 589 CREATIVITY / BROADLOOM / CONSTRUCTION STYLE: TUFTED / TEXTURED PATTERN LOOP/ BACKING: UNIBOND PLUS/ INSTALLATION: NUBROADLOK ADHESIVE FOR BROADLOOM, ENPRESS OR FLEXLOC TABS FOR TILE
FLOORS	WF	PORCELAIN TILE	LOUISVILLE TILE	502-276-2880 nationalaccounts @louisville- tile.com	SUBARU-WI-CHERRY 6x36 and 6x18 , 1/8"-3/16" JOINT, MUST USE APPROVED TILE PATTERN, GROUT AND GROUT JOINT WIDTH MUST INCLUDE DEALER NAME AND "SUBARU" ON PURCHASE ORDER /INVOICE ONLY AVAILABLE FROM LOUISVILLE TILE

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SURFACE	CODE	MATERIAL	MANUFACTURER	MFR. PHONE NO.	PRODUCT INFORMATION
FLOORS	VCT-1*	VINYL COMPOSITION TILE	ARMSTRONG	Shavonne Aument 717-396-3259	#52125/ PREMIUM EXCELON TILE/ STONETEX/ COLOR: GRANITE GRAY/ 12" X 12"/ 1/8" GAUGE
FLOORS	CB-1	PORCELAIN BASE			CT-1 or CT-1 ALT TO BE CUT TO 4" HIGH/ MATTE FINISH/ 3/8" THICKNESS/ 1/16" OR 1/8" JOINT
FLOORS	VB-1*	VINYL BASE	ROPPE	800-537-9527	#TV 8P100/ BLACK/ 4" STANDARD COVE BASE VINYL
FLOOR	SC	SEALED CONCRETE			TO BE SPECIFIED BY LOCAL ARCHITECT. FLOOR COLOR MUST BE CONSISTENT WITH IMAGE PROGRAM FINISHES.
WALLS	GL-1	GLASS			STOREFRONT GLAZING WITH ANODIZED OR SILVER METALLIC FRAME, TO BE SPECIFIED BY LOCAL ARCHITECT.
WALLS	GL-2	GLASS			CLEAR BUTT-JOINT GLAZING TO BE SPECIFIED BY LOCAL ARCHITECT
WALLS	WC-1	WALLCOVERING	MDC WALLCOVERING	615.479.7413 Contact: Monica Fox	ALPHA6470; FABRIC-BACKED VINYL; TYPE II, 20 OZ PER LINEAR YARD; NON-WOVEN BACKING; 54" WIDE; RANDOM REVERSIBLE PATTERN MATCH
WALLS	CWT-1	PORCELAIN TILE	LOUISVILLE TILE	502-276-2880 nationalaccounts@louisville-tile.com	LOUISVILLE TILE CHARCOAL UNPOLISHED/ LTDSBUMAC-24UNP UNPOLISHED 24x24/ 1/8" OR 1/16" JOINT/ GROUT SYSTEM: LACTICRETE SPECTRALOCK, COLOR: #60 DUSTY GREY
WALLS	CWT-1 ALT	PORCELAIN TILE	AUTOSTONE	800-625-5314 Contact: Subaru Team	PREMIER.4 SERIES/ NATURAL/ UNPOLISHED 24x24/ 1/8" OR 1/16" JOINT/ LATICRETE PERMACOLOR SELECT, COLOR: CHARCOAL
WALLS	CWT-1 ALT	PORCELAIN TILE	PANTHEON	614-286-2215 Contact: Stu Kinney	ENDURE #URB-015, 16"X16" OR 24"X24" MATTE FINISH/ 1/8" OR 1/16" JOINT/ THIN SET MORTAR / RECOMMENDED GROUT: MAPEI GROUT & MORTAR SYSTEM/ GROUT SYSTEM: KERACOLOR U UNSANDED GROUT, COLOR: #47 CHARCOAL
WALLS	CWT-2	PORCELAIN TILE	LOUISVILLE TILE	502-276-2880 nationalaccounts@louisville-tile.com	LOUISVILLE TILE CHARCOAL POLISHED/ LTDSBUMAC-24POL UNPOLISHED 24x24/ GROUT SYSTEM: LACTICRETE SPECTRALOCK, COLOR: #60 DUSTY GREY
WALLS	CWT-2 ALT	PORCELAIN TILE	AUTOSTONE	800-625-5314 Contact: Subaru Team	PREMIER.4 SERIES/ POLISHED 24x24/ 1/8" OR 1/16" JOINT/ LATICRETE PERMACOLOR SELECT, COLOR: CHARCOAL

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SURFACE	CODE	MATERIAL	MANUFACTURER	MFR. PHONE NO.	PRODUCT INFORMATION
WALLS	CWT-2 ALT	PORCELAIN TILE	PANTHEON	614-286-2215 Contact: Stu Kinney	ENDURE #URB-015, 16"X16" OR 24"X24", POLISHED FINISH/ 1/8" OR 1/16" JOINT/ THIN SET MORTAR / RECOMMENDED GROUT: MAPEI GROUT & MORTAR SYSTEM/ GROUT SYSTEM: KERACOLOR U UNSANDED GROUT, COLOR: #47 CHARCOAL
WALLS	MWT-1	MOSAIC WALL TILE	CROSSVILLE TILE	931-484-2110 Contact: Your Local Representative	EF04 / .1MIXMOS – LINEAR MIXED MOSAIC/ SERIES: EBB & FLOW/ COLOR: SAND AND SURF/ SHEET SIZE: 11-3/4" X 13", THICKNESS: 1/4"/ MATERIAL: NATURAL STONE AND GLASS/ PLEASE CONTACT YOUR LOCAL DISTRIBUTOR FOR NATIONAL ACCOUNT PRICING
WALLS	PT-1*	PRIMARY PAINT	SHERWIN WILLIAMS	800-4SHERWIN	SW 7009 PEARLY WHITE/ PREMIUM GRADE LATEX SEMI-GLOSS ENAMEL/ 2 COATS OVER PRIMER (USE "HARMONY" INTERIOR LATEX LOW ODOR COATINGS FOR REDUCED ENVIRONMENTAL IMPACT.)
WALLS	PT-2*	ACCENT PAINT	SHERWIN WILLIAMS	800-4SHERWIN	SW 7047 PORPOISE/ PREMIUM GRADE LATEX SEMI-GLOSS ENAMEL/ 2 COATS OVER PRIMER (USE "HARMONY" INTERIOR LATEX LOW ODOR COATINGS FOR REDUCED ENVIRONMENTAL IMPACT.)
WALLS	PT-3*	ACCENT PAINT	SHERWIN WILLIAMS	800-4SHERWIN	SW 6236 GRAYS HARBOR/ PREMIUM GRADE LATEX SEMI-GLOSS ENAMEL/ 2 COATS OVER PRIMER (USE "HARMONY" INTERIOR LATEX LOW ODOR COATINGS FOR REDUCED ENVIRONMENTAL IMPACT.)
WALLS	PT-4*	ACCENT PAINT	SHERWIN WILLIAMS	800-4SHERWIN	SW 6423 RYEGRASS/ PREMIUM GRADE LATEX SEMI-GLOSS ENAMEL/ 2 COATS OVER PRIMER (USE "HARMONY" INTERIOR LATEX LOW ODOR COATINGS FOR REDUCED ENVIRONMENTAL IMPACT.)
MILLWORK	NS-1*	NATURAL STONE	CAMBRIA	866-CAMBRIA	#5110 WILLISTON
MILLWORK	PL-1*	PLASTIC LAMINATE	WILSONART	800-433-3222	#6257 (419) SATIN BRUSHED NATURAL ALUMINUM
MILLWORK	PL-2*	PLASTIC LAMINATE	FORMICA	800-FORMICA	6220-RD SMOKE QUARSTONE RADIANCE FINISH
MILLWORK	PL-3*	PLASTIC LAMINATE	NEVAMAR	800-638-4380	WC5581N BLOSSOM CHERRY HI-LUSTER FOR VERTICAL APPLICATIONS ONLY
MILLWORK	PL-4*	PLASTIC LAMINATE	NEVAMAR	800-638-4380	S6001T BLACK TEXTURED
MILLWORK	SS	STAINLESS STEEL			TO BE SPECIFIED BY LOCAL ARCHITECT.

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EXTERIOR SURFACE	MATERIAL	FINISH	PRODUCT INFORMATION
ICON TOWER	SLATE	Camara/ Shadow Grey/ ¼" min. thickness/ natural cleft face, gauged back/ Pattern #1	See "Thin Veneer Slate Assemblies" document for more information on sizes and pattern/ Recommended grout color 1 shade lighter than slate or TEC #927 Light Pewter. Contact: Shawn or Mike Camara at 802-265-3200 or email: <a href="mailto:info@camaraslate.com">info@camaraslate.com</a> . <b>5-6 week lead time</b> <b>INSTALLATION NOTE: Must allow at least seven days for proper mortar curing. Follow "Thin Veneer Slate Assemblies" installation specification. Improper installation could cause efflorescence.</b>
STOREFRONT	ALUMINUM	Clear Anodized Coating	AAMA 611 Architectural Class 2
GLAZING	INSULATED GLASS	Outside lite: clear (grey as required for sun control) Inside lite: clear Low emissive coating: #3 surface	Glazing is captured with metal frames and retainers at head and sill. Vertical joints are captured with a structural silicone bond to the vertical mullion.
FASCIA	COMPOSITE PANEL	Silver Metallic	As manufactured by Mitsubishi Alpolic (757-382-5724), Citadel Architectural Products (708-479-6222), Alcoa Architectural Products - Reynobond (770-695-0973) or approved equal.
WALLS	SPLIT FACE BLOCK	Trenwyth Trendstone Rutherford Grey or equal	Split face concrete masonry units
WALLS	EXTERIOR PAINT*	Sherwin Williams Paint Color: SW7071 Gray Screen Pro-Industrial Zero VOC Acrylic paint	Exterior trim color, back and sides of exterior, as needed
WALLS	EXTERIOR PAINT*	Sherwin Williams Paint Color: SW7074 Software Pro-Industrial Zero VOC Acrylic paint	Exterior trim/accent color
EXTERIOR METAL TRIM CAP (ABOVE ACM)	PREFINISHED STEEL OR ALUMINUM PANEL	Angled Top Cap or Flashing to be Silver or Equal. Vertical Panel to be Award Blue or Equal	Metal Era, 800-300-1659 Contact: Eric Godfrey
EXTERIOR METAL TRIM CAP (ABOVE ICON TOWER)	PREFINISHED STEEL OR ALUMINUM PANEL	Angled Top Cap or Flashing to be Silver Metallic. Vertical Panel to be Silver Metallic.	Metal Era, 800-300-1659 Contact: Eric Godfrey
EXTERIOR METAL CAP (PAINT OPTIONS)	PAINT	Blue - Benjamin Moore Ben 100% Acrylic Exterior paint low VOC  Silver Metallic Paint – Sherwin Williams or Equal	Custom Mix Formula for 1 quart/ BB 1 X 0.00 (1 fl. oz.) MA 0 X 1.00 (1 shot) / High Gloss Metal and Wood Ultra Base 3094B for 12" Signature Series Blue Stripe (See exterior elevations for locations.) or match PMS 280 Blue. Silver Brite B59S11

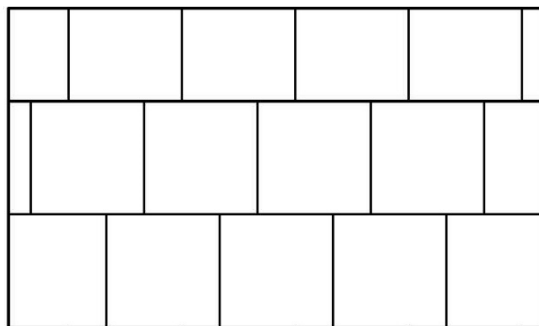
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### CT-1/CT-1 ALTERNATES

Louisville Tile Charcoal Unpolished LTDSBUMCA-24UNP, 24" x 24", Unpolished

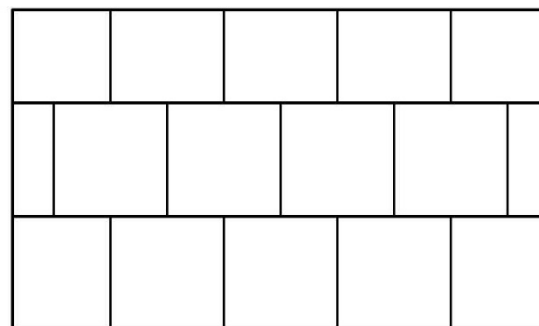
Autostone Premier.4 Series, 24" x 24", Unpolished



**1/3 Offset Running Bond Tile Pattern**



**CORRECT INSTALL PATTERN**



**1/2 Offset Running Bond Tile Pattern**



**CORRECT INSTALL PATTERN**

**Only use prescribed grout shown below. The use of wrong or alternative grout could damage tile or cause unwanted appearance change to tile surface.**

Grout to be 1/8" or 1/16" joint. Use appropriate Grout System for selected tile.

CT-1 - Louisville Tile: Laticrete Spectralock, color: #60 Dusty Grey

CT-1 Alt - Autostone: Laticrete Permacolor Select, color: Charcoal

Follow Manufacturer's recommended post-installation cleaning regimen.

Approved Tile Installation Pattern: 1/3 or 1/2 Offset Running Bond

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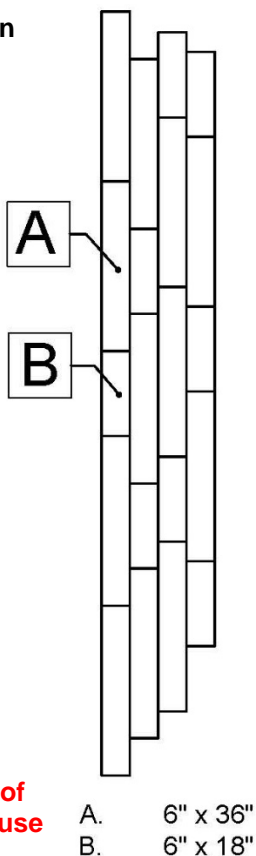
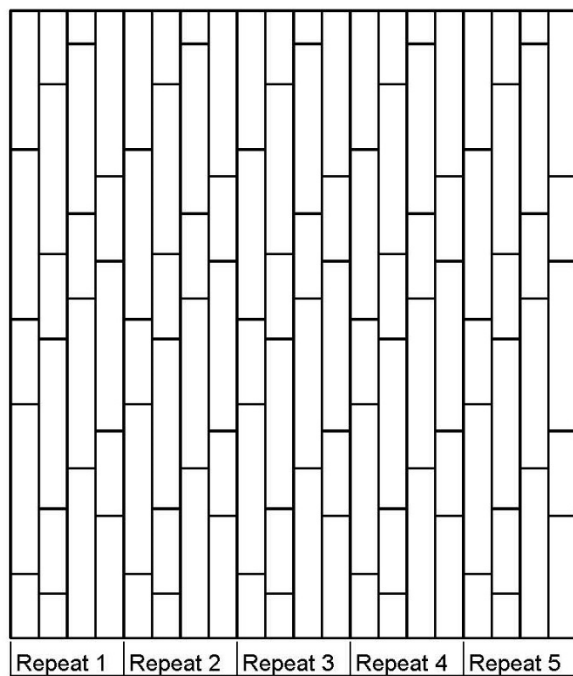




**WF WOOD LOOK CERAMIC TILE**

Subaru-WI-Cherry

6" x 36" – 75% of pattern, 6" x 18" – 25% of pattern



**Only use prescribed grout shown below. The use of wrong or alternative grout could damage tile or cause unwanted appearance change to tile surface.**

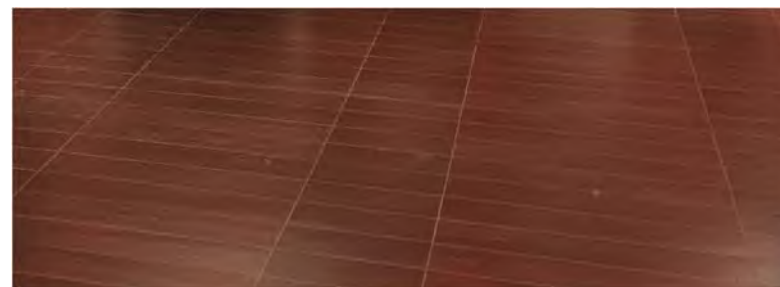
**Grout to be 1/8". Laticrete Spectralock, color: #59 Espresso.**

Follow Manufacturer's recommended post-installation cleaning regimen.  
See above for approved installation pattern

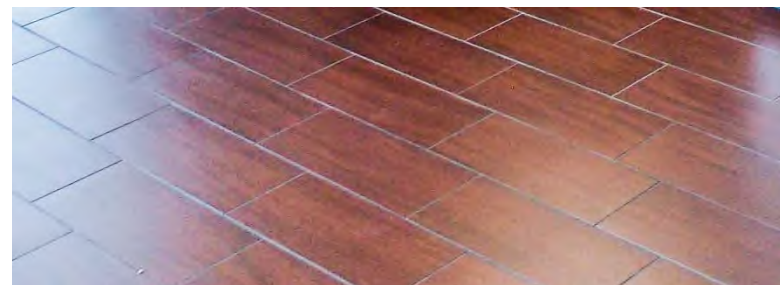
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**CORRECT INSTALL PATTERN:** Picture above shows the tile installation pattern as specified in finish schedule



**INCORRECT INSTALL PATTERN:** Picture above shows the correct tile sizes, but installed in a grid instead of pattern specified in finish schedule

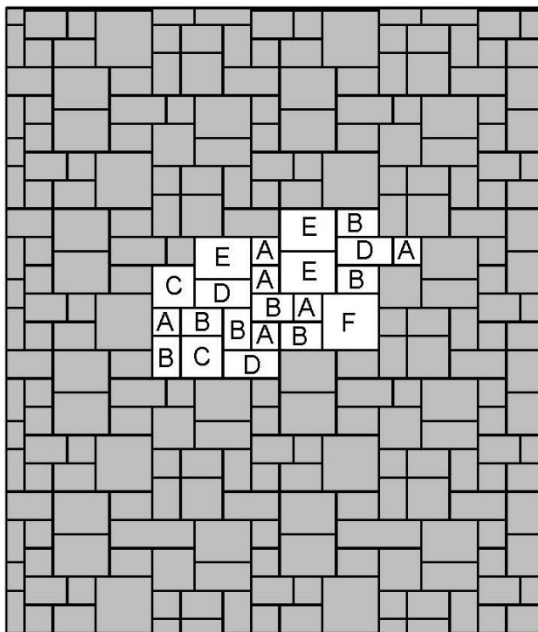


**INCORRECT INSTALL PATTERN:** Picture above shows only a single size of tile, not the mix of sizes specified in finish schedule



## SLATE

Camara Shadow Grey, 1/4" min. thickness, natural cleft face, gauged back



- A. 6 @ 6-inch by 6-inch units
- B. 7 @ 6-inch by 9-inch units
- C. 2 @ 9-inch by 9-inch units
- D. 3 @ 6-inch by 12-inch units
- E. 3 @ 9-inch by 12-inch units
- F. 1 @ 12-inch by 12-inch units

### Slate Pattern



Slate Pattern Photo

See *Thin Veneer Slate Assemblies* document for slate installation instructions  
Grout: 1 shade lighter than slate or TEC #927 Light Pewter

**INSTALLATION NOTE: Must allow at least seven days for proper mortar curing. Follow "Thin Veneer Slate Assemblies" installation specification. Improper installation could cause efflorescence.**

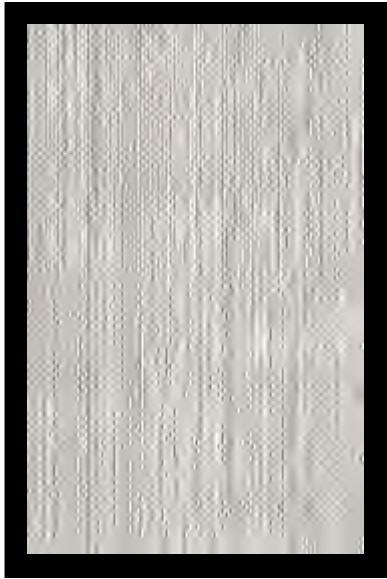


**CORRECT ICON TOWER TOP CAP:**  
Silver angled trim with silver accent band

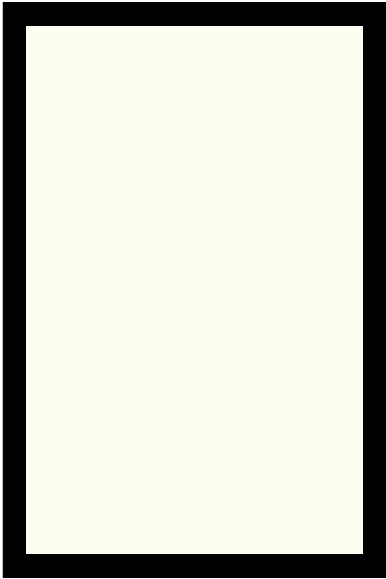


**INCORRECT ICON TOWER TOP CAP:**  
Silver angled trim with blue accent band

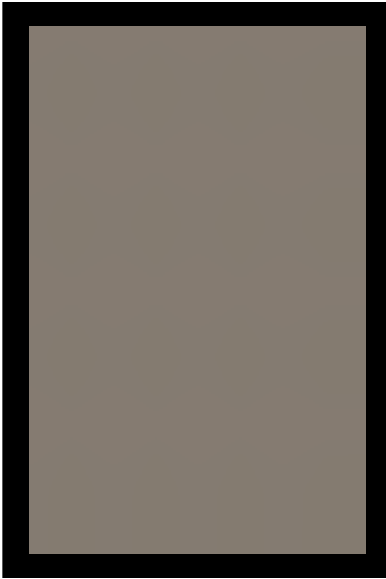
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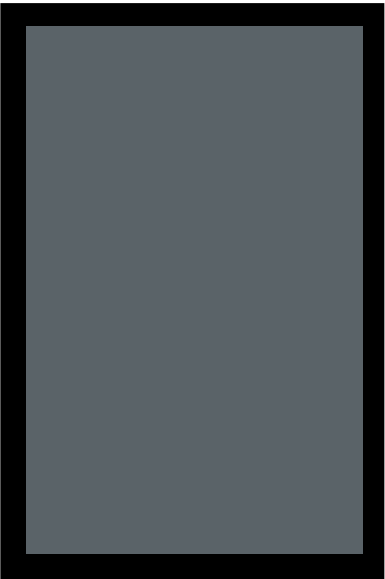
**WC1**



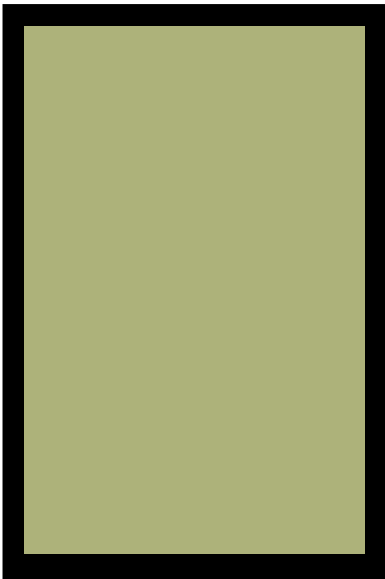
**PT1**



**PT2**  
**ACCENT**



**PT3**  
**ACCENT**

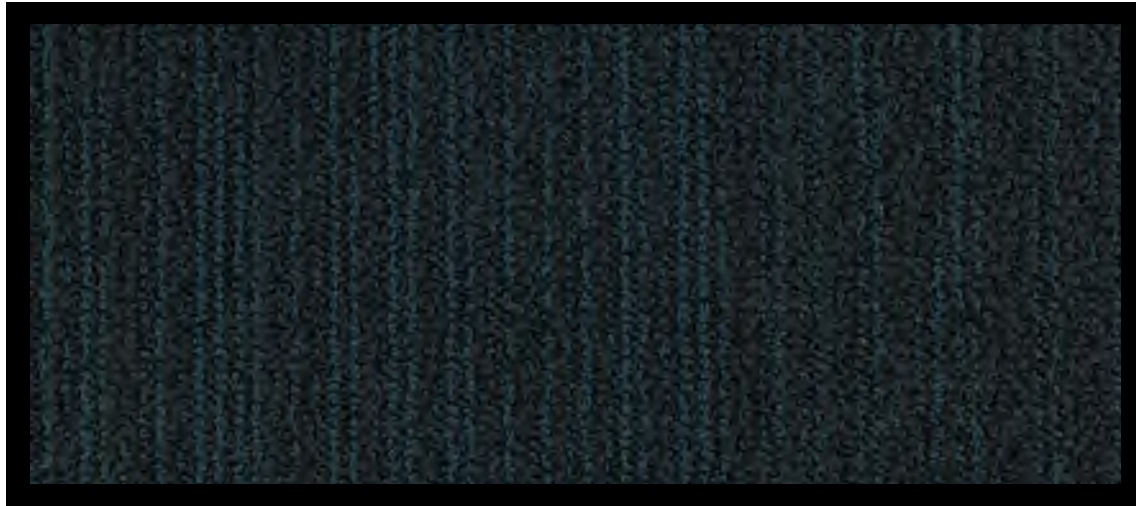


**PT4**  
**ACCENT**

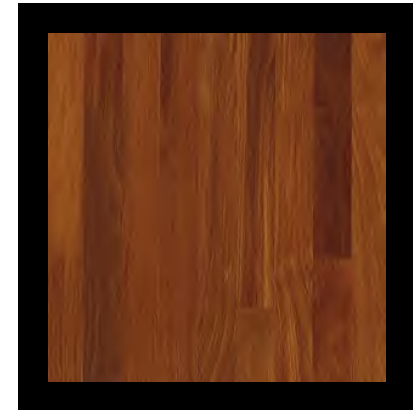
**(Refer to Finish Schedule for Specific Locations.)**



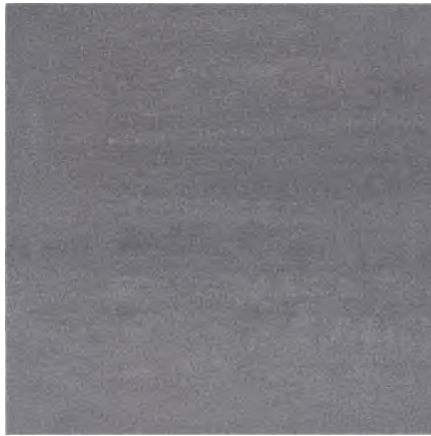
**Wallcovering**



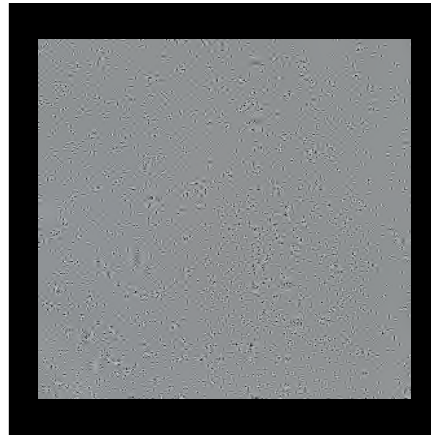
**CA1**



**WF**  
**Color Reference Only**



**CT1**  
**(Satin Finish)**



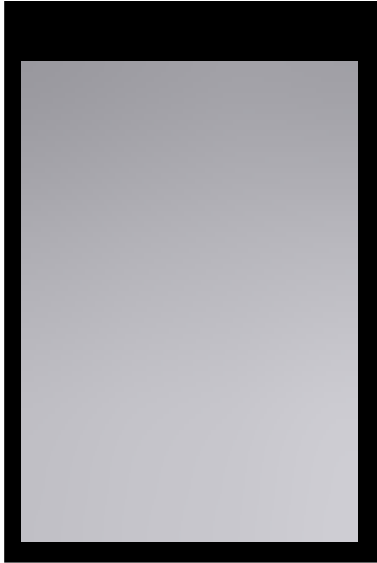
**VCT1**

**(Refer to Finish Schedule for Specific Locations.)**

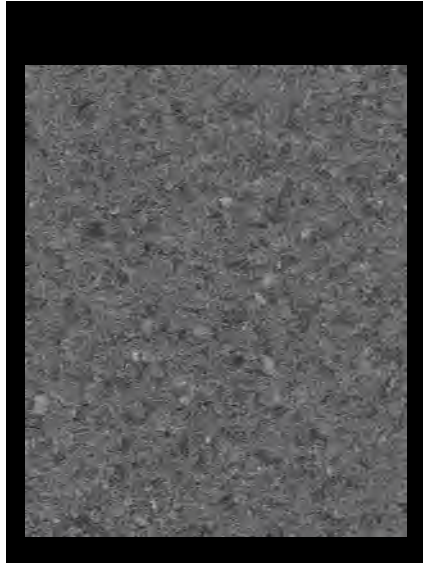


## **Flooring**





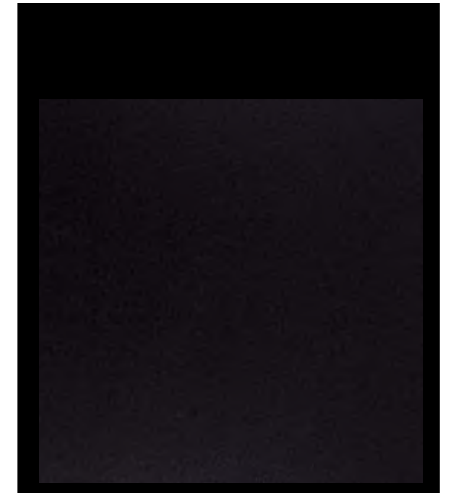
**PL1**



**PL2**



**PL3**



**PL4**

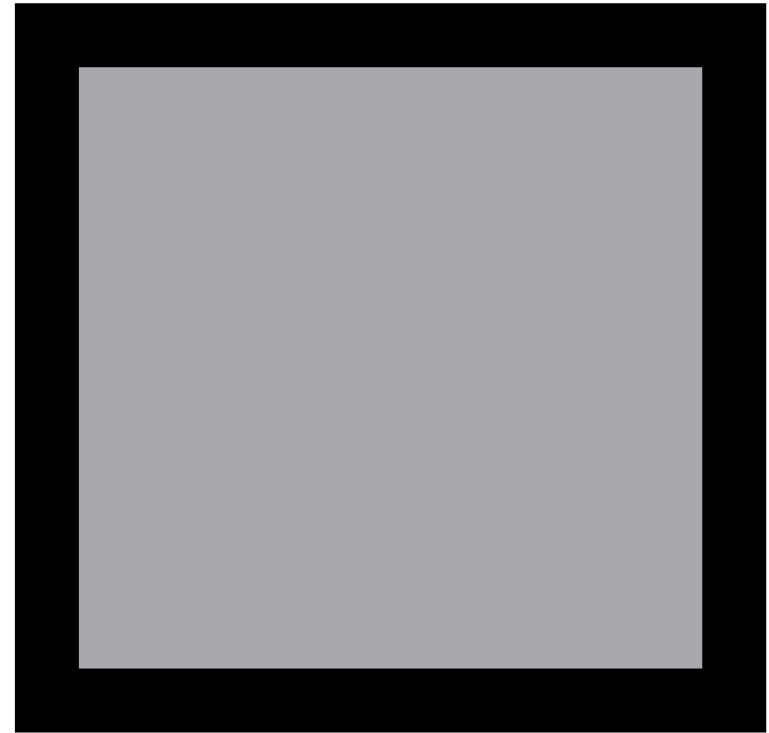
**(Refer to Finish Schedule for Specific Locations)**



**Laminates**



**Slate Icon Tower**



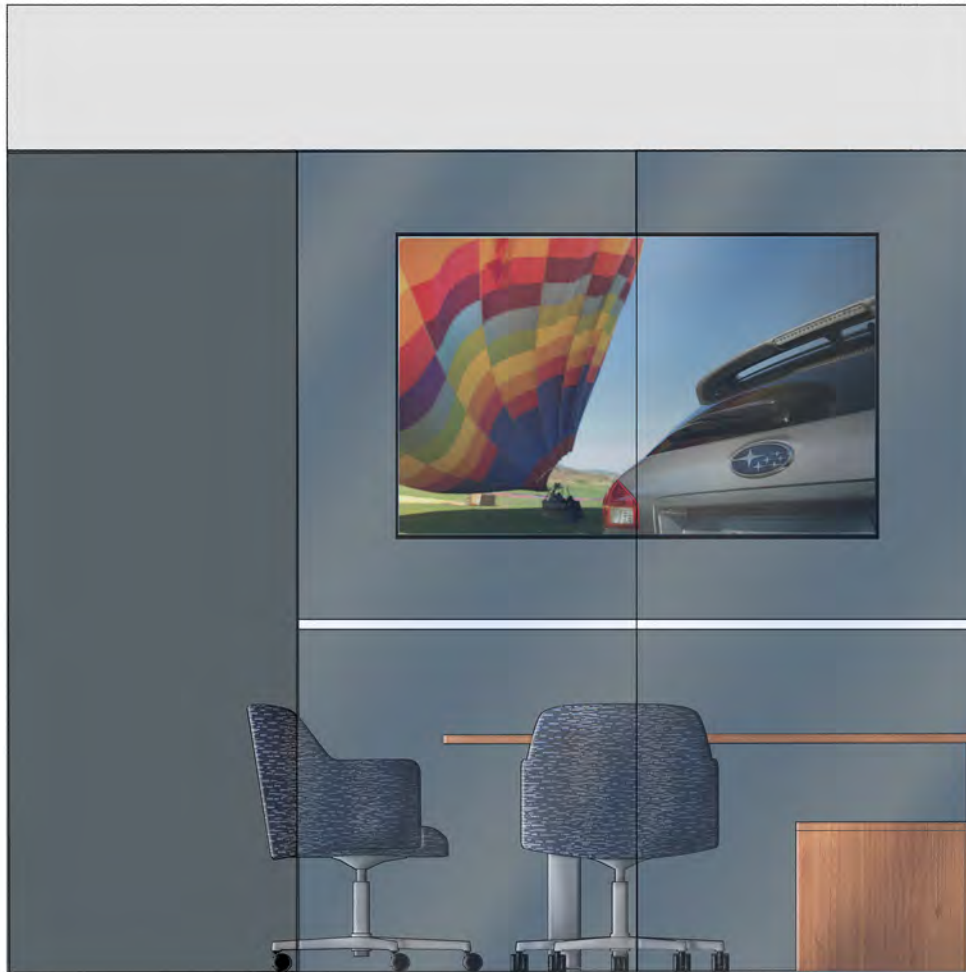
**Fascia/Composite Panel**

**Color Reference Only**



**Exterior Finishes**





**RECOMMENDED PRODUCT:**  
3M SCOTCHCAL MARKING FILM WINDOW  
GRAPHICS TO BE PLACED ON OFFICE  
WINDOWS TO INCREASE VISIBILITY

1.5" 3M SCOTCHCAL MARKING FILM  
WINDOW GRAPHIC PLACED 42" ABOVE  
BASE OF WINDOW



**Window Graphic**



**Signature Facility Program  
Phase II**

**ESTIMATED BUDGET MATERIALS PRICING**

<b>MANUFACTURER</b>	<b>COLOR/NAME</b>	<b>PRICE</b>
<b><u>CARPET</u></b>		
BENTLEY MILLS	Style: 146439-001; 18" x 36" Carpet Tile	\$18.00/Sq. Yd.
<b><u>PORCELAIN TILE</u></b>		
LOUISVILLE TILE	Charcoal - LTDSBUMAC-24UNP Unpolished; 24" x 24"	\$2.95/Sq. Ft.
LOUISVILLE TILE	Charcoal - LTDSBUMAC-24POL Polished; 24" x 24" (Wall Tile)	\$3.30/Sq. Ft.
AUTOSTONE	Premier.4 Series Natural/Unpolished; 24" x 24"	\$2.99/Sq. Ft.
AUTOSTONE	Premier.4 Series Polished; 24" x 24" (Wall Tile)	\$2.99/Sq. Ft.
CROSSVILLE	AV195 Brazilian Cherry 6" x 36" – 75% of pattern	\$4.54/ Sq. Ft.
CROSSVILLE	AV195 Brazilian Cherry 6" x 18" – 25% of pattern	\$4.87/ Sq. Ft.
<b><u>WALLCOVERING</u></b>		
MDC	Style: ALPHA6470; Type II Vinyl	\$14.50/Linear Yd.

PRICES SUBJECT TO CHANGE.

PRICE INCLUDES MATERIALS ONLY.

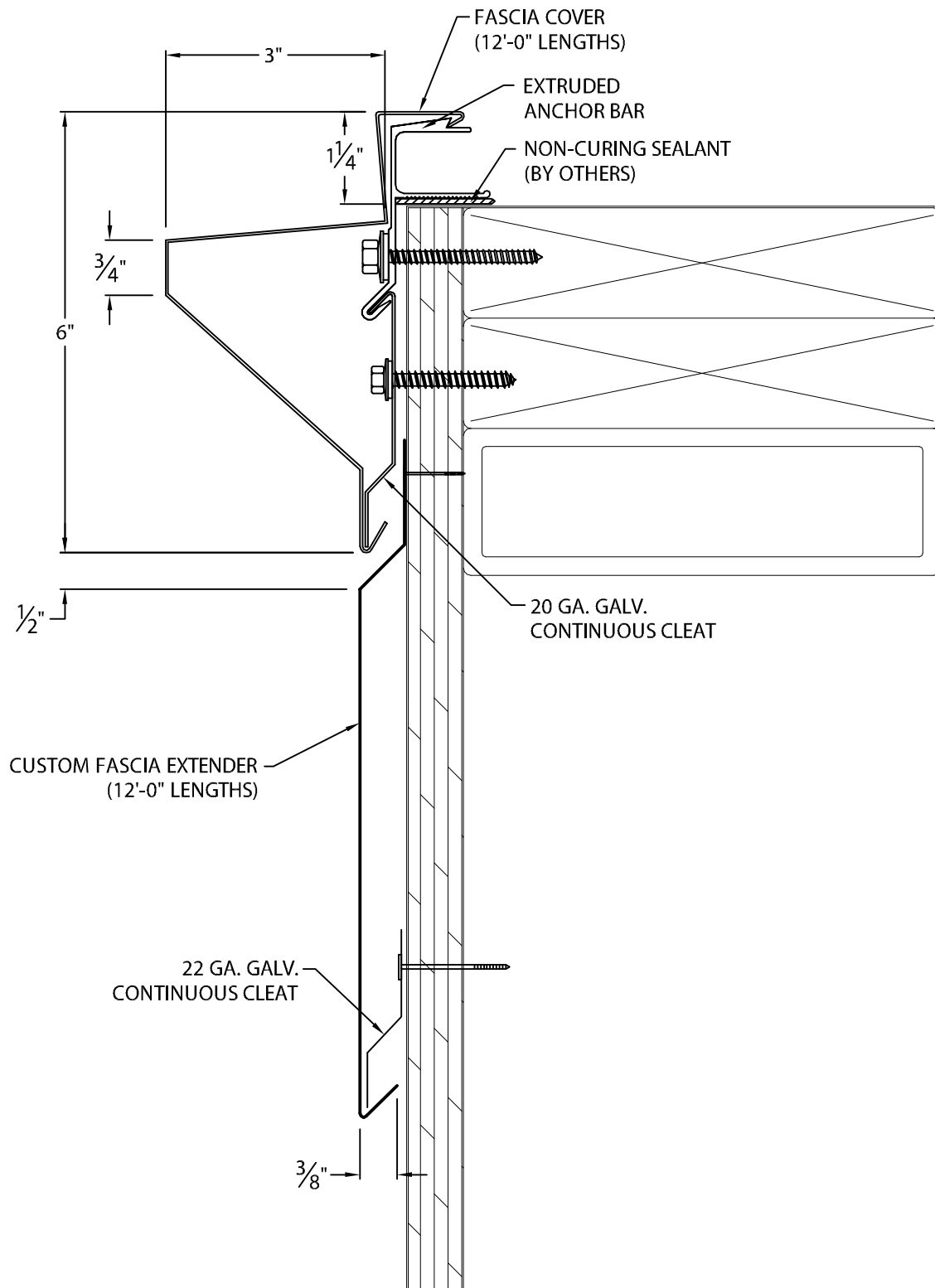
FREIGHT CHARGES AND INSTALLATION ARE NOT INCLUDED.

REFER TO FINISH SCHEDULE FOR CONTACT NAMES AND PHONE NUMBERS FOR ORDER.

# SUBARU SHADOW LINE FASCIA

WITH FLUSH FACE EXTENDER

OVERVIEW



## PART 1 GENERAL

## 1.1 SECTION INCLUDES

- A. Substrate preparation requirements.
- B. Thin natural slate set in latex modified cement mortar for exterior application over:
  - 1. Cementitious backer over plywood sheathing on metal studs.
  - 2. Concrete masonry units.
- C. Thin natural slate in randomly sized pattern with, square sawn edges.
- D. Installation of accessories.

## 1.2 REFERENCES

- A. ASTM C-629 Standard Specification for Slate Dimension Stone / Test C121 for Moisture Absorption to be less than 0.25%.
- B. ASTM Class S2 or S1 slate for exterior applications.

## 1.3 QUALIFICATIONS

- A. Slate Quarry: Company specializing in quarrying slate products specified in this section with minimum twenty-five (25) years documented experience.
- B. Slate Masonry Installer: Company specializing in performing Work of this section with minimum five (5) years documented experience.

## 1.4 DELIVERY, STORAGE, AND HANDLING

- A. Store products on pallets, under cover and in manufacturer's unopened packaging until ready for installation.
- B. Store slate materials on pallets on a dry level surface. Pallets shall not be stacked and shall be covered with tarps.
- C. Store mortar under cover and in an area where temperature is maintained between 40 degrees F to 110 degrees F.

## 1.5 PROJECT CONDITIONS

- A. Maintain environmental conditions (temperature, humidity, and ventilation) within limits recommended by manufacturer for optimum results. Do not install products under environmental conditions outside manufacturer's absolute limits.
- B. Ambient temperature shall be 40 degrees F or above during erection of slate masonry. When ambient temperature falls below 50 degrees F, mortar mixing water shall be heated.

## PART 2 PRODUCTS

## 2.1 GRAY SLATE WITH LIGHT BLACK MOTTLE

- A. Subaru-approved slate:
  - 1) Natural cleft face, gauged back, sawn edges.
  - 2. Allow for 3/8" slate joint, pattern repeats every 2.5-feet by 4-feet.
  - 3. 1/4" thick in an interlocking, random 10 SF pattern containing:
    - a. 6 @ 6-inch by 6-inch units
    - b. 7 @ 6-inch by 9-inch units
    - c. 2 @ 9-inch by 9-inch units
    - d. 3 @ 6-inch by 12-inch units
    - e. 3 @ 9-inch by 12-inch units
    - f. 1 @ 12-inch by 12-inch units

- B. Slate and Quarry:
  - 1. Slate: Shadow Grey, Heathermoor or Vermont Grey-Black Slate
  - 2. Pattern Pattern 1
  - 3. Quarry: Camara Slate Products – Shadow Grey  
963 South Main Street / Fair Haven, VT 05743  
Shawn or Mike Camara  
Phone 802-265-3200  
Fax 802-265-2211  
Email [info@camaraslate.com](mailto:info@camaraslate.com)
- C. Premixed Grey Sanded Grout, TEC 927 Light Pewter
- D. Building Paper: ASTM D 226, No. 30 asphalt saturated felt.
- E. Concrete Bonding Agent: Latex type as approved by the slate quarrier.

## 2.2 SETTING MATERIALS

- A. Flexible, dry-set mortar: Complying with ASTM A118.4 and A118.11
  - 1. Shear bond at 28 days: 375 psi, minimum
  - 2. Gray color
  - 3. Recommended by mortar manufacturer for installing slate to exterior walls.
- B. Polymer modified latex additive: Complying with ASTM A118.4 and A118.11
  - 1. Recommended by mortar manufacturer for installing slate to exterior walls.
  - 2. Mix in sufficient quantities as recommended by the manufacturer.
- C. Water: Clean and potable.
- D. Trowel: Match the weight of the tile, the tensile strength of the setting material, and the trowel type. When in doubt, select a bigger notch pattern. Use of V-notched trowels is not acceptable.
  - 1. The type of trowel used for a particular tile installation depends on the kind of setting material being used and on the size and type of tile being installed.
  - 2. Notched trowels provide a bead (rib) pattern which ensures both uniform thickness of material and full contact with the tile after beating in.
  - 3. Non-absorbent slate has no suction and therefore requires sufficient latex modified mortar to grip their edges as well as their backs.
  - 4. Extremely large or uneven-backed tile may require "back butter" setting material on the tile to ensure contact with all points, full coverage and complete contact with the substrate.
- E. Slate is a product of nature. Determine the suitability of all the setting materials before proceeding with the installation.
  - 1. Natural Cleft Finish is a rough textured, split face finish. The bottom is gauged to an even plane and the thickness, although varying due to the facial deviation of the cleft, is constant within the maximum thickness specified.
  - 2. The facial deviation in Natural Cleft Finish may appear more pronounced with regard to the outside corners.

## 2.3 PANEL SUBSTRATE MATERIALS

- A. Back up materials:
  - 1. 14 to 20 gauge galvanized metal studs to not exceed L/360 deflection based on the studs alone. Laterally brace framing.
  - 2. ½" exterior grade plywood screwed to the studs with #8 x 1 1/4-inch corrosion

- resistant screws @ 12" o.c..
- 3. Cover plywood sheathing with waterproof building paper with all joints lapped 4-inches.
- 4. Plastic drip and starter strips.
- B. 2" wide DUROCK brand joint reinforcement, as manufactured by USG.
- C. 1/2" thick DUROCK brand cement board, as manufactured by USG.
- D. #8 x 1 5/8-inch corrosion resistant screws to attach the cementitious backer into the plywood at 8" o.c.

### PART 3 EXECUTION

#### 3.1 EXAMINATION

- A. Do not begin installation until backing structure is plumb, bearing surfaces are level and substrates are clean and properly prepared.
- B. Verify that built-in items are in proper location, and ready for roughing in.
- C. Notify Architect or Dealer of unsatisfactory preparation before proceeding.

#### 3.2 PREPARATION FOR INSTALLATION OVER PLYWOOD SHEATHING & CEMENTITIOUS BACKER BOARD

- A. Cover plywood sheathing with waterproof building paper with all joints lapped shingle style a minimum of 4 inches.
- B. Orient cementitious backer board with rough side out.
- C. Screw cementitious backer board into plywood with coated fasteners as approved by board manufacturer.
- D. Fill joints with tile setting mortar and immediately embed tape and level the joints.
- E. Continuously reinforce outside corners with mesh and compound.

#### 3.3 PREPARATION FOR INSTALLATION OVER CONCRETE OR CONCRETE MASONRY

- A. Clean or sandblast concrete masonry to assure a proper mortar bond. Verify no bituminous, water repellent, or deleterious agents exist on the surface.
- B. Apply bonding agent in accordance with the manufacturers printed instructions.

#### 3.4 PREPARATION FOR THIN VENEER SLATE INSTALLATION

- A. Coordinate placement of signage, anchors and accessories, flashings and weep holes and other moisture control products supplied by other sections.
- B. Clean all built-in items of loose rust, ice, mud, or other foreign matter before incorporating into the wall.
- C. If required, provide temporary bracing during installation of masonry work. Maintain bracing in place until building structure provides permanent support.

#### 3.5 THIN VENEER SLATE INSTALLATION

- A. Maintain 3/8-inch joint with the use of wooden or metal spacers.
- B. Maintain masonry courses to uniform dimensions. Form vertical and horizontal joints of uniform thickness.
- C. Pattern Bond:
  - 1. Lay slate with the split face exposed. Take care to avoid a concentration of any one size adjacent to another similarly sized slate tile.
  - 2. Do not use stacked vertical joints.
  - 3. Lay out work in advance and distribute pattern range of slate uniformly over total work area.
- D. Placing and Bonding:
  - 1. Inadequate coverage results in bond failure and/or cracking of the tiles.
  - 2. To ensure 100% coverage, remove and re-inspect several tiles after they



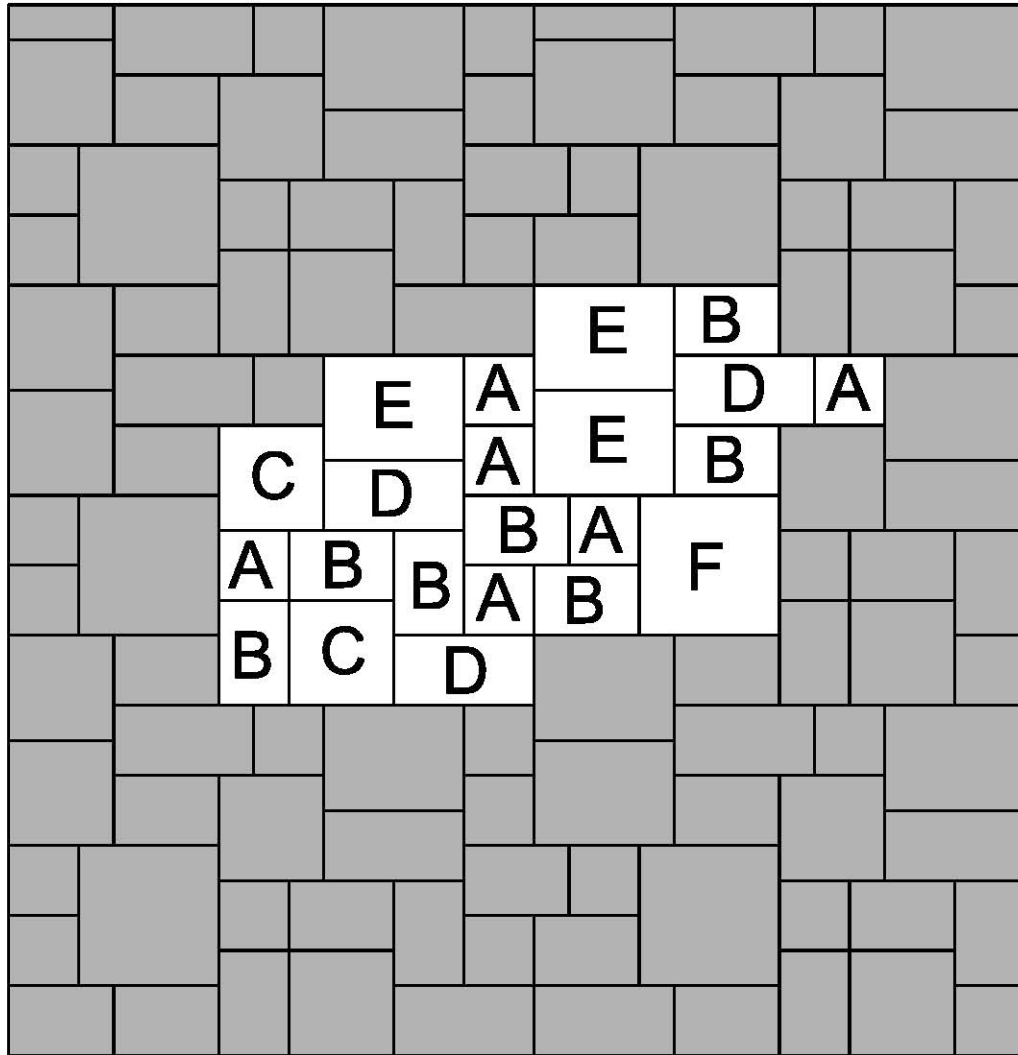
- have been placed. Photograph and place in log book.
- 3. Do not spread more than a workable area of 5 to 10 SF so that mortar will not set before slate is applied. Set tile while mortar is fresh and before it has skimmed over.
- 4. Lay out work in advance and distribute pattern range of slate uniformly over total work area.
- 5. Place your finger in the setting material which has been spread on the substrate. If no material comes off on your finger, it will not bond to the tile, either.
- 6. If the setting material has skimmed over, pressing the tile into it may create a mirror image of the tile's back on the substrate, but it will not bond to the tile.
- 7. Remove any skimmed material from the substrate and apply fresh material.
- E. Beating In
  - 1. Beat in the tile to seat it firmly in the setting material and thus ensure a good bond by maximizing the contact area between the setting bed and the tile.
  - 2. The more beating in, the better the bond.
- F. Quality control
  - 1. Remove one tile for every 100 installed and inspect its back for coverage.
  - 2. Save the removed tile for verification by the A/E or dealer.
  - 3. If insufficient bond is found, remove and replace tiles until tile are found that are properly beaten in with a strong bond and sufficient coverage.
- G. Control and Expansion Joints: Keep joints open and free of debris. Coordinate control joint for optimum sealant performance.
- H. Sealant Recesses: Provide open joint 1/2 inch deep and 1/4 inch wide, where masonry meets any openings. Coordinate sealant joints in accordance with sealant manufacturer for adequate performance.
- I. Cutting And Fitting: Cut and fit for chases, pipes, conduit, sleeves, grounds, and other penetrations and adjacent materials. Coordinate with other sections of work to provide correct size, shape, and location.

### 3.6 GROUTING

- A. Never apply to a wet or cementitious substrate cured less than seven days.
- B. Thicker setting beds and thinner joints require longer times before grouting.
- C. Large slate tile pieces require longer times before grouting.
- D. Damp cure by placing porous Kraft paper or polyethylene sheets over the surface.
  - 1. Portland cement mortars, screed beds, thin-set mortars, & grouts will not reach their full strength and serviceability if they dry out before curing.
  - 2. Water can also be misted over the surface after initial set. Hot dry conditions may require this to be repeated at regular intervals for several days.
  - 3. If insufficient bond is found, remove and replace tiles until tiles are found that are properly and fully embedded in setting compound.
- E. Control job conditions for uniform curing to ensure no shade variations.
- F. Maintain uniform temperature, ventilation and direct sunlight exposure throughout the installation of each surface.
- G. Grout mixing
  - 1. Precisely measure water using the same clean container for the same amount of water for every batch to produce a firm wet mix. Record in log book.
  - 2. Soupy mixes dilute grout causing shade variations, and powdering.
  - 3. Thoroughly mix every batch to the manufacturer's recommendations. Allow to slake for a minimum of 10 minutes, then re-stir.
  - 4. Log mixing time and temperature so all employees maintain the same amount of mixing time with every batch.
- H. Grout Application
  - 1. Prior to grouting, Verify joints between tiles are be clean and free of excessive

- setting bed materials, and dirt. Remove all deleterious material.
  - 2. Apply grout with a rubber float trowel, forcing it into joints to fill completely.
  - 3. Remove excess grout with float.
  - 4. Begin cleaning immediately.
    - i. Sprinkle dry grout or sawdust over a workable area.
    - ii. Use terry-cloth rags & circular motion to rub dry grout / sawdust into the fresh joints.
    - iii. Rub until the joints are uniform and the slate is clean.
    - iv. A second, very light sprinkling of grout/sawdust over the same given area, polished in the same manner, will create an acceptable joint.
    - v. This method increases joint hardness, removes excess water, and fills the joints, making them flush with the slate tile surfaces.
    - vi. Proceed to the next area and continue grouting in the same manner.
  - I. Finishing
    - 1. If grout film appears, wipe with a lightly dampened sponge. Rinse & wring in clear water repeatedly.
    - 2. Re-polish surface with terry-cloth rags.
    - 3. Do not use acid or bleach when cleaning.
  - J. Curing
    - 1. Damp cure with either method to improve grout strength.
      - a) Cover the finished installation with non-staining kraft paper for 3 days.
      - b) Wipe the joints with a damp sponge or mop daily, after the initial 24 hours, for a period of 3 days. Do not use metal brushes or acids.
    - 2. Touch-up, repair or replace damaged products before Substantial Completion.
- 3.7 SLATE TERMINATION AT VERTICAL TOWER CORNERS
- A. Align horizontal joints of each corner tile, so vertical dimensions of each slate tile forming the corner matches the dimension of the adjoining corner slate tile.
  - B. Adjust horizontal length of each corner slate tile as required to quickly resume & continue the random pattern.
  - C. Field finish corner slate tiles with 1/8 inch to 3/16 inch reverse arris to create a quirk miter to be fully grouted.
  - D. Design intent is to visually minimize corner joint.

END OF SECTION



- A. 6 @ 6-inch by 6-inch units
- B. 7 @ 6-inch by 9-inch units
- C. 2 @ 9-inch by 9-inch units
- D. 3 @ 6-inch by 12-inch units
- E. 3 @ 9-inch by 12-inch units
- F. 1 @ 12-inch by 12-inch units

Scale: NTS

03.07.12



## Subaru Slate Pattern



FELTUS|HAWKINS DESIGN  
1207A MCGAVOCK STREET NASHVILLE, TN 37203 p. (615)320.1777 f. (615)320.1880



Retailer Graphics Program



# INTRODUCTION

## Retailer Graphics Program

As part of our continuing support of your retail store sales goals and branding efforts, Subaru is making available an array of owner lifestyle graphics in custom sizes and installation materials. These graphics offer retailers the ability to place images that have an extended lifespan and are consistent with the Subaru brand throughout your retail facility. You will also find photos of the items available to you displayed at many retail locations.

This program is designed with flexibility in mind for your individual needs such as:

- **Image Selection** – Featuring 8 new horizontal wallpaper images, 10 new vertical fabric panels, 40 new horizontal fabric panels and 2 new freestanding banners to choose from. The historical Subaru models are available as well as the LOVE collage freestanding banner. The refreshed lifestyle images feature different regions of the country and reinforce the Subaru brand messaging.
- **Materials** – Depending on your needs, the images can be produced on wallpaper, fabric panels or on freestanding banner stands.
- **Size and Layout** — Wallpaper images are customizable in both vertical and horizontal layouts. See inside for maximum dimensions. Fabric panels and banners are fixed sizes that are not customizable. Please note all materials provided are for interior use only and are not suitable for outdoor purposes.

## Ordering Retailer Graphics

Each item displayed in the plan-o-gram is available for order via the Subaru Marketing Resource Center ([subarumarketing.com](http://subarumarketing.com)), click “Print-on-Demand”, then click on “Retailer Graphics Program” to select the items you wish to order.

## Important Information Regarding Wallpaper Installation

### Self-Installation (Retailer is 100% responsible for installation)

- You are required to provide measurements and a photo of the wall space with your order on [subarumarketing.com](http://subarumarketing.com).
- You may opt to measure the wall space yourself. Should you prefer a professional installer to take measurements, please check the appropriate box on the website and SOA will have a referred installer contact you.
- The photo will establish whether the selected image can be properly installed without jeopardizing corporate branding. Obstructions such as a clock or fire extinguisher within the placed image may disqualify the location.
- Upon approval of the photo, the wallpaper will be produced as close as possible to the requested size.

### Professional Site Survey and Installation

- A professional installer is recommended and can be requested prior to placing your order at [subarumarketing.com](http://subarumarketing.com). The installer will survey the wall space for approval, take measurements and install the wallpaper.
- To have a Subaru referred installer contact you prior to your purchase, please check the appropriate box on the print-on-demand area at [subarumarketing.com](http://subarumarketing.com).



## Retailer Graphics Program

Bring your retail store to life and place wallpaper graphics as a focal point in your facility.

### Wallpaper

The wallpaper options consist of 10 vertical and 31 horizontal image selections, all of which can be printed at a size that meets the needs of your retail facility.

- Maximum size of the vertical image is 64"W x 96"H.
- Maximum size of the horizontal image is 144"W x 96"H

**You may customize the size of an image but it must be scaled proportionally.** Neither vertical nor horizontal images may be cropped or altered in any manner during printing or installation. A custom image will be fabricated as close as possible to the requested size. The final dimensions will be determined by the correct proportions of the image so please specify whether the width or height is most important.

### Customized Wallpaper Print-on-Demand

If a retailer wishes to further customize an image for larger or smaller showroom walls, submit a request to the Subaru Marketing Resource Center with the image desired and wall dimensions (width x height) to determine if the original image recropping and quality will accommodate the size desired to produce a quality print. If cropping and quality are approved, the image will be sized accordingly and a proof will be sent to the retailer for approval along with an estimate for time to print, ship and install (if applicable). Upon retailer authorization, the customized wallpaper will be produced. Production time varies per size and production schedule.

Note: A professional installer is recommended and can be requested prior to placing your order at [subarumarketing.com](http://subarumarketing.com). To have a Subaru referred installer contact you prior to your purchase, please check the appropriate box on the print-on-demand area at [subarumarketing.com](http://subarumarketing.com).

### Vertical Wallpaper



Wallpaper - Map



Wallpaper - Family



Wallpaper - Ski Couple



Wallpaper - MY17 Full Line (New!)



Wallpaper - Adventure



Wallpaper - Climbing



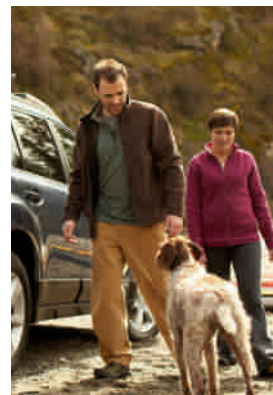
Wallpaper - Winding Road



Wallpaper - Dog



Wallpaper - Bike



Wallpaper - Pet



## Horizontal Wallpaper



Wallpaper - Friends (New!)



Wallpaper - Winter Fishing (New!)



Wallpaper - Mountain View (New!)



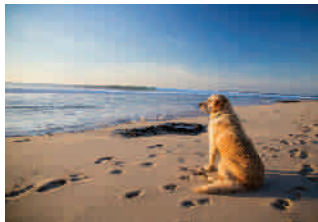
Wallpaper - Lake Cabins (New!)



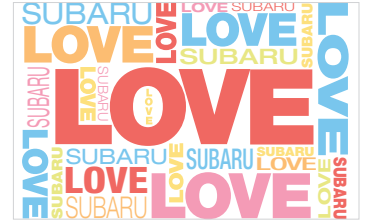
Wallpaper - Motorsports Higgins (New!)



Wallpaper - Downhill Skiing (New!)



Wallpaper - Dog Day Afternoon (New!)



Wallpaper - Subaru Love (New!)



Wallpaper - Go Fly A Kite



Wallpaper - Beach Campfire



Wallpaper - Beach Dog



Wallpaper - Flying



Wallpaper - Kids Corner



Wallpaper - Two Dogs



Wallpaper - Couple



Wallpaper - Three Boys



Wallpaper - Tent



Wallpaper - Children



Wallpaper - Camping



Wallpaper - All-Wheel Drive



Wallpaper - Ice Hockey



Wallpaper - Handle Bars



Wallpaper - Active Couple



Wallpaper - Mountain Bike



Wallpaper - Trail Bike



Wallpaper - Wilderness



Wallpaper - Mountain Top



Wallpaper - Rock Climbing

## Horizontal Wallpaper (continued)



Wallpaper - Hikers



Wallpaper - Kayaking



Wallpaper - Ocean Kayak

## Fabric Panels

The wall panels are lightweight framed images printed on fabric. The 17 vertical and 76 horizontal panels are fixed sizes, they cannot be customized.

- Vertical image dimensions are 36"W x 48"H
- Horizontal image dimensions are 48"W x 36"H

Choose the number of panels, format and images that best speaks to the customer in your showroom.

### Fabric Panels



Vertical



Horizontal



## Vertical Fabric Panels



Panel - Lake View (New!)



Panel - Campfire (New!)



Panel - Mountain Skies (New!)



Panel - Lake Cabins (New!)



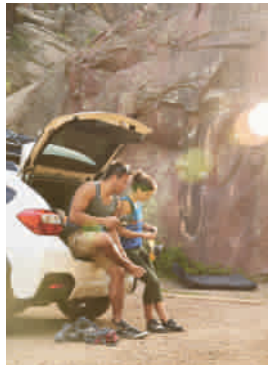
Panel - Jumping In (New!)



Panel - Blue Waters (New!)



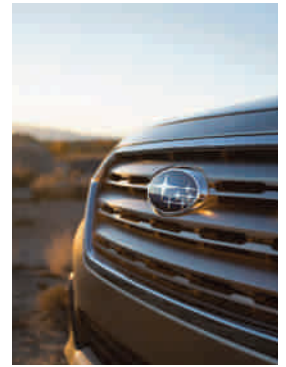
Panel - Family Outing (New!)



Panel - Before the Climb (New!)



Panel - Dog Passenger (New!)



Panel - Subaru Front Grille (New!)



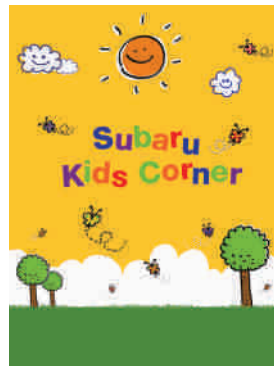
Panel - Map



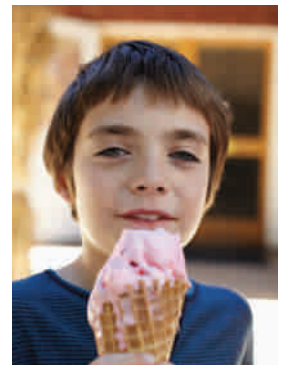
Panel - Fall Family



Panel - Winter



Panel - Kids Corner



Panel - Summer



Panel - Landscape



Panel - Camping



## Horizontal Fabric Panels



Panel - Beach Family (New!)



Panel - Friends (New!)



Panel - Winter Fishing (New!)



Panel - Desert Hills (New!)



Panel - Snowdrift (New!)



Panel - Riverside Camping (New!)



Panel - Telescope (New!)



Panel - Lake View (New!)



Panel - Bikers (New!)



Panel - Photographer (New!)



Panel - Campfire (New!)



Panel - Organic Gardening (New!)



Panel - Friends (New!)



Panel - Pre-Loved Subaru (New!)



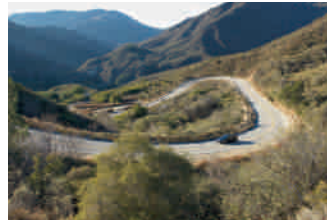
Panel - Doggie Bandana (New!)



Panel - Odometer (New!)



Panel - STI Grille (New!)



Panel - Winding Roads (New!)



Panel - Ice Skates (New!)



Panel - Dog Tested Canoe (New!)



Panel - Dog Tested Surfboard (New!)



Panel - Mountain View (New!)



Panel - Golden Retriever (New!)



Panel - Sunset View (New!)



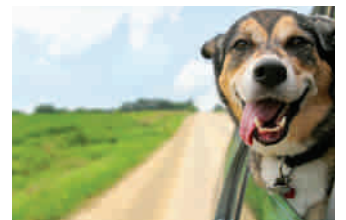
Panel - Mountain Skies (New!)



Panel - Lake Cabins (New!)



Panel - Window View (New!)



Panel - Dog Passenger (New!)



## Horizontal Fabric Panels *(continued)*



Panel - Mountain Sunset **(New!)**



Panel - Bike Wheel **(New!)**



Panel - Jumping In **(New!)**



Panel - Blue Waters **(New!)**



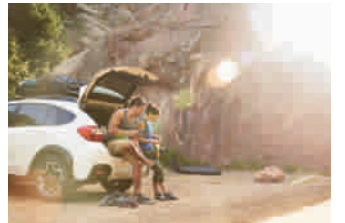
Panel - Family Outing **(New!)**



Panel - Friends Walking **(New!)**



Panel - Bike Journey **(New!)**



Panel - Before the Climb **(New!)**



Panel - Motorsports Higgins **(New!)**



Panel - Motorsports Lasek **(New!)**



Panel - Motorsports **(New!)**



Panel - Motorsports Pastrana **(New!)**



Panel - Go Fly A Kite



Panel - Beach Campfire



Panel - Beach Dog



Panel - Flying



Panel - Gauges



Panel - Gone Fishing



Panel - Bike Break



Panel - Hiking with Dog



Panel - Gardening



Panel - Family Bike Ride



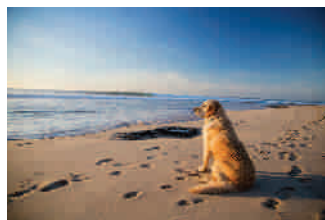
Panel - Fun on the Beach



Panel - Mountain Hike



Panel - Downhill Skiing



Panel - Dog Day Afternoon



Panel - Walk on the Beach



Panel - Paddleboarding



## Horizontal Panels *(continued)*



Panel - All Wrapped Up



Panel - STI Dirt



Panel- STI Trunk Spoiler



Panel - Subaru Front Grille



Panel - Desert Camping



Panel - Fall Fun



Panel - Kids Corner



Panel - In a Hurry



Panel - Children



Panel - Trail Ride



Panel - White Water Rafting



Panel - Active Couple



Panel - Mountain Bikes



Panel - Kayakers



Panel - Travel



Panel - Ice Hockey



Panel - Couple



Panel - Mountain Top



Panel - Two Dogs



Panel - Three Boys



## Fabric Panels *(continued)*

### Historical Images - Horizontal Panels



Historical Panel - 360



Historical Panel - DL Sedan



Historical Panel - Subaru Family



Historical Panel - FF-1



Historical Panel - Leone

## Freestanding Banners

The 8 vertical images are designed to fit stand-alone, single and double-sided retractable banner stands. The durable banners are also ideal for frequent use at events and promotional activities. These vinyl banners are a fixed size which cannot be customized.

- Image dimensions are 33"W x 84"H

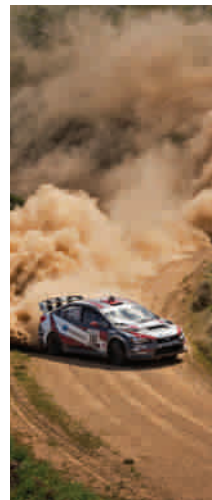
After selecting the desired banner image(s) on [subarumarketing.com](http://subarumarketing.com), proceed to check-out to view the retractable banner stand hardware options and select the one that meet your needs.

### Freestanding Banner Stands

### Banner Images



Banner - MY17 Full Line *(New!)*



Banner - Motorsports *(New!)*

## Freestanding Banners *(continued)*

### Banner Images



Banner - Winter



Banner - Winding Road



Banner - Desert Camping



Banner - Active Couple



Banner - All-Wheel Drive



Banner - Love Collage

## Installed Retailer Photos

The images below are examples of how a Subaru retail facility used the Subaru Retailer Graphics Program to add warmth and visual interest to their retail facility. Consider grouping images in a creative way for visual impact such as installing several images to run together. For high ceilings consider stacking images vertically in a group with equal space between them. Install one large image and divide it into three sections with a few inches of space between them to add texture. Cover a column, soffit or walkway area. Hang multiple fabric panels to create a collage style or photo wall. Use the Kids Corner graphics to designate a children's play area. Feel free to be creative in how these items are displayed.

### Wallpaper Examples



### Fabric Panel and Wallpaper Examples







ALL SHOWROOM PRODUCTS

Subaru Primary Kits

Showroom Elements

Digital Elements

SUBARU PRIMARY KITS



The Subaru Digital & Showroom Elements Primary Kits are designed to provide an engaging and impactful customer experience across all Subaru retailers. We've created a set of powerful retail tools to dynamically showcase Subaru vehicles, service, accessories, and more!

Having a consistent set of leading-edge resources in every Subaru facility will increase the consistency and effectiveness of our overall sales and parts/service operations. The Subaru Digital & Showroom Elements Primary Kits are a critical component of our retail strategy and a requirement for all Subaru retailers. New retailers should order all elements (Digital and Showroom) directly on this site.

The Subaru Digital Primary Kit\* includes the following components:

- (1) Digital Showroom Touch-Screen Kiosk\*\*
- (1) Service Media Center\*\*

The Subaru Showroom Elements Primary Kit\* includes the following components:

- (2) Performance Pylons
- (2) Performance Pylon Literature Racks
- (4) Aluminum Poster Frames
- (2) Digital or Graphic Wheel Feature Stands
- (1) Accessory Display

\* Subaru of America, Inc. maintains the right to update the physical display and electronic hardware after the warranty expiration, beginning at time of purchase. Monthly payments are subject to change.

\*\* Monthly Payment includes LiveGuide license fee, digital content, POP materials typically included in the update kits.

Located at:

Subarunet>>Retail Environment>>SOE Merchandise

**SUBARU.**

QUALITY DRIVEN® SERVICE

# Field Sales Organization

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National Director of Field Sales

**724-693-9335**

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**724-816-9478**

dsalo@comcast.net

**SubaruDealerSolutions.com****1-866-213-4690**





To speak with our Equipment and Systems Planning team, contact me:

**Tom Campbell 724-693-9335**

[tom.campbell@us.bosch.com](mailto:tom.campbell@us.bosch.com)

## Expert Service Equipment & Systems Planning...

### *At No Cost to You!*



#### **FOUR Easy Steps:**

#### **Detailed CAD Drawing**

Includes detailed equipment and systems layout in service area as well as a lighting plan with photometric data.

#### **Equipment & Systems Needs Assessment**

Key project document detailing contact information, target launch/phase dates, building requirements and recommended shop equipment to enhance fixed operations.

#### **Detailed Specifications & Budget**

Includes detailed specifications for all major equipment called out in the Needs Assessment. Also includes a preliminary equipment & systems budget.

#### **Project Coordination & Support**

Single point of contact for service equipment and installation.

## **Most architects and contractors don't understand the needs of a service facility – *we do!***

Equipment and Systems Planning team members know service areas need to be set up to provide an optimal flow of people, equipment and vehicles into and out of the area. Because of our close partnership with the OEM, we know the Subaru-approved equipment – where to place it for the best usage and work flow throughout the shop and how to get it installed.

*We are the experts!*

**Call today to speak with an Equipment & Systems  
Planning Specialist!**

Special lease programs available for new facilities.  
Lease rates will vary. Please call for details.

# **1-866-213-4690**

**Let our experts make sure your facility:**

- Accommodates Future Vehicles
- Provides Layout Efficiency
- Maximizes Shop Throughput



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**[SubaruDealerSolutions.com](http://SubaruDealerSolutions.com)**



## Courtesy Subaru of Chico

Required Furniture Elements (Typicals)	Estimated Cost Range	
	Level 1	Level 2
Sales 2-7/General Mgr. - Consultation Table 7 Layouts	\$ 10,782.24	\$ 15,298.43
Sales 1/ Sales Mgr./F&I 1-2 - L Shaped Desk without overheads 60" 4 Layouts	\$ 10,333.48	\$ 14,016.68
General Mgr./ Serv. Mgr. - U shaped desk with overheads 72" 2 Layouts	\$ 7,963.04	\$ 11,045.76
Customer Lounge/Quiet Lounge - Lounge Seating 5 Layouts	\$ 21,300.95	\$ 42,669.80
Kids Play Area - Seating 1 Layout	\$ 748.08	\$ 1,571.85
Customer Lounge - Workstation chairs 4 Chairs	\$ 1,774.76	\$ 2,974.76
Service Write-Up - Service Writers 3 Layouts	\$ 6,547.74	\$ 7,540.74
Total	\$ 59,450.29	\$ 95,118.02

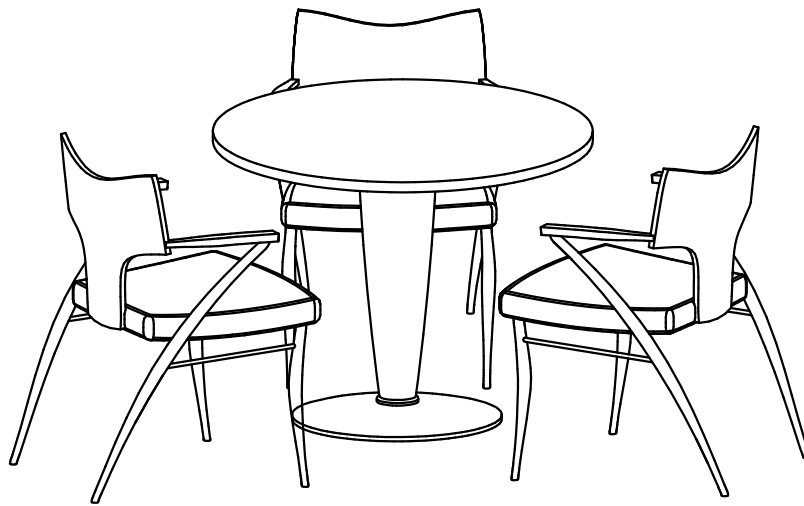
-A quote for Freight and Installation will be provided at time of order.

-Optional furniture areas will be specified to meet Dealership's need at time of order.

-Sales tax will be added at time of invoicing

-Prices subject to change.

**-Standard lead time is 8-10 weeks.**



Cafe Seating

3 - Cafe chair with wood back, upholstered seat and brushed metal leg  
1 - Cafe Table with brushed & chrome leg, laminate top with wood edge

Totals

\$1,540.32 - \$2,185.49

Scale: NTS

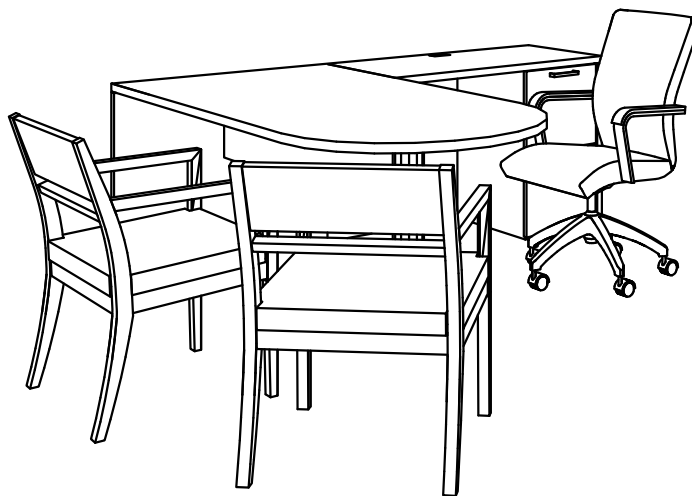
03.24.18



Sales 2-7, General Mgr.

FELTUS HAWKINS DESIGN  
1207A MCGAVOCK STREET NASHVILLE, TN 37203 p. (615)320.1777 f. (615)320.1880

**fh** FELTUS HAWKINS DESIGN  
1207A McGavock St. | 615.244.4328  
Nashville, TN 37203 | www.fhdesign.com



Office - L shape

- 1 - 60"x30" Peninsula Desk with brushed nickel leg & frosted glass modesty panel
- 1 - 42"x22" Return Desk with (1) Box, Box, File Pedestal
- 1 - Pencil drawer
- 1 -Task Chair
- 2 -Guest Chairs

Totals (Varies Per Level Selected)  
\$2,583.37 - \$3,504.17

Scale: NTS

03.24.18

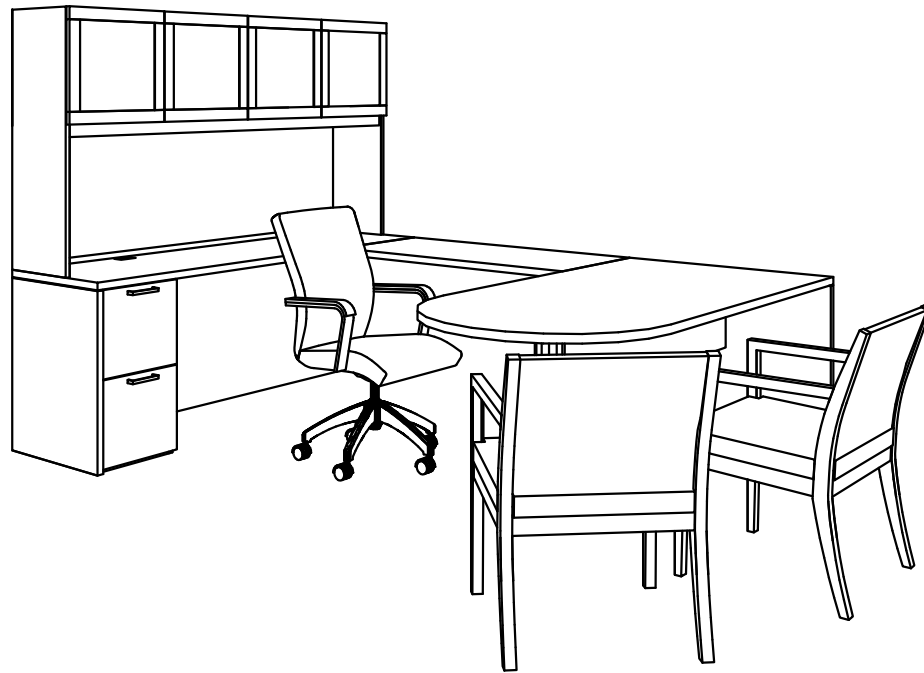


Sales Mrg., Sales 1, F&I 1-2



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### Manager's Office- U shape

- 1 - 72"x30" Peninsula Desk with brushed nickel leg & frosted glass modesty panel
- 1 - 42"x22" Bridge
- 1 - 72"x22" Return Desk with (1) Box, Box, File Pedestal
- 1 - 72" Overhead Storage unit with frosted glass doors
- 1 - Pencil drawer
- 1 - Task Light
- 1 - Tackboard
- 1 -Task Chair
- 2 -Guest Chairs

Totals (Varies Per Level Selected)

\$3,981.52 - \$5,522.88

Additional filing cabinets or wardrobe cabinets not included in price.

Scale: NTS

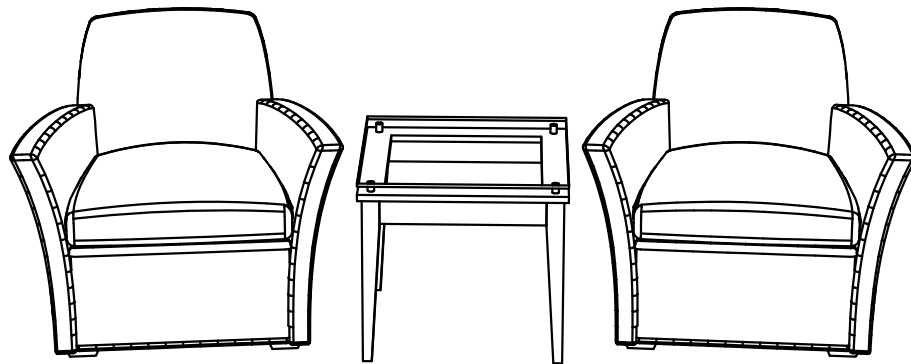
03.24.18



General Mgr., Service Mgr.



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### Customer Lounge

- 4 - Fully Upholstered Lounge Chair
- 1 - 24" x 24" Square end table, cherry veneer with glass top

Totals (Varies Per Level Selected)  
\$4,260.19 - \$8,533.96

Scale: NTS

03.24.18

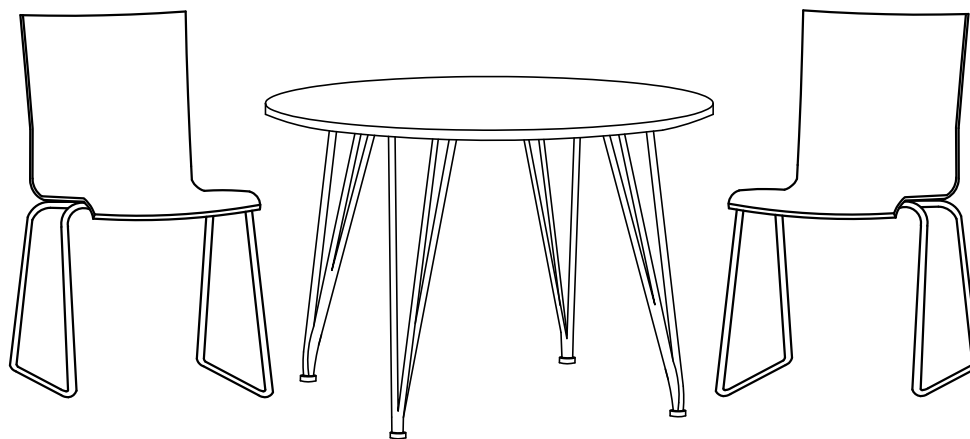


## Customer Lounge/Quiet Lounge

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Nashville, TN 37203 | www.fhdesign.com



### Customer Lounge

3 - Kids Chair, cherry finish  
1 - 36" Diameter table, blue top, black legs

### Totals

\$748.08 - \$1,571.85

Scale: NTS

03.24.18



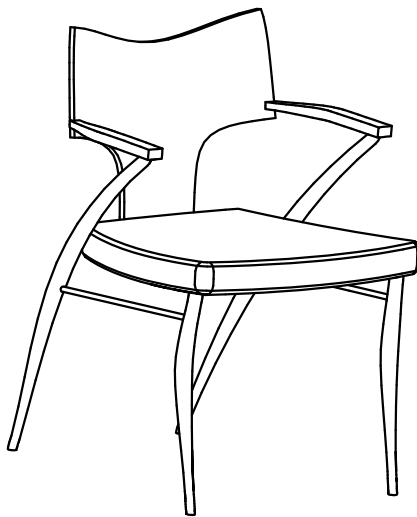
## Kids Play Area

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### Customer Workstation Chair

1 - Cafe chair with wood back, wood arms, upholstered seat and brushed metal leg

Totals

\$443.69 - \$743.69

Scale: NTS

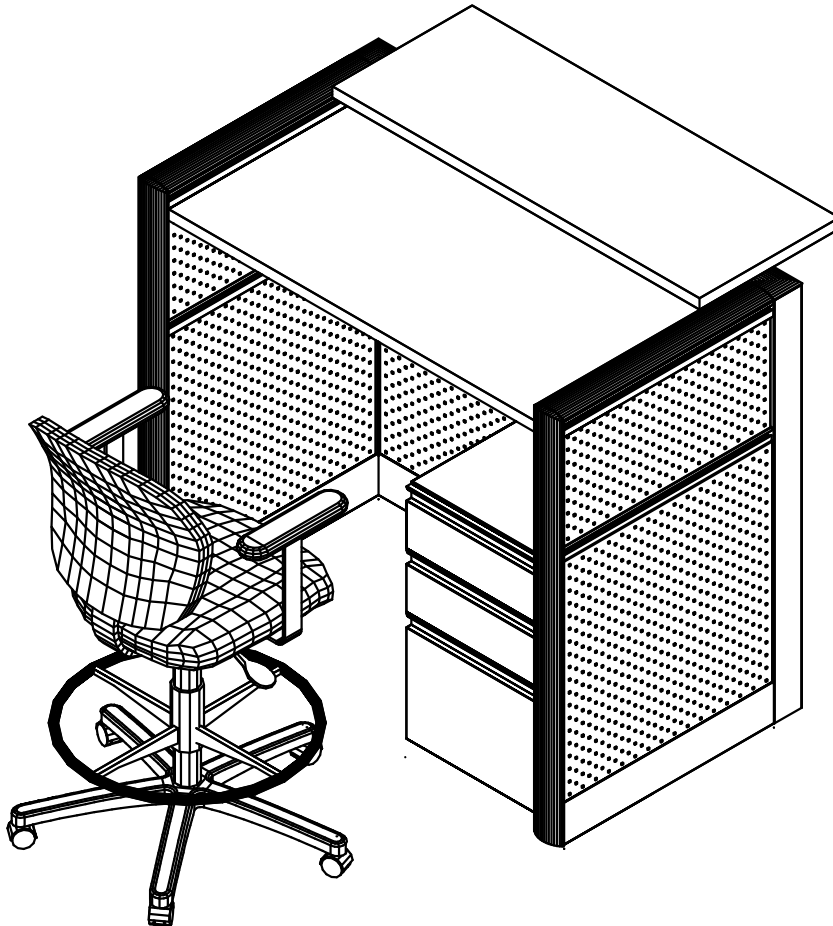
03.24.18



## Customer Lounge

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Nashville, TN 37203 | www.fhdesign.com



### Service Advisor

- 1 - Stand-up height desk with transaction surface
- 1 - Box-box-file pedestal
- 1 - Stool with upholstered seat and back and caster base.

Total

\$2,182.58 - \$2,513.58

Estimates are non-powered stations. Power capabilities may be added for an additional charge. Widths available are 36", 42", 48", and 54" wide.

PRICE DOES NOT INCLUDE FREIGHT AND INSTALLATION

Scale: NTS

03.24.18



## Service Write-Up

FELTUS HAWKINS DESIGN  
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**fh** FELTUS HAWKINS DESIGN  
1207A McGavock St. | 615.244.4328  
Nashville, TN 37203 | www.fhdesign.com

# Signature Facility Program, Phase II

## Furnishings Options



FELTUS HAWKINS DESIGN

INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT



**SUBARU**

The Furnishings Options for the Signature Facility-Phase II include some options of furniture. Each option delivers a similar look that is appropriate for the concept, but with different levels of finishes and costs.

The following pages provide images, specifications and pricing for typical examples used throughout the facility. The specific design, layout, and specification for each Signature facility will be developed by F|H Design, in response to input from the dealership.

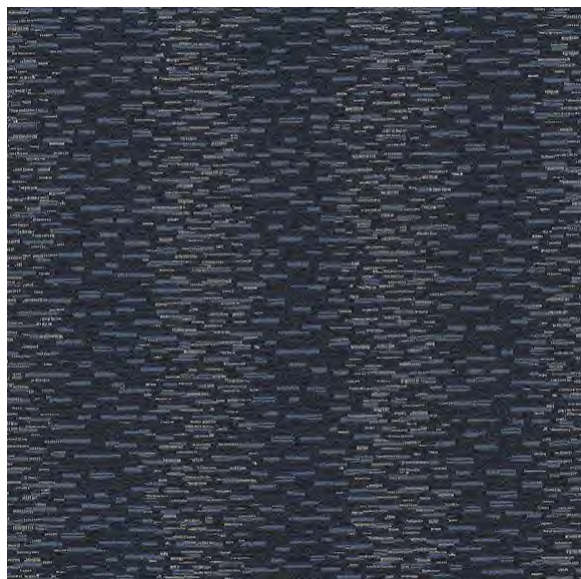


For additional information, please contact F|H Design at 615.320.1777:

Daniella Gatlin

dgatlin      esign.com

Ext. 235



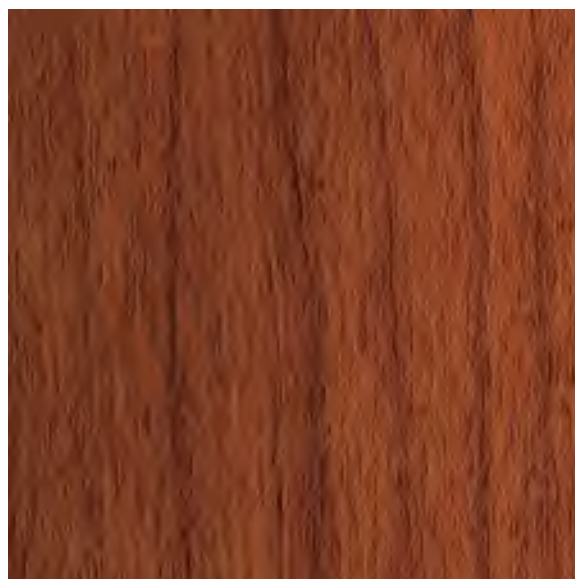
**Guest Chair Upholstery**  
CF Stinson Jala Wave



**Café Chair and Stool Upholstery**  
DesignTex Beam Indigo, Hold # 5119588



**Task and Lounge Chair Upholstery**  
Catalina Black Leather  
- OR -  
Momentum Canter Onyx



**Wood/Laminate Finish**  
OFS Brands Light Cherry  
OR  
Nevamar Blossom Cherry-  
WC558IN  
Wilsonart 7054-60 Wild Cherry



**Custom Cherry Laminate Greeter and Credenza—**

7' wide desk and credenza with bullnose edge and tempered glass transaction top with metal standoffs.

Brushed metal panels with black reveal, brushed metal base and accents on face of desk

Millwork drawings available upon request.



### **Open Peninsula Office**

72"x 30" Peninsula Desk, 90" x 22" Bench Storage with lateral files and open storage, monitor arm, and 3 swivel chairs; Fits in standard 10'x 10' office - \$3,906\*



### **Lounge Office**

2 Loveseats, mobile stool, 96" x 22" working credenza, side table, 36" dia. mobile table, monitor arm; Fits in 12' x 10' office - \$5,938\*



### **First Office "Pulse" Casegoods**

Light Cherry Laminate Surface with Square Edge Detail, Satin Nickel Cylinder Base

**Units available with wall-mounted shelves and monitor panel**

### **“L” Shaped Configuration**

72”x 30” Peninsula Desk,  
42”x22” Return, and Over-  
head Storage - \$2,660\*



### **“U” Shaped Configuration**

72”x30” Peninsula Desk,  
42”x22” Bridge, 72”x 22” Cre-  
denza, and Overhead Storage -  
\$3,999\*



### **OFS “Impulse” Casegoods**

Light Cherry Custom Wood Veneer with Square Edge Detail, Frosted Overhead Doors  
and Modesty Panel with Matte Silver Frame, Satin Nickel Cylinder Base

#### **Units available without overhead storage**

*These casegoods are suggested for use in Dealer Office or Private Office  
and are not suggest for use in high traffic sales offices.*

**“L” Shaped Configuration**

72”x 30” Peninsula Desk,  
42”x22” Return, and Over-  
head Storage - \$2,446\*


**“U” Shaped Configuration**

72”x30” Peninsula Desk,  
42”x22” Bridge, 72”x 22” Cre-  
denza, and Overhead Storage -  
\$2,842\*


**First Office “Pulse” Casegoods**

Light Cherry Laminate Surface with Square Edge Detail, Frosted Overhead Doors and Modesty Panel with Matte Silver Frame, Satin Nickel Cylinder Base

**Units available without overhead storage**

### **Sales Workstation (duplex) non-powered**

Kimball Xsite 55" high systems furniture with glass, metallic silver painted, embossed tiles and wood trim 60" x 30" cherry laminate peninsula worksurface with metallic silver leg and 42"x 24" matching return worksurface with pencil drawer metallic silver box, box, file cabinets below worksurface

Also available with base power

\$3770\*



### **Service Advisors**

Kimball Xsite systems furniture with metallic silver painted and embossed tiles 42"x24" cherry laminate worksurface and transaction counter, cherry topcaps and finished ends, metallic silver mobile box/box/ file cabinet, plastic center drawer

Available in 36", 42", 48" and 54" wide units and as desk height units

Contact F|H Design for specific pricing

Estimate for 42" non-powered station - \$1862\*



### **Option 1**

#### **Desk Chair-Faux Leather**

Sit On It “ReAlign” Chair - Swivel Tilt, Faux Leather Upholstered Seat and Back, Polished Aluminum Base - \$360\*

27W x 27D x 39 1/2” H



### **Option 2**

#### **Desk Chair-Faux Leather**

Keilhauer “Tom” Chair - Arc Arms, Faux leather upholstered Seat and Back, Black Frame and Base - \$785\*

28W x 33D x 28H



### **Option 3**

#### **Desk Chair-Mesh and Faux Leather**

SitOnIt “Focus” Chair - Swivel Tilt, Faux Leather Upholstered Seat, Mesh Back. Adjustable Arms, Polished Aluminum Base - \$325\*

27.3W x 25D x 35H



**Option 1****Stool—Faux Leather**

Sit On It “ReAlign” Armless Task Stool -  
Black Faux Leather Upholstered Seat and  
Back, Black Base - \$388\*

27W x 27D x 45.25” - 56.38” H

**Option 3****Stool—Faux Leather**

Sit On It “Focus” Armless Task Stool -  
Black Faux Leather Upholstered Seat,  
Mesh Back, Black Base - \$380\*

27W x 27D x 45.25” - 56.38” H





**Option 1****Guest Chair—Metal Frame**

Keilhauer “Also” Chair -Upholstered  
Seat and Back, Nickel Frame - \$399\*

Upholstery—CF Stinson Jala Wave  
22.5W x 24D x 42H

**Option 2****Guest Chair—Casters**

Loewenstein “Cinque” Chair  
Upholstered Seat, Aluminum Star Base on  
Casters- \$665

Upholstery—CF Stinson Jala Wave  
25.75W x 27.75D x 37.5H



**Option 1**
**Guest Chair—Closed Back**

OFS “Aria” Chair -

Upholstered Seat and Back,

Light Cherry Wood Frame - \$591\*

Upholstery—CF Stinson Jala Wave

22.75W x 20.5D x 33H


**Option 2**
**Guest Chair—Wood Back**

David Edward “Aussie” Chair

Upholstered Seat, Light Cherry Finish

Wood Frame - \$638

Upholstery—CF Stinson Jala Wave

22.5W x 25.25D x 33H



**Option 1A**
**Lounge Chair**

Ideon "Composium Sharp"

Wood Feet with Medium Cherry Finish ,

-Black Faux Leather Upholstery - \$929\*

-Black Leather Upholstery - \$1125\*

31W x 28D x 34H


**Option 1B**
**Lounge Chair with Tablet Arm**

Ideon "Composium Sharp"

Wood Feet with Medium Cherry Finish ,

-Black Faux Leather Upholstery with Wood Tablet Arm: \$1358\*

-Black Leather Upholstery with Wood Tablet Arm - \$1555\*

31W x 28D x 34H


**Option 2**
**Lounge Chair**

Cabot Wrenn "Lisbon" - Fully Upholstered

Chair Upholstery - Black Leather -\$1863\*

35W x 31D x 33H



**Option 1**
**Coffee Table—Glass Top**

OFS “Travata” Magazine Table

Wood Base with Custom Cherry Finish, Glass Top with Brushed Metal Hardware -

-Rectangle Table \$670\*

42W x 22D x 17H


**Option 2**
**Coffee Table—Wood Top**

Bernhardt B.6 Square Occasional Table

Brushed Nickel Base with Cherry Finish Wood Top - \$1,665\*

42W x 42D x 15.5H



**Option 1****Occasional Table—Glass Top**

OFS “Travata”

Wood Base with Custom Cherry Finish,  
Glass Top with Brushed Metal Hardware -  
\$546\*

24Wx 24D x 22H

**Option 2****Occasional Table—Wood Top**

Bernhardt “B.6”

Brushed Nickel Base

Cherry Wood Finish Top -\$1082\*

22W x 22D x 20.5H



**Option 1****Bar Chair - “Parfait II”**

Leland “Parfait II”

Wood Back with Cherry Finish (22 Copper), Upholstered Seat, Sterling Frame - \$447\*

Upholstery—Designtex Beam Indigo

17.5W x 21.5D x 40.5H

**18.25W x 23D x 30SH**

**Option 2****Bar Chair - “Jaunt”**

Loewenstein Jaunt

Wood Back with Light Cherry Finish, Upholstered Seat, Polished Chrome Frame - \$575\*

Upholstery—Designtex Beam Indigo

18.5W x 19.5D x 39.5H





**Option 1****Bar Table—"Parfait"**

Leland "Parfait "  
Sterling Dome Base, 30" Diam.  
Laminate Top with Vinyl Edge -  
\$688\*

30D x 42H

**Option 2****Bar Table—"40000 Series"**

Loewenstein " 40000 Series"  
with stainless disc base, 30" Dia  
Laminate Top with Wood Edge -  
\$538\*

30D x 42H



**Option 1**
**Cafe Chair—"Parfait II"**

Leland "Parfait II"  
Wood Back with Cherry Finish (22 Copper),  
Upholstered Seat, Sterling Frame - \$337\*

Upholstery—Designtex Beam Indigo

18.5 W x 37.75H 25.5 SH


**Option 2**
**Café Chair - "Jaunt"**

Loewenstein "Jaunt"

Wood Back with Light Cherry Finish, Upholstered Seat, Polished Chrome Frame - \$554\*

Upholstery—Designtex Beam Indigo

24W x 22D x 31H



**Option 1****Cafe Table— “Parfait”**

Leland “Parfait”

Sterling Dome Base, 36” Diam. Lami-  
nate Top with Vinyl Edge - \$805\*

36D x 30H

**Option 2****Cafe Table— “40000 Series”**

Loewenstein “ 40000 Series”  
with stainless disc base, 36” Laminate Top  
with Wood Edge - \$524\*

36D x 30H



**Community Table - “Impression”**

Enwork Impression O-Leg

Silver Base Finish

Wild Cherry Laminate Top with Vinyl  
Edge and USB/Outlet Power - \$706

30D x 72W x 42H

\*Seated Height Also Available



**Table Option 1****Kid's Play Table—"Little Marquette"**

Leland "Little Marquette"

Beveled Plywood Edge

Black Base, Copper Wood Finish - \$863\*

36" Dia. x 25"H

**Table Option 2****Kid's Play Table—"Bola"**

Fixtures Furniture "Bola"

Silver Base, Wild Cherry Laminate Top-

\$319\*

36" Dia. x 24"H

**Chair Option 1**
**Kid's Chairs—"Little Marquette"**

Leland "Little Marquette"  
 Arc Shell with no cutout,  
 Black Base, Cobalt Shell - \$236\*  
 16" W x 19" D x 28" H, 15" SH


**Chair Option 2**
**Kid's Ball Chairs—"Runtz"**

Safco "Runtz"  
 Black, Pink or Green Seat, Silver  
 base - \$143\*  
 22 1/2" Dia. x 17" H







INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT

---

1207A McGavock Street • Nashville, TN 37203 • 615-244-4328 • [www.fhdesign.com](http://www.fhdesign.com)



**Custom Cherry Laminate Cashier Desk —  
7' wide desk with bullnose edge and tempered glass  
transaction top with metal standoffs.**

**Brushed metal panels with black reveal, brushed metal  
base and accents on face of desk.**

**Millwork drawings available upon request.**



**Greeter/ Cashier**



Custom Cherry Laminate Greeter and Credenza—  
7' wide desk and credenza with bullnose edge and  
tempered glass transaction top with metal standoffs.

Brushed metal panels with black reveal, brushed metal  
base and accents on face of desk .

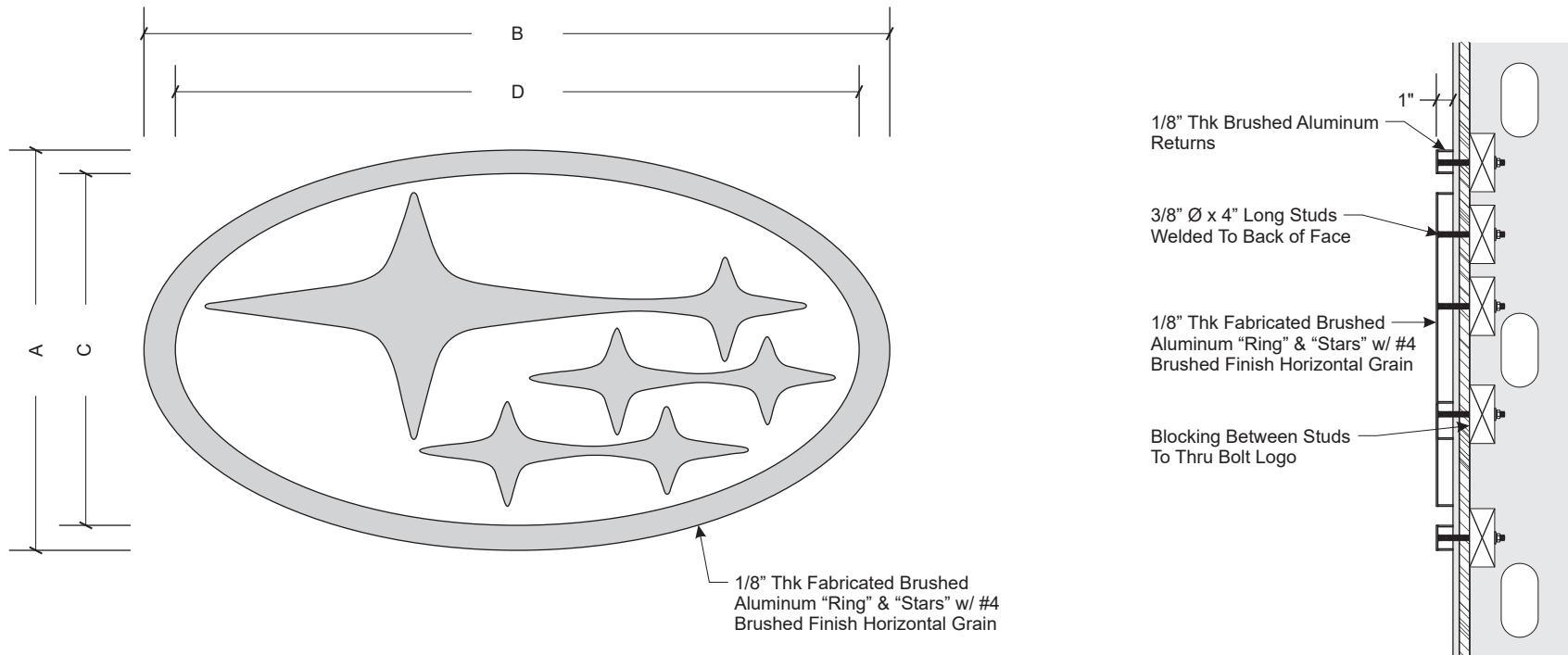
Millwork drawings available upon request.



**SUBARU®**

**Greeter and Credenza**

# Non-Illuminated Logo



	A	B	C	D
Non-Illuminated Logo	53"	98-3/4"	46-1/2"	90-1/2"
	48"	89-7/16"	42-3/16"	82"
	36"	67"	31-5/8"	61-1/2"
	24"	44-3/4"	21"	41"



**PHILADELPHIASIGN**  
BRINGING THE WORLD'S BRANDS TO LIFE

TITLE  
**Subaru**  
ADDRESS  
**Subaru Various**

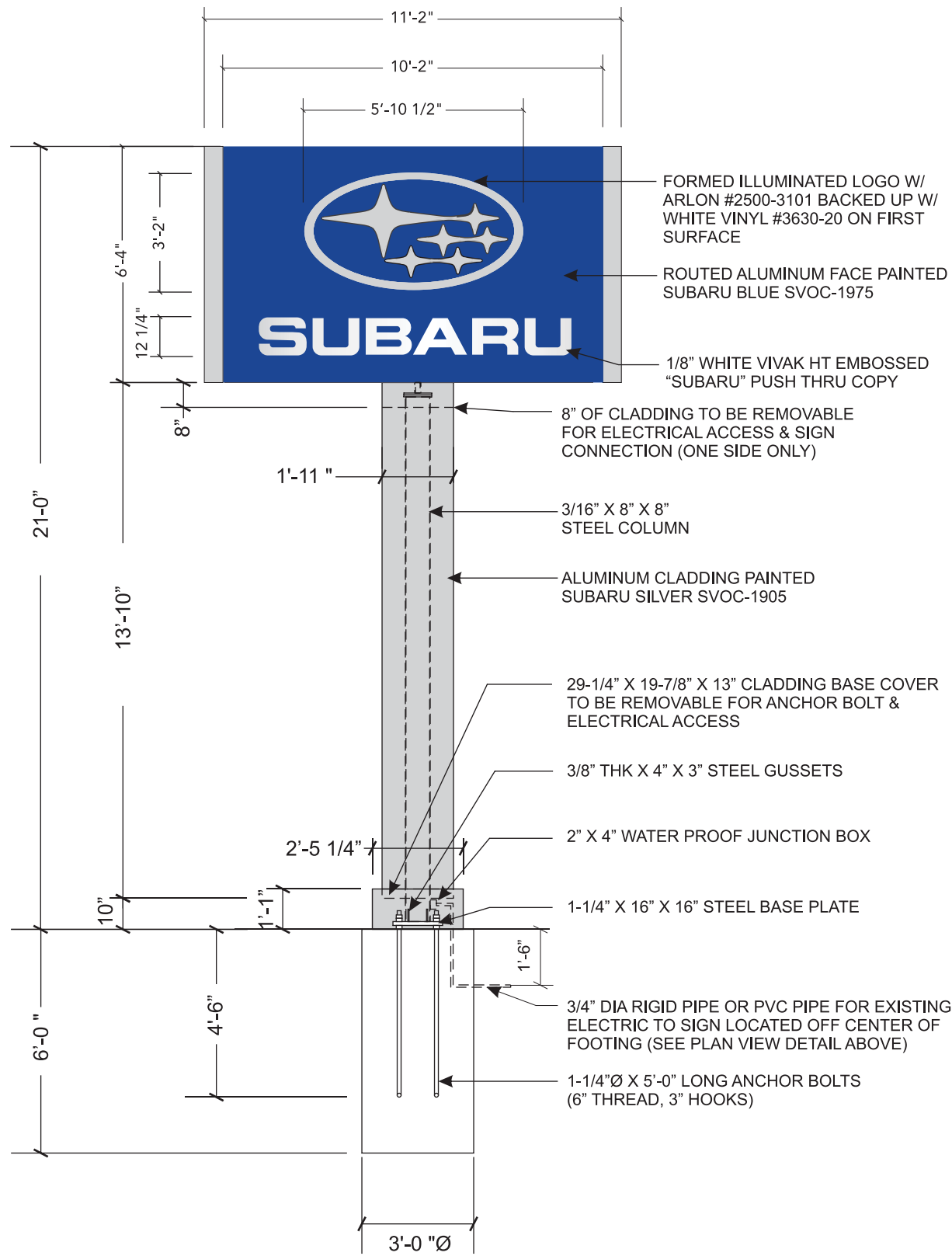
DWG BY  
**AFR**

DATE  
**05.18.16**  
DWG NUM  
**A26649**  
SHEET  
**1**

DATE  
REVISION

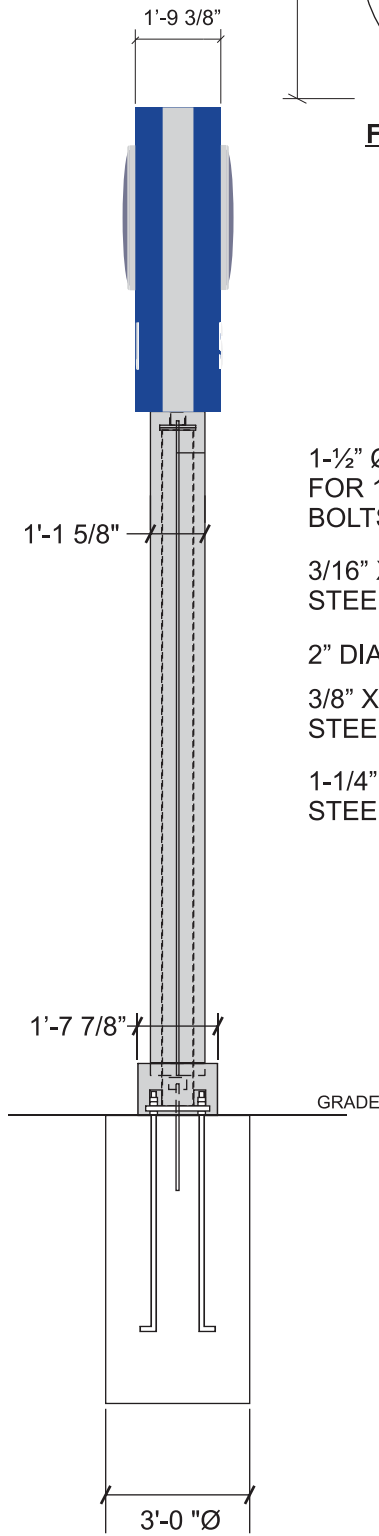
BY  
THIS IS AN ORIGINAL UNPUBLISHED DRAWING CREATED BY P.S.C.O. IT IS SUBMITTED FOR YOUR PERSONAL USE IN CONJUNCTION WITH A PROJECT BEING PLANNED FOR YOU BY P.S.C.O. IT IS NOT TO BE SHOWN TO ANYONE OUTSIDE YOUR ORGANIZATION NOR IS IT TO BE USED, COPIED, REPRODUCED, OR EXHIBITED IN ANY FASHION.

ENGINEERING  
SHOP  
VINYL / LAYOUT  
ROUTING / KNIFE



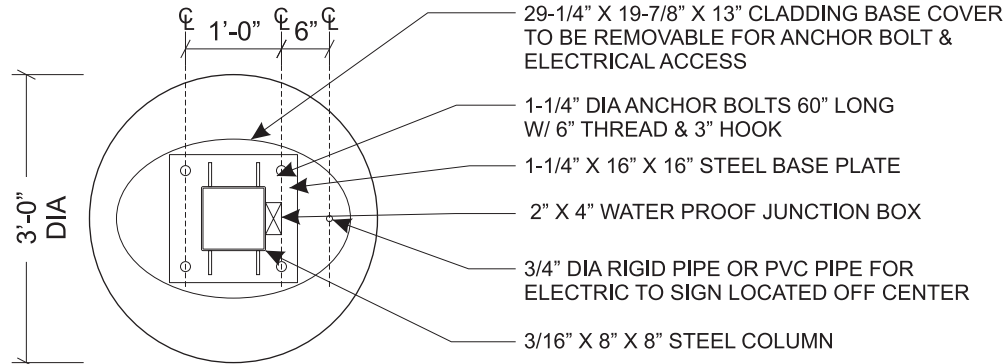
FRONT VIEW  
SCALE: 1/4" = 1'-0"

Note: This sign is intended to be installed in accordance with the requirements of Article 600 of the National Electrical Code and/or other applicable local codes. This includes proper grounding and bonding of the sign.

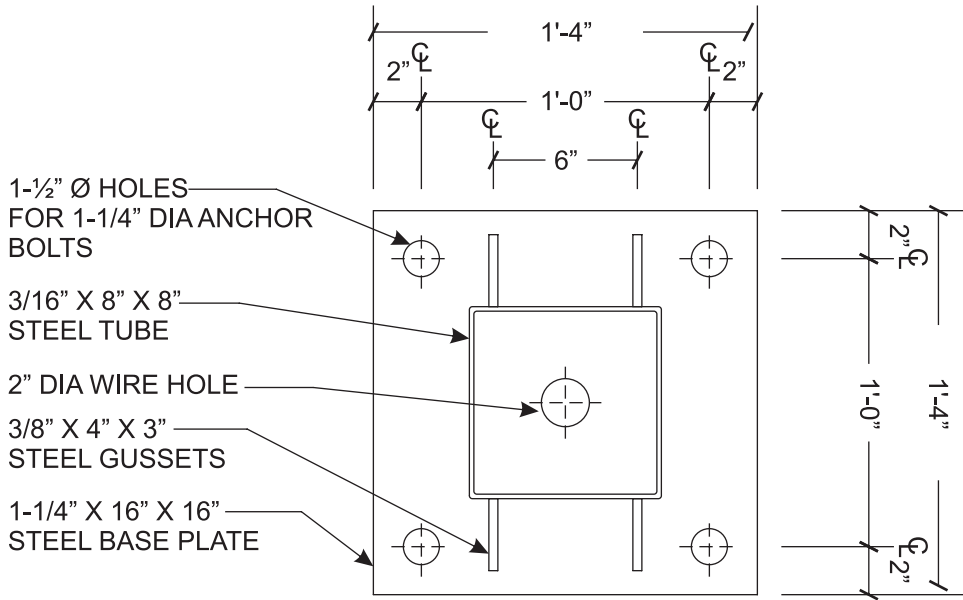


SIDE VIEW  
SCALE: 1/4" = 1'-0"

Rated for Standard Wind Load  
30 lbs./ft<sup>2</sup>



FOOTING PLAN VIEW  
SCALE: 1/2" = 1'-0"



BASE PLATE DETAIL  
SCALE: 1-1/2" = 1'-0"

PERMITS  
ONLY

**ELECTRICAL LOAD**  
(6.4) Amps @ 120 Volts  
**ELECTRICAL REQ'MTS**  
(1) 20 Amp/120 Volt Circuit

- STANDARD PYLON NOTES:**
1. Sufficient Primary Circuit In Vicinity Of Sign By Others.
  2. Final Primary Hook-up By Sign Installer, Where Allowed By Local Codes.
  3. Sign Shall Be U.L. Listed.
  4. Soil Assumed To Be Medium Clay, Or Better, With Minimum Soil Bearing Capacity Of 2,500 PSF.
  5. Concrete 3,000 PSI @ 28 Days.
  6. Reinforcing Steel Shall Be ASTM A615 GR-40.
  7. Structural Steel Shall Be ASTM A36.
  8. All Welds Shall Conform To A.W.S Standards.



Philadelphia Sign  
C O M P A N Y

707 West Spring Garden Street  
Palmyra, New Jersey 08065

Phone: 856 829 1460  
Fax: 856 829 8549  
E-mail: mail@philadelphiasign.com

CUSTOMER:  
SUBARU

JOB NUMBER:

REVISIONS:		
Date:	Description:	By:
10/01/07	FLUSH FOOTING W/ GRD.	TS
10/10/07	UPDATED DRAWINGS	TS

DRAWING TYPE:  
PERMIT DRAWING

SIGN TYPE:  
P65 PYLON SWL

LOCATION:  
Various

DATE:  
10-02-06

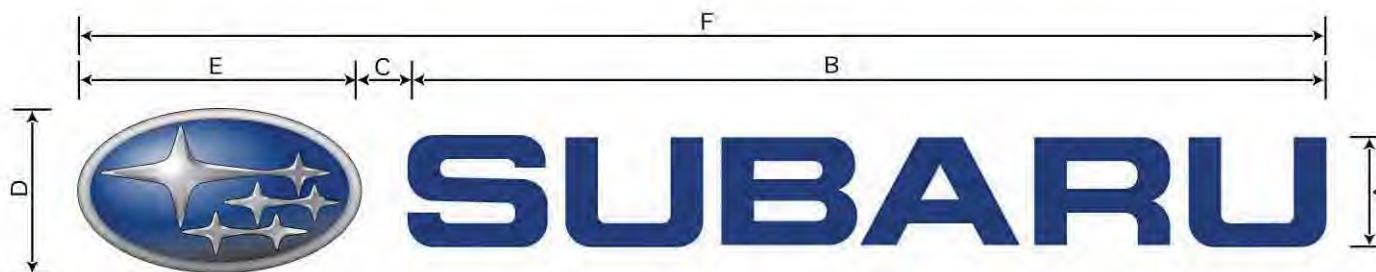
DRAWN BY:  
TS

SHEET:  
1 of 1

DWG NUMBER:  
B-23399 SWL

THIS IS AN ORIGINAL UNPUBLISHED DRAWING CREATED BY P.S.C.O. IT IS SUBMITTED FOR YOUR PERSONAL USE IN CONJUNCTION WITH A PROJECT BEING PLANNED FOR YOU BY P.S.C.O. IT IS NOT TO BE SHOWN TO ANYONE OUTSIDE YOUR ORGANIZATION NOR IS IT TO BE USED, COPIED, REPRODUCED, OR EXHIBITED IN ANY FASHION.





### Channel Letter Schedule

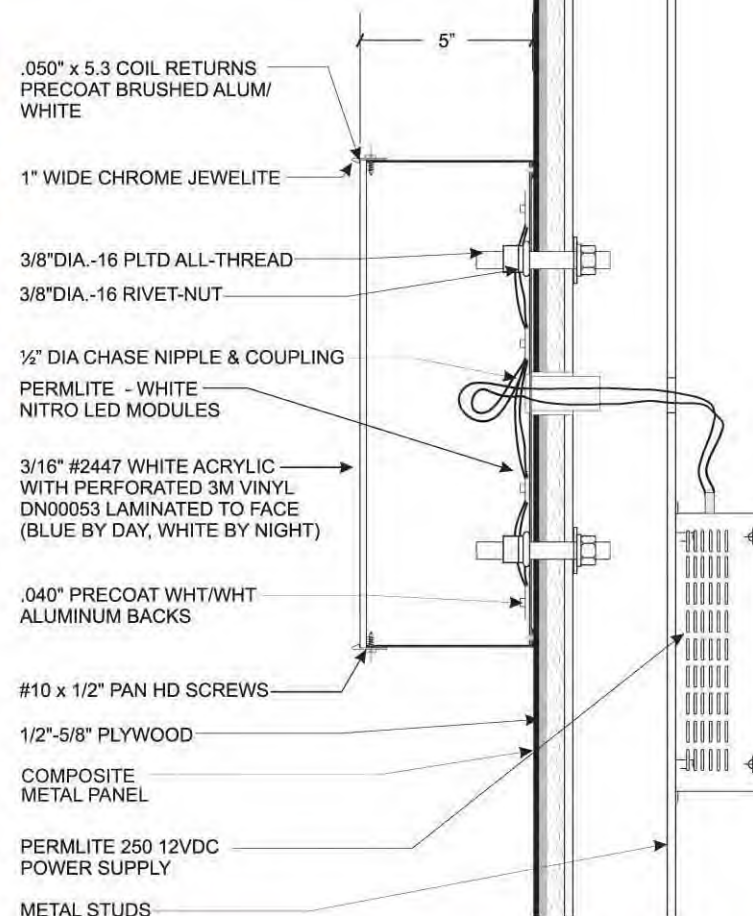
A	B	C	D	E	F	ELECTRICAL LOADS	AMPS / CIRCUITS
36"	25' 7- <sup>3</sup> / <sub>4</sub> "	14- <sup>3</sup> / <sub>8</sub> "	4' 5"	8' 2"	35' 0- <sup>1</sup> / <sub>8</sub> "	10.3 AMPS@ 120 VOLTS	(1) 20 AMP 120 VOLT CIR.
24"	17' 1- <sup>1</sup> / <sub>4</sub> "	9- <sup>5</sup> / <sub>8</sub> "	3' 0"	5' 2- <sup>1</sup> / <sub>2</sub> "	23' 0- <sup>3</sup> / <sub>8</sub> "	6 AMPS@ 120 VOLTS	(1) 20 AMP 120 VOLT CIR.

BLUE DAY/WHITE NIGHT FACES  
CHROME TRIM  
METALLIC SILVER RETURNS

**ILLUMINATED CHANNEL LETTER POWER SUPPLY.**  
**ADEQUATE WIRING ACCESS INSIDE BLDG. WALL**  
**REQUIRED FOR INSTALLATION.**

### STANDARD LETTER NOTES:

1. Sufficient Primary Circuit In Vicinity Of Sign By Others.
2. Letter To Letter Wiring And Final Primary Hook-up By Sign Installer, Where Allowed By Local Codes.
3. Sign Shall Be U.L. Listed.
4. Mounting Hardware By Sign Installer.
5. Full Size Drilling Template Furnished With Sign.



CROSS SECTION





**P48**  
6' 2" H X 7' 7"  
X 16' 4" OAH



**P30**  
4' 4" H X 7' 7"  
X 15' 3" OAH



**P50**  
5' 7" H X 9' 9"  
X 20' 3" OAH



**P65**  
6' 4" H X 11' 2"  
X 21' 0" OAH



**P90**  
7' 6" H X 13' 1"  
X 25' 9" OAH



**P120**  
8' 8" H X 15' 2"  
X 26' 11" OAH



**M30**  
4' 4" H X 7' 10"  
X 6' 10" OAH



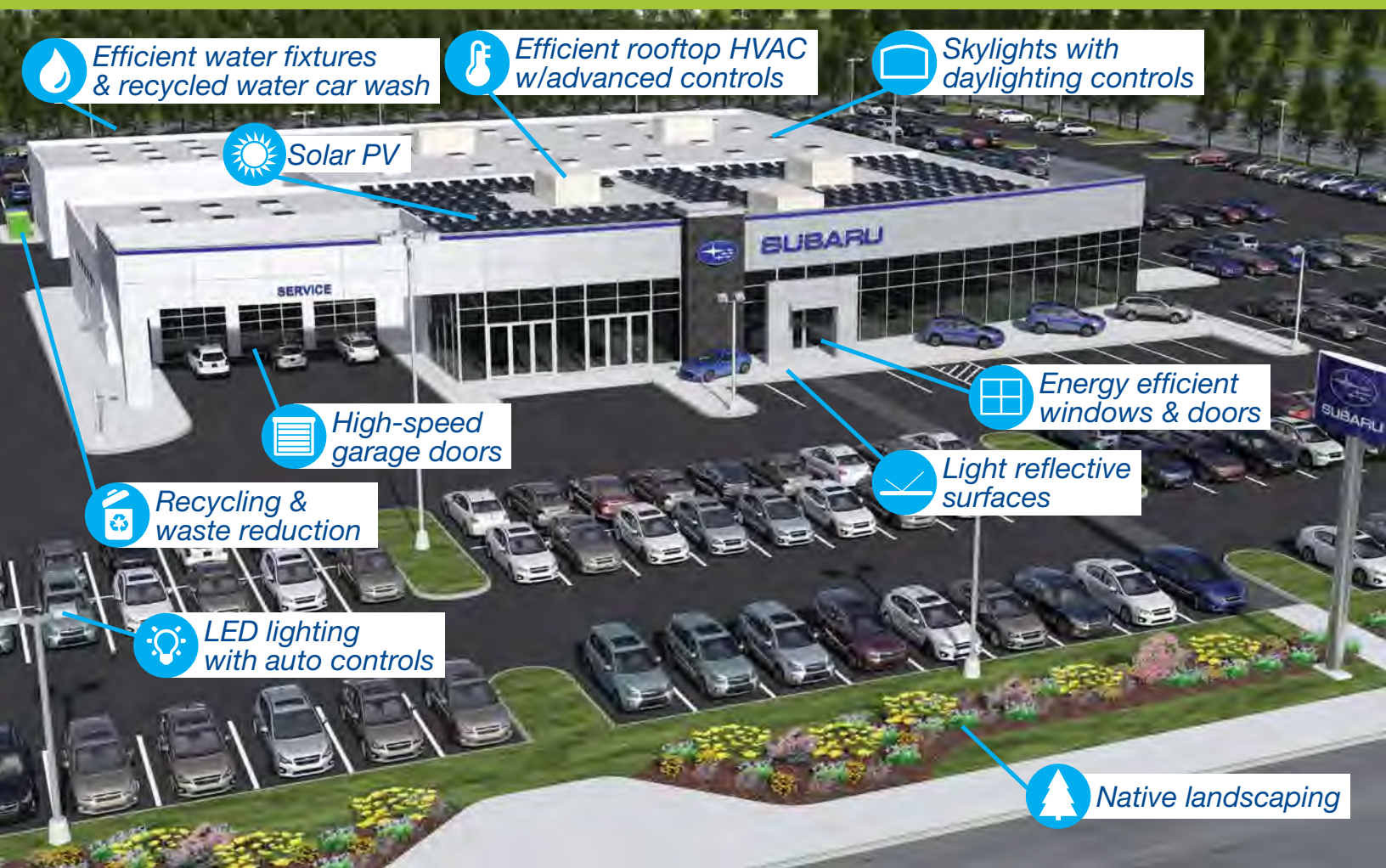
**M50**  
5' 7-1/2" H X 9' 11"  
X 8' 1-1/2" OAH



**M65**  
6' 4" H X 11' 1"  
X 8' 10" OAH

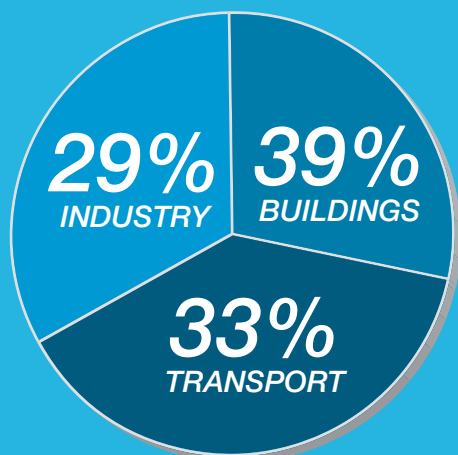


# Subaru Eco-Friendly Retailer Program



## Why It Matters:

CO Emissions by Source



## The Industry Opportunity:



17,000  
U.S. auto retailers



680 Million  
square feet of retail space



10,000 GWh  
of electricity consumed annually



## ABOUT THE PROGRAM

The Subaru Eco-Friendly Retailer Program is a voluntary environmental program designed for retailers who want to make a positive impact of their community and local environment.

This comprehensive program aims to help Subaru retailers minimize environmental impact by focusing on reduced energy consumption and cost savings while promoting community outreach.

The program focuses on five key areas of a facility:

- Energy Efficiency
- Water Conservation
- Recycling
- Waste Management
- Community Involvement

### ENERGY EFFICIENCY

Certified Eco-Friendly Retailers use occupancy sensors, LED lighting and programmable thermostats to minimize costs of daily operations and the amount of CO2 released into the atmosphere.

### WATER EFFICIENCY

Certified Eco-Friendly Retailers reduce water consumption by installing low flow fixtures and a water efficient car wash. They also conserve water by using non-potable sources for landscaping.

### RECYCLING

By recycling material such as paper; light metals; cardboard; small batteries; and plastic, Certified Eco-Friendly Retailers help divert massive amounts of material from landfills.

### WASTE MANAGEMENT

Certified Eco-Friendly Retailers ensure proper disposal of harmful waste including oil, coolant, batteries, and tires.

### COMMUNITY INVOLVEMENT

Caring about the environment extends beyond a retailer's facility. Certified Eco-Friendly Retailers are involved in community programs focused on preserving and protecting the environment. Some examples of community involvement include Adopt-A-Highway and Leave No Trace.

## HOW TO BECOME SUBARU ECO-FRIENDLY CERTIFIED

### ENROLL IN PROGRAM

Complete and submit the enrollment form available on Subarunet under Retail Environment

### TAKE SELF ASSESSMENT

Upon enrollment, you will be provided access to our environmental website with the complete program overview and self-assessment questionnaire. The completed questionnaire will help determine how close you already are to certification.

### CREATE AN ENVIRONMENTAL TEAM

This cross-functional team leads the rest of facility toward the goal of Subaru Eco-Friendly status.

### SCHEDULE ON-SITE INSPECTION

SOA arranges an on-site inspection by one of our consultants. The inspection is comprised of a checklist covering all five areas of the program and takes approximately five hours. The consultant meets with the Environmental Team after the inspection to review the results.

### CREATE A PLAN OF ACTION

Our consultant works with the Environmental Team to address any deficiencies.

### IMPLEMENT CHANGES

The Environmental Team makes the necessary changes or improvements to become certified.

### RECEIVE CERTIFICATION

Once a retailer earns enough points, SOA proudly certifies them as a Subaru Eco-Friendly Retailer. In addition, SOA will provide marketing materials and assist in promoting the retailer's achievement.

### COST TO RETAILERS

Although voluntary, the Subaru Eco-Friendly Retailer Program is comprehensive and includes a facility assessment performed by a professional consultant so there may be cost associated with participation in the program.



**Subaru Eco-Friendly Retailer Program**





# Subaru Eco-Friendly Best Practices Field Guide

## Energy Conservation

### Electricity reduction

- **Lighting**
  - Use lower wattage lamps or LED bulbs. LED is the preferred lighting for both interiors and exteriors.
  - Install On/Off controls such as motion detectors, dimming timers, and photocell switches to further regulate usage.
- **Efficient HVAC equipment** to include blower motors and AC compressors.
- **Compressors, pumps and fans** should have efficient/correct size motors

### Natural Gas Conservation

- **High efficiency furnaces or alternative systems** such as infrared reduce gas usage for heat.
- **Temperature control**
  - Lower temperatures during non-working hours.
  - Design and maintain building envelope integrity to minimize air/moisture infiltration.

### Alternative Energy

- **Recycling waste oil** to generate heat.
- **On-site electricity generation** from solar panels.
- **Natural lighting** through solar tubes, skylights and clerestory windows.
- **Geothermal units** to channel stable temperatures found below ground level.

## Water Use Reduction

### Water irrigation

- **Capturing of non-potable water** for irrigation and/or car washes.

## Waste to Landfill Reduction

### Limit Containers

- **Develop purchasing policies/practices** that limit the need for disposable items (Ex: Bulk Oil Program)

### Proper Disposal

- **Reuse/Renew/Recycle** appropriate items.
- **Disposal and recycling bins** should be accessible and correctly labeled.
- **Monitor flow** to confirm proper disposal.

### Reduce Plastic Use

- **Providing reusable cups, bottles and mugs** will reduce the use of Styrofoam and plastic.

## Community Involvement

### Environmental Involvement/Outreach

- **Communicates Eco-Friendly initiatives** to employees, customers and the community..
- **Work with the community** to further Eco-Friendly efforts already in place.
- **Capitalize marketing opportunities** by participating in local activities that interact with people of your local community.

Energy	Monthly Savings	Price Per Unit	Product specs	Suggested Make/Model
<b>Electricity</b>				
Lot Lighting switch from HID to LED	\$ 28.44	\$ 1,200.00	1100 to 250 watts	GE, Cree
Dimmers and Motion Detectors	\$ 8.00	\$ 100.00	EMS controlled	GE, Cree
Interior Lighting from Fluorescent to LED	\$ 1.83	\$ 71.00	T12 to LED	GE, Phillips
High Efficiency AC units	\$ 150.00	\$ 4,500.00	3 ton**	Rheem, Bryant, Trane
Upgrade Exit Signs to LED	.\$ 2.00	.\$ 15.00	Incandescent to LED	Home Depot, Lowes
<b>Natural Gas</b>				
High Efficiency furnace units	\$ 100.00	\$ 3,500.00	90+% eff. furnaces	Lennox, Bryant, Trane
<b>Both Electricity and Gas</b>				
Occupancy sensors for less used rooms	\$ 6.00	\$ 100.00	Total Room Sensor	Grainger, Leviton, Hubbel
Fast Track garage doors	\$ 75.00	\$ 14,000.00	2-3 second cycle	Rytec
Programmable thermostat	\$ 4.00	\$ 50.00	7 day	Honeywell, Nest, Lennox
Low E-windows	\$ 2.00	\$ 50.00	SHGC=.29, LSG=1.85	PPG
<b>Alternative Energy</b>				
Waste Oil Heaters	\$ 200.00	\$ 7,000.00	300,000 btu	Lanair,
Solar Panels	\$ 13.00	\$ 1,600.00	50 watt panels	Sunergy, DM Solar, Solar Cynergy
Skylights/Solar Tubes	\$ 9.00	\$ 400.00	10 inch	Solartube, Velux
<b>Water Efficiency</b>				
Low-flow toilets	\$ 12.50	\$ 200.00	Less than 1.5 GPF	TOTO, American Standard, Kohler
Low-flow faucets	\$ 5.00	\$ 10.00	1 gal per minute	Delta, Moen, Grainger
Car washes with recycled water	\$ 1,000.00	\$ 30,000.00	90% Recycled water	Broadway
Efficient lawn irrigation systems, xeriscape	\$ 200.00	\$ 5,000.00	Low flow system	Rain Bird, Krain
<b>Waste</b>				
Reduced Waste volume by recycling	\$ 10.00	\$ 200.00	Multiple waste bins	Granger
Reduced Waste by purchasing practices	\$ 20.00	\$ 500.00	Water bottles vs cooler	Elkay
Replace Styrofoam coffee cups w/ceramic	.\$ 10.00	.\$ 100.00	Styrofoam vs Ceramic	
Elimination of bathroom hand towels	\$ 100.00	\$ 1,300.00	100 uses per day	Dyson, Xlerator

\*Claims and recommendations are based on information provided by [www.energy.gov](http://www.energy.gov) and [www.energystar.gov](http://www.energystar.gov)

\*\* Additional or larger units may be in place



**PROOF OF SERVICE  
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Nelson Mullins Riley & Scarborough LLP and my business address is 19191 South Vermont Avenue, Suite 900, Torrance, CA 90502.

On July 20, 2022 I served the foregoing document entitled

**DECLARATION OF DEAN A. BAKKUM IN SUPPORT OF RESPONDENT  
SUBARU OF AMERICA, INC.'S RESPONSE TO PETITION**

on all the appearing and/or interested parties in this action by placing a true copy thereof as follows:

LAW OFFICES OF GAVIN M. HUGHES

Gavin M. Hughes

Robert A. Mayville, Jr.

3436 American River Drive, Suite 10

Sacramento, CA 95864

T: (916) 900-8022

E-mail: [gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)

[mayville@hughesdealerlaw.com](mailto:mayville@hughesdealerlaw.com)

*Counsel for Petitioner*

**NEW MOTOR VEHICLE BOARD**

1507 21st Street, Suite 330

Sacramento, CA 95811


Email: [nm vb@nm vb.ca.gov](mailto:nm vb@nm vb.ca.gov)

[robin.parker@nm vb.ca.gov](mailto:robin.parker@nm vb.ca.gov)

[danielle.phomsopha@nm vb.ca.gov](mailto:danielle.phomsopha@nm vb.ca.gov)

**[X] BY ELECTRONIC TRANSMISSION:** I transmitted a PDF version of this document by electronic mail to the party(s) identified above and/or on the attached service list using the email address(es) indicated.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was Executed on July 20, 2022 at Torrance, California.

  
Jenny Prado

VIA EMAIL

New Motor Vehicle Board

Received  
July 20, 2022

FILED

New Motor Vehicle Board

Date: 7-20-22

By: dp

Lisa M. Gibson (SBN 194841)  
Amy M. Toboco (SBN 149508)  
NELSON, MULLINS, RILEY &  
SCARBOROUGH  
19191 South Vermont Avenue, Suite 900  
Torrance, CA 90502  
Telephone: 424.221.7400  
Facsimile: 424.221.7499  
Email: [lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)  
[amy.toboco@nelsonmullins.com](mailto:amy.toboco@nelsonmullins.com)

Attorneys for Respondent  
SUBARU OF AMERICA, INC.

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, INC. dba  
COURTESY SUBARU OF CHICO,

Petitioner,

v.

SUBARU OF AMERICA, INC.,

Respondent.

Petition No. P-463-22

**DECLARATION OF LISA M. GIBSON  
IN SUPPORT OF RESPONDENT  
SUBARU OF AMERICA, INC.'S  
RESPONSE TO PETITION**

1 I, Lisa M. Gibson, declare and state as follows;

2 1. I am an attorney at law, duly licensed to practice before all courts of the State of  
3 California. I am a Partner with the law firm of Nelson, Mullins, Riley & Scarborough LLP, counsel  
4 of record for Respondent Subaru of America, Inc. ("SOA") in the above-captioned matter. I make  
5 this Declaration in support of SOA's Response to Petition. I have personal knowledge of the facts  
6 set forth in this declaration and, if called as a witness, could and would testify competently to such  
7 facts under oath.

8 2. On April 5, 2022, I corresponded with Gavin Hughes, counsel for Petitioner Courtesy  
9 Automotive Group, Inc. dba Courtesy Subaru of Chico ("Courtesy"), first by my telephoning him,  
10 and later that day, by email. The substance of my communications were regarding the outstanding  
11 issues between Courtesy and SOA, both of which included discussions and negotiations about the  
12 parties' multiple disputes, including but not limited to construction of the proposed facilities, the  
13 letter of credit and Courtesy's sign package request. As part of the telephone conversation, I made  
14 an offer of compromise in an effort to discuss a final resolution of any and all disputes existing  
15 between Courtesy and SOA. This offer of compromise involved the potential sale of Courtesy's  
16 dealership, among other terms. These statements and all that followed with reference to the potential  
17 sale of Courtesy's dealership are statements and negotiations relating back to this offer of  
18 compromise and, as such, are inadmissible for the purposes being offered by the Petition.

19 3. In addition, Courtesy attaches to the Petition an email from me to Mr. Hughes dated  
20 May 10, 2022 and marked as Exhibit 4 which related to a sign package. The information contained  
21 in that email included unambiguous statements leading to negotiations and an offer to compromise  
22 by way of a hold harmless agreement. These were communications made in furtherance and in  
23 negotiation of resolving a sign package dispute that had arisen between SOA and Courtesy. As  
24 such, the use by Courtesy of these good faith negotiations cannot be admissible for the purpose of  
25 any admissions or declaration against SOA's interest under the California Evidence Code.

26 ///

27 ///

28 ///

1           4.     Following those earlier exchanges and conversations, there have been several  
2 additional communications between Mr. Hughes and myself, written and oral, regarding that offer,  
3 including the correspondence attached to the Petition as Exhibit 6. My letter dated May 25, 2022  
4 was part of ongoing settlement discussions and negotiations between myself and Mr. Hughes that  
5 date back to early April when I made the initial formal offer of compromise. These statements and  
6 communications made in reference to my earlier telephone conversation and correspondence with  
7 Mr. Hughes regarding settlement are now being improperly raised and disclosed in the Petition in  
8 Exhibit 6.

9           5.     Exhibit 5 of the Redacted Petition contains references, by the exact cite to a paragraph  
10 and quote of the language in the Confidential Agreement, which are being disclosed in this Exhibit  
11 5 without SOA's consent. As such, Exhibit 5 of the Redacted Petition is a violation of the  
12 Confidential Stipulated Decision and the requirement of the Board that the Confidential Stipulated  
13 Decision remain under seal.

14           6.     As noted above, I also corresponded with Courtesy's counsel about Mr. Pajouh's  
15 April 4, 2022 email to Ray Smit requesting a sign package from SOA. At that time, Courtesy had  
16 threatened to file a lawsuit against SOA and SOA did not yet know the full substance of this lawsuit.  
17 Accordingly, on behalf of SOA, I directly responded to Courtesy's counsel on April 5, 2022 about  
18 this request. This was done in anticipation of litigation by Courtesy.

19           7.     Courtesy filed its lawsuit in the Superior Court of the State of California, County of  
20 Butte, Case No. 22CV00702, entitled *Courtesy Automotive Group, Inc. dba Courtesy Subaru of*  
21 *Chico v. Subaru of America, Inc.* on April 6, 2022. The true and complete lawsuit is attached to  
22 Respondent Subaru of America, Inc.'s Request for Official Notice in Support of Verified Response  
23 to Petition as Exhibit 2. At no time during either my phone conversation or email exchange with  
24 Courtesy's counsel or afterwards, which occurred no more than 24 hours earlier, did Courtesy's  
25 counsel ever mention, ever raise or attempt to meet and confer with me about the filing of this  
26 lawsuit.

27     ///

28     ///

1 I declare under penalty of perjury under the laws of the State of California that the foregoing  
2 is true and correct.

3 Executed this 20th day of July, 2022, at Torrance, California.

4  
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6 

7 Lisa M. Gibson  
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**PROOF OF SERVICE  
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Nelson Mullins Riley & Scarborough LLP and my business address is 19191 South Vermont Avenue, Suite 900, Torrance, CA 90502.

On July 20, 2022 I served the foregoing document entitled

**DECLARATION OF LISA M. GIBSON IN SUPPORT OF RESPONDENT SUBARU  
OF AMERICA, INC.'S RESPONSE TO PETITION**

on all the appearing and/or interested parties in this action by placing a true copy thereof as follows:

**LAW OFFICES OF GAVIN M. HUGHES**

Gavin M. Hughes  
Robert A. Mayville, Jr.  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
T: (916) 900-8022  
E-mail: [gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)  
[mayville@hughesdealerlaw.com](mailto:mayville@hughesdealerlaw.com)

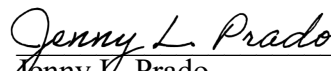
***Counsel for Petitioner***

**NEW MOTOR VEHICLE BOARD**

1507 21st Street, Suite 330  
Sacramento, CA 95811  
Email: [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov)  
[robin.parker@nmvp.ca.gov](mailto:robin.parker@nmvp.ca.gov)  
[danielle.phomsopha@nmvp.ca.gov](mailto:danielle.phomsopha@nmvp.ca.gov)

**[X] BY ELECTRONIC TRANSMISSION:** I transmitted a PDF version of this document by electronic mail to the party(s) identified above and/or on the attached service list using the email address(es) indicated.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on July 20, 2022 at Torrance, California.

  
Jenny L. Prado



VIA EMAIL

New Motor Vehicle Board

Received  
July 20, 2022

FILED

New Motor Vehicle Board

Date: 7-20-22

By: dp

Lisa M. Gibson (SBN 194841)  
Amy M. Toboco (SBN 149508)  
NELSON, MULLINS, RILEY &  
SCARBOROUGH  
19191 South Vermont Avenue, Suite 900  
Torrance, CA 90502  
Telephone: 424.221.7400  
Facsimile: 424.221.7499  
Email: [lisa.gibson@nelsonmullins.com](mailto:lisa.gibson@nelsonmullins.com)  
[amy.toboco@nelsonmullins.com](mailto:amy.toboco@nelsonmullins.com)

Attorneys for Respondent  
SUBARU OF AMERICA, INC.

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, INC.  
dba COURTESY SUBARU OF CHICO,

Petitioner,

v.

SUBARU OF AMERICA, INC.,

Respondent.

Petition No. P-463-22

**DECLARATION OF RAYMOND SMIT  
IN SUPPORT OF RESPONDENT  
SUBARU OF AMERICA, INC.'S  
RESPONSE TO PETITION**

1 I, Raymond Smit, declare and state as follows;

2 1. I am employed by Subaru of America, Inc. ("SOA") as the Zone Retailer  
3 Development Manager for the San Francisco Zone of SOA. I have held this position since February,  
4 2018. As part of my responsibilities, I coordinate design intents performed at SOA retailers in the  
5 San Francisco Zone and regularly receive the design intent deliverable ("DID") binders at the Zone  
6 offices located in Pleasanton, California. My responsibilities also include processing dealer  
7 agreement changes for retailers in the Zone in coordination with SOA's Western Region in Denver,  
8 Colorado and National headquarters in Camden, New Jersey.

9 2. Upon receipt of any DID binders from our design intent vendor ("Feltus Hawkins), I  
10 either send or hand deliver a hard copy of the binder to a retailer by overnight mail and also send an  
11 electronic version by email. In March, 2018, upon receipt of the DID binder for Courtesy Subaru  
12 of Chico (the "Retailer") from Mr. Dean Bakkum of Feltus Hawkins, consistent with my practice, I  
13 would have delivered the DID binder by the same methods to the Retailer.

14 3. Attached as Exhibit "A" to my declaration is the true and accurate copy of the DID  
15 binder for the Retailer. It includes five pages of sign structural and electrical specifications. Sign  
16 structural and specifications are always included in the DID binders provided to any Subaru retailer.  
17 There have been no significant changes to these specifications since the DID binder was finalized  
18 for this Retailer in 2018.

19 4. Upon notification to me by any retailer that a DID binder was not received, I would  
20 promptly send another copy by overnight mail and electronically. I have never been notified that  
21 the Retailer did not receive its DID binder.

22 5. A sign approval package with SOA is not a prerequisite for the purpose of providing  
23 additional information about the DID, including sign structural and electrical specifications.

24 6. The major distinction between what is provided to a retailer in a sign approval package  
25 (and has not already been provided in the DID binder) is a Subaru Dealership Sign Lease Agreement  
26 and its Addenda. The Subaru Dealership Sign Lease Agreement provides the terms and conditions  
27 for the retailer's lease of Subaru-branded signs and Addendum "A" provides a monthly lease quote.  
28

1 The Subaru Dealership Sign Lease Agreement is between Subaru Sign Leasing Corp. (a wholly-  
2 owned subsidiary of SOA, "SLC") and the retailer. There are no structural or electrical  
3 specifications provided in either the Subaru Dealership Sign Lease Agreement or its Addenda.

4 7. The Retailer neither orders Subaru-branded signs directly from SOA's sign vendor  
5 nor owns them. SLC orders and owns the signs, then leases them to retailers pursuant to an executed  
6 Subaru Dealership Sign Lease Agreement. These signs are ordered from and held in inventory stock  
7 by the sign vendor until they are ready to be installed. Another vendor retained by SLC installs the  
8 signs, not the Retailer. The Retailer does not pay the monthly lease payment for signs until they are  
9 installed. Signs for a newly constructed dealership would not be installed (i) unless SOA has  
10 provided its consent for the Retailer's relocation into the new facility, and (ii) until the signs are  
11 fully permitted and the dealership is ready to become operational.

12 8. The Subaru Dealership Sign Lease Agreement for the Retailer's lease of Subaru-  
13 branded signs for the authorized premises located at 896 East Avenue in Chico, California is  
14 attached as Exhibit "B".

15 9. As part of my responsibilities, I would know of any amendments, modifications, or  
16 termination of the Retailer's Subaru Dealer Agreement. The amendment to the Facility Addendum  
17 dated May 21, 2020 is the last amendment to this Retailer's Subaru Dealer Agreement. Also, the  
18 status of the Subaru Dealer Agreement for this Retailer is active, and not terminated.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing  
20 is true and correct.

21 Executed on July 18, 2022, at Pleasanton, California.

22   
23 Raymond Smit

# **EXHIBIT A**



Courtesy Subaru of Chico  
Chico, CA

Design Intent



FELTUS HAWKINS DESIGN  
INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT

March 26, 2018

Shahram Mihanpajouh  
**Courtesy Subaru of Chico**  
2520 Cohasset Road  
Chico, CA 95973

Mr. Mihanpajouh,

Please find enclosed the Design Intent Deliverable package for Courtesy Subaru of Chico. This package incorporates the new Subaru Facility Image components, which include the exterior design and materials, interior material and finishes, and layout of furniture and millwork into your facility.

This package includes typical specifications and material samples for the furnishings for the required areas of your facility. We can also provide office furniture for all other areas in your retail center. There are 2 Levels of furniture available for the new program as shown in the furniture section. When you are ready to review furniture, we will layout the furniture Level that fits your needs and provide you an exact furniture quotation. We can discuss all optional areas at that time.

Important Notes:

1. The facility plans included in the D.I.D. are being compared to the current Minimum Standards and Operating Guidelines (MSOG) to confirm compliance. The MSOGs are updated annually, usually in March. If your project will not be completed before the MSOG is updated, you should consider exceeding minimum requirements for anticipated growth. Your Subaru zone personnel can assist with estimated growth calculations.
2. The current finish schedule takes precedence over all previous finish schedules; if you are not sure you have the most current schedule, confirm with FH Design or Subarunet/Retail Environment/Signature Facility Program/Finish Schedule. These documents have been created by FH Design to illustrate the design intent as approved by SUBARU OF AMERICA, INC. (SOA). Any desired exceptions to the specifications or finish schedule must be approved in writing by FH Design and SOA. Please submit exception requests, along with drawing, specifications and samples as needed to FH Design for review.
3. This Design Intent Documentation is valid for 18 months from the date of this letter. If meaningful construction has not begun within 15 months from the date of this letter, your facility plans must be reassessed to confirm compliance. A reassessment fee will be charged to the Retailer. Please contact your Subaru zone personnel for additional information.

If you have any questions or need additional information, please contact me.

Sincerely,

Dean A. Bakkum  
Senior Director





FELTUS HAWKINS DESIGN

---

FH DESIGN TEAM CONTACT INFORMATION

---

DEAN BAKKUM

Design Director, LEED AP BD+C  
dbakkum@fhdesign.com  
615.250.8627

DANIELLA GATLIN

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dgatlin@fhdesign.com  
615.250.8628

LAUREN WOOD

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lwood@fhdesign.com  
615.250.9197

JASON LOWE

Project Coordinator  
jlowe@fhdesign.com  
615-250-8391

LYDIA MELTON

Project Coordinator  
lmelton@fhdesign.com  
615-320-8251

---

INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT

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This binder contains the drawings, photographs, and information required to establish the **design intent** for incorporating the Subaru Facility Image into this facility. The binder includes the following:

**Assessment Information:** Meeting notes, dealer's needs, and photo documentation, if available, are included in this section to represent the existing conditions of the facility and to determine the needs of the dealership.

**Design Intent:** Reduced sized copies of the proposed plan and elevations are included in this section of the binder for easy reference. 1/8" scale prints of the floor plan and elevations are included as a separate set. A rendering to show the new facility will also be shown in this section.

**Building Finishes:** The required specifications and placement of building finishes for the Subaru Facility Image are listed in the Finish and Color Schedule. Samples of the major finishes are enclosed.

**Image Elements:** This section contains photographs of required merchandising elements necessary to fulfill the Subaru Facility Image Program. Required Image Elements are also located on the floor plan. You can also go to [subaru.dcim.com](http://subaru.dcim.com) for Requirements and order information.

**Furniture:** Included in this section are typical furniture 3-d layouts and a furniture cost estimation summary. Actual pricing will be generated at time of order after a furniture review to determine Level of furniture and individual needs of Dealership.

**Millwork / Fixtures:** This section includes millwork drawings for areas such as the Greeter and Cashier.

**Signage Elements:** Pylons and channel set letters provided by Philadelphia Sign Company 856-829-1460.

*Typically, this design intent information is provided to the architect or design/build firm for use in preparing the construction and permitting documents.*

## **SUBARU FACILITY DESIGN PROGRAM – SUMMARY REPORT**

ON SITE DESIGN INTENT REVIEW MARCH 23<sup>RD</sup> & 24<sup>TH</sup>.

COURTESY SUBARU OF CHICO – CHICO, CA

PREPARED BY: MICHAEL VENTOURAS 03/04/18.

### **REPORT:**

Present for the kick off meeting were Jerry Pajouh, local architect, Lisa Kline and myself. I started the meeting by presenting the Subaru image program and explained the survey process. We then developed a design program. Scope of work for this project is to design a new facility to meet Retailer's needs, Subaru's Image and Minimum Standard requirements. At this point the project is required to meet Exclusive requirements.

The site for this project is to be shared with Subaru, Volvo, BMW, Mercedes, Cadillac, Buick/GMC, Body Shop / Service & Parts bldg. and Used Car showroom for all brands. The area that we are working with is 9.6 acres. Local Architect had already started the design process and presented site plan, floor plan and elevations. To get everything on this site, the Architect came up with duplex like showrooms and lined them up on the site like row houses. He proposed one building to house service, parts and body shop for all franchises and another building for Used Cars (all brands). The plan is very tight with no room for future growth. The plans do not meet Exclusivity requirements and I was very concerned that we would not meet Minimum Standard requirements as well. The showroom layout presented was basic and Jerry explained that we could set up the interior space as we needed.

Lisa and I explained that this plan would not satisfy Subaru's requirements, but Jerry was adamant that we worked with space shown. I explained that I could not present a solution that did not meet Subaru's requirements and that tomorrow's presentation had to reflect Exclusive facility, MS requirements and Image requirement.

After the meeting, Lisa and I visited the site. I then started the design process. By the next morning I had proposed floor plan, site plan and elevations. Jerry was not happy with solution but requested some revisions. I explained that I would complete revisions and email them to everyone for review. I also explained that I would not move forward with final DID's until I received approval to move forward.

During the course of the design process. Subaru changed this project to meet Separate Touch Point facility requirements. Several months later and, after generating several proposed plans, Lisa gave me a plan to move forward with that was designed by local the Architect. She requested a few additional revisions and told me to complete final plans.

These plans were not designed by myself, only some of the interior layout. I modified the elevations to meet Subaru's requirements. Otherwise, these plans are designed completely by Local Architect.

### **SITE:**

Subaru pylon sign is shown on site plan.

Off-site parking is required.

### **BUDGET:**

Budget was not provided.

### **ECO FRIENDLY PROGRAM:**

Jerry seemed interested in Eco Friendly program.

### **Furniture & Finishes:**

All new furniture and finishes are required

### **Express Service:**

They are interested in Express Service. Plans show express lane and service stalls.



FELTUS HAWKINS DESIGN

## Pre-Design Questionnaire -

Date: March 03, 2018

## Courtesy Subaru

Chico, CA

### Image

Facility	Description	Dealer Commitment
I1	Subaru Signature Facility Exterior Image	Phase 2
I2	Subaru Signature Facility Interior Image	Phase 2

### Sales

Facility	Description	Existing	Proposed
F1	Subaru New Vehicle Showroom Area Designation	Exclusive	Exclusive
F2	Subaru New Vehicle Showroom Units		7
F3	Subaru New Vehicle Showroom Area	na	2937
F4	Certified Subaru Sales Manager Office Area		438
F5	Certified Subaru F & I Manager Office Area		198
F6	Certified Subaru Sales Consultant Area		556
F7	General Office Area		na
F8	E-Commerce/CRM		
*			

### Lounge

Facility	Description	Existing	Dealer Commitment
C1	Subaru Customer Lounge Area Designation	Exclusive	Exclusive
C2	Subaru Customer Lounge Area	na	1275
C3	Internet Access/ WiFi Access	Y	Y

INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT

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**Pre-Design Questionnaire**  
**Courtesy Subaru of Chico**  
Page 2 of 4

**Service**

Facility	Description	Existing	Dealer Commitment
S1	Subaru Service Stalls (Dedicated)	na	9
S2	Subaru Service Lifts (Dedicated)	na	9
S3	Subaru Service Advisor Area Designation	Exc	3

**Storage**

Facility	Description	Existing	Dealer Commitment
SS1	Subaru New Vehicle Display & Storage (Dedicated Spaces)		29
SS2	Subaru Used Vehicle Storage (Dedicated Spaces)		shared
SS3	Subaru Service Vehicle Storage (Dedicated Spaces)		24
SS4	Subaru Service Customer Parking (Dedicated Spaces)		6
SS5	Subaru Sales Customer Parking (Dedicated Spaces)		14
SS6	Subaru Employee Parking		Off-site
SS7	Subaru Technician Lockers		y
SS8	Subaru Tool Storage Area		y
SS9	Subaru Parts Storage Area		1606
	Secure Parts Delivery Area	Y	Y
	Service Drive		922

**General Services**

	Existing No.	Proposed No.
Lunchroom	na	Y
Restrooms (Women)		1
Sinks		1
Toilets		1
Restrooms (Men)		1
Sinks		1
Toilets		1
Urinals		0

Additional Comments:
<b>Off-site parking required.</b>

## **G. Building and Lot Area Summary**

**Please provide estimated square footage for existing and required spaces.**

	<b>Existing</b>	<b>Proposed</b>
Showroom		<b>2937</b>
Offices		
Service Reception		<b>922</b>
Parts		<b>1606</b>
Service (Mechanical)		<b>4135 Subaru only</b>
Body Shop		<b>na</b>
Building Area (Total)		<b>na</b>
New Unit Display		<b>49</b>
New Unit Storage		
Pre-Owned Display		<b>shared</b>
Sales Customer Parking		<b>14</b>
Service Parking		<b>34</b>
Employee Parking		<b>Off-site</b>
Total Vehicles		<b>83 Subaru only</b>
Paved Lot Area (Total)		<b>na</b>

Additional Comments:



## Subaru Pre-Design Questionnaire

### Employee Synopsis

Dept/ Position	Quantity	Dept/ Position	Quantity
<b>New Car Sales</b>		<b>Customer Service</b>	
Sales Manager	1	Greeter	0
Sales Consultants	7	Cashier	0
F & I Manager / Dir	2	Customer Svc Mgr	
F & I Consultants	-	<b>Service</b>	-
Fleet/Leasing Mgr.	-	Svc Manager	1
Business Dev Mgr	-	Shop Foreman	0
<b>Used Car Sales</b>		Dispatch	0
Sales Manager		Warranty Clerk	0
Sales Consultants		Technicians	
F & I Consultants		Detailing	
		Porter	
<b>Administration</b>		Service Adv's	3
Dealer	0	<b>Parts</b>	
Dealer Admin		Parts Manager	
General Manager	1	Tech Counter	
GM Admin		Retail Counter	
Controller	0	Wholesale Counter	
Office Manager	0	Shipping/Receiving	Y
Clerical	0	Stocking Clerk	-
		<b>Body Shop</b>	
		Manager	
		Technicians	

















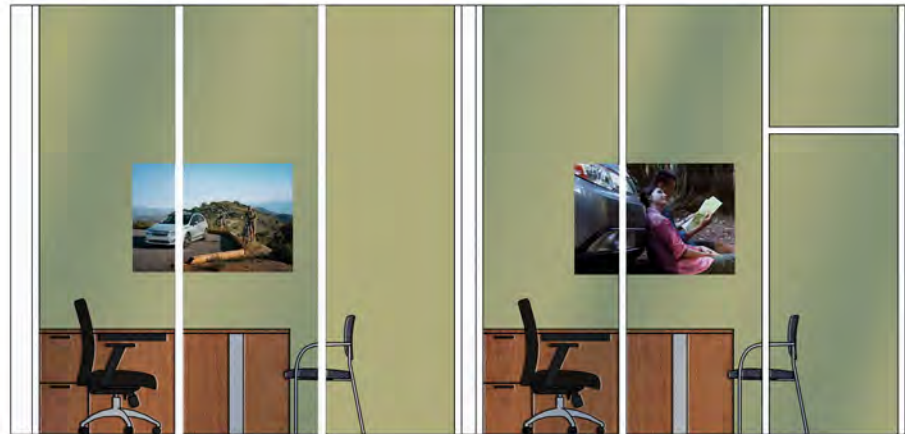


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INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT

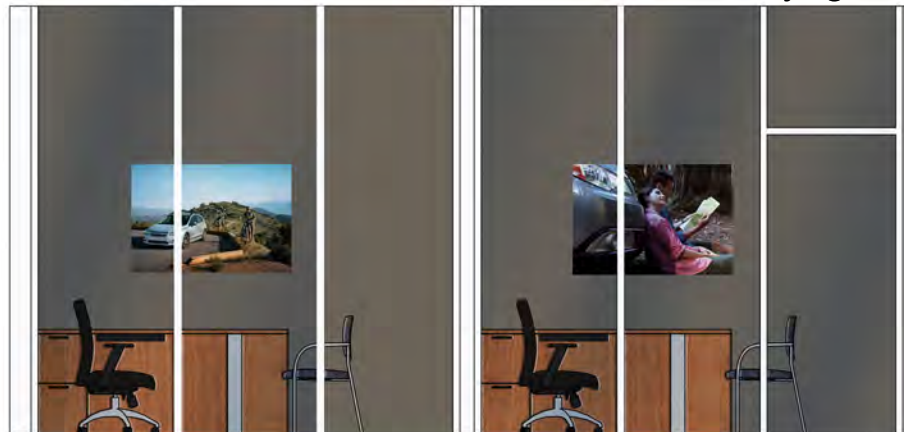




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Accent Color: SW 6423 Ryegrass



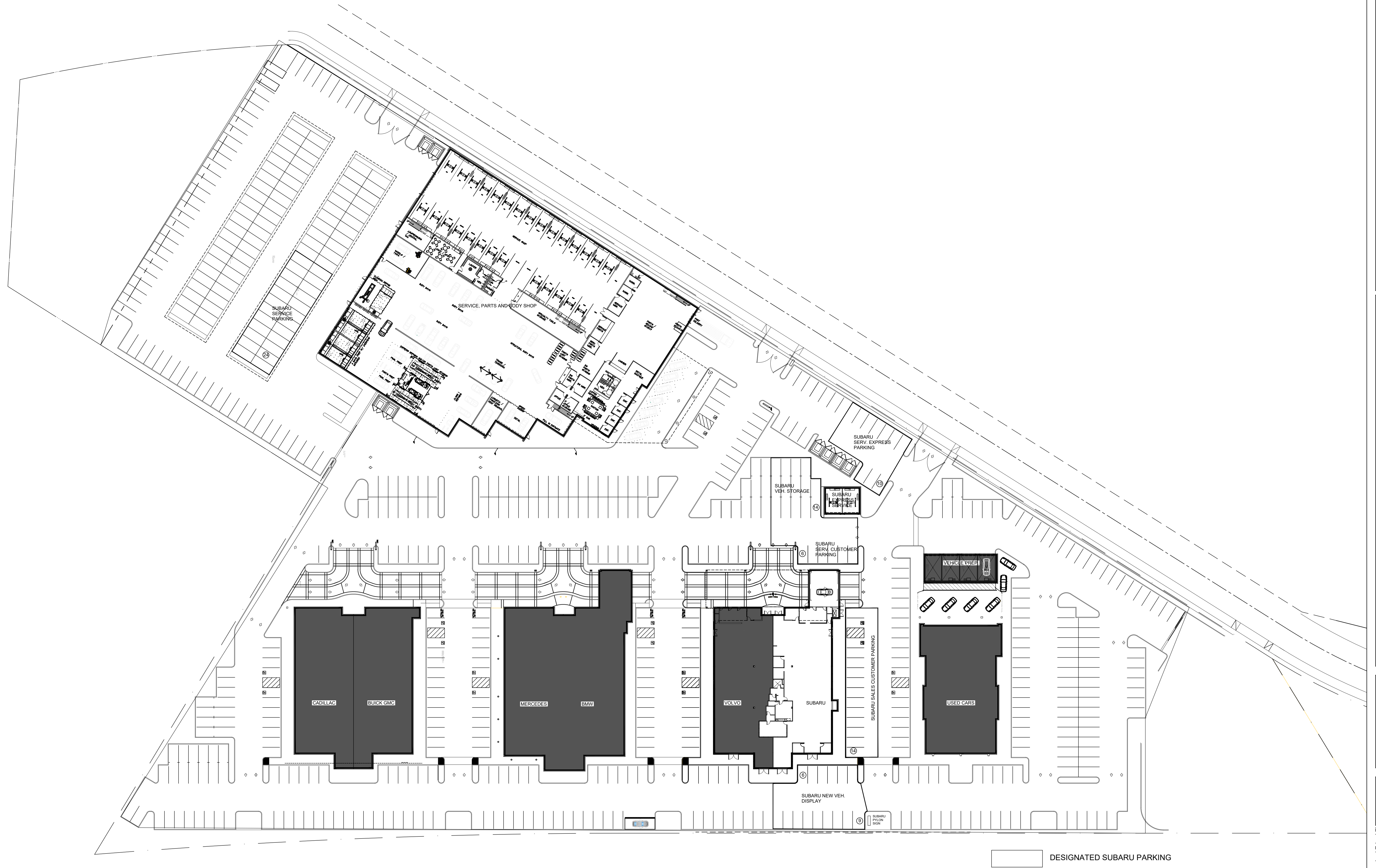
Accent Color: SW 7047 Porpoise



FELTUS HAWKINS DESIGN



**SUBARU**



## PROPOSED SITE PLAN

1" = 40'-0"

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### Proposed Site Plan COURTESY SUBARU of CHICO

CA

Chico

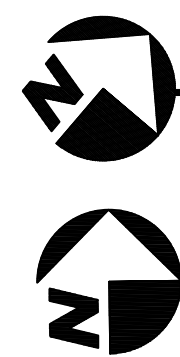
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FHD project # 17021-1  
drawn by MGV  
checked by LHM

issue 03/03/18

revision  
△  
△  
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△  
△  
△





PROPOSED FLOOR PLAN - SHOWROOM

1/8"

PLAN NORTH

SUBARU MINIMUM STANDARDS GUIDELINES					RECOMMENDED ITEMS
	2017 STANDARDS	2020 FOX	PROPOSED	DEFICIENT/NOTES	
SALES					① Floor Mounted Outlet
New Vehicle Showroom Units	4		7		② Wallpaper Graphic
New Vehicle Showroom Area	1,500 S.F.		2,937 S.F.		③ Wall Mounted Stretch Frame Graphic
Certified Subaru Sales Manager Office Area	319 S.F.		438 S.F.	Includes GM office	REQUIRED ITEMS
Certified Subaru F&I Manager Office Area	165 S.F.		198 S.F.		④ Performance Pylons
Certified Subaru Sales Consultant Area	360 S.F.		556 S.F.		⑤ Aluminum Poster Frames
General Office Area	VERIFY SP AV		na		⑥ Digital or Graphic Wheel Stands
LOUNGE					⑦ Service Media Center
Customer Waiting Area	320 S.F.		1,275 S.F.		⑧ Accessory Display
SERVICE					⑨ Digital Showroom Display
Service Stalls (Dedicated)	8	8	9	2 Subaru Express	
Service Lifts (Dedicated)	5	5	9		
Service Writers	2		3		
STORAGE					
New Vehicle Display & Storage (Dedicated Spaces)	100		29	Off-site parking required	
Used Vehicle Storage (Dedicated Spaces)	59		0	See shared Used Car	
Service Vehicle Storage (Dedicated Spaces)	24		24		
Service Customer Parking (Dedicated Spaces)	4		6		
Sales Customer Parking (Dedicated Spaces)	5		14		
Employee Parking	VERIFY SP AV		off-site		
Parts Storage Area	1,600 S.F.	1,600 S.F.	1,606 S.F.		

FELTUS HAWKINS DESIGN

1207A McGavock St. 615.244.4328

Nashville, TN 37203 www.fhdesign.com

FH

Proposed Floor Plan - Showroom

COURTESY SUBARU OF CHICO

Chico

CA

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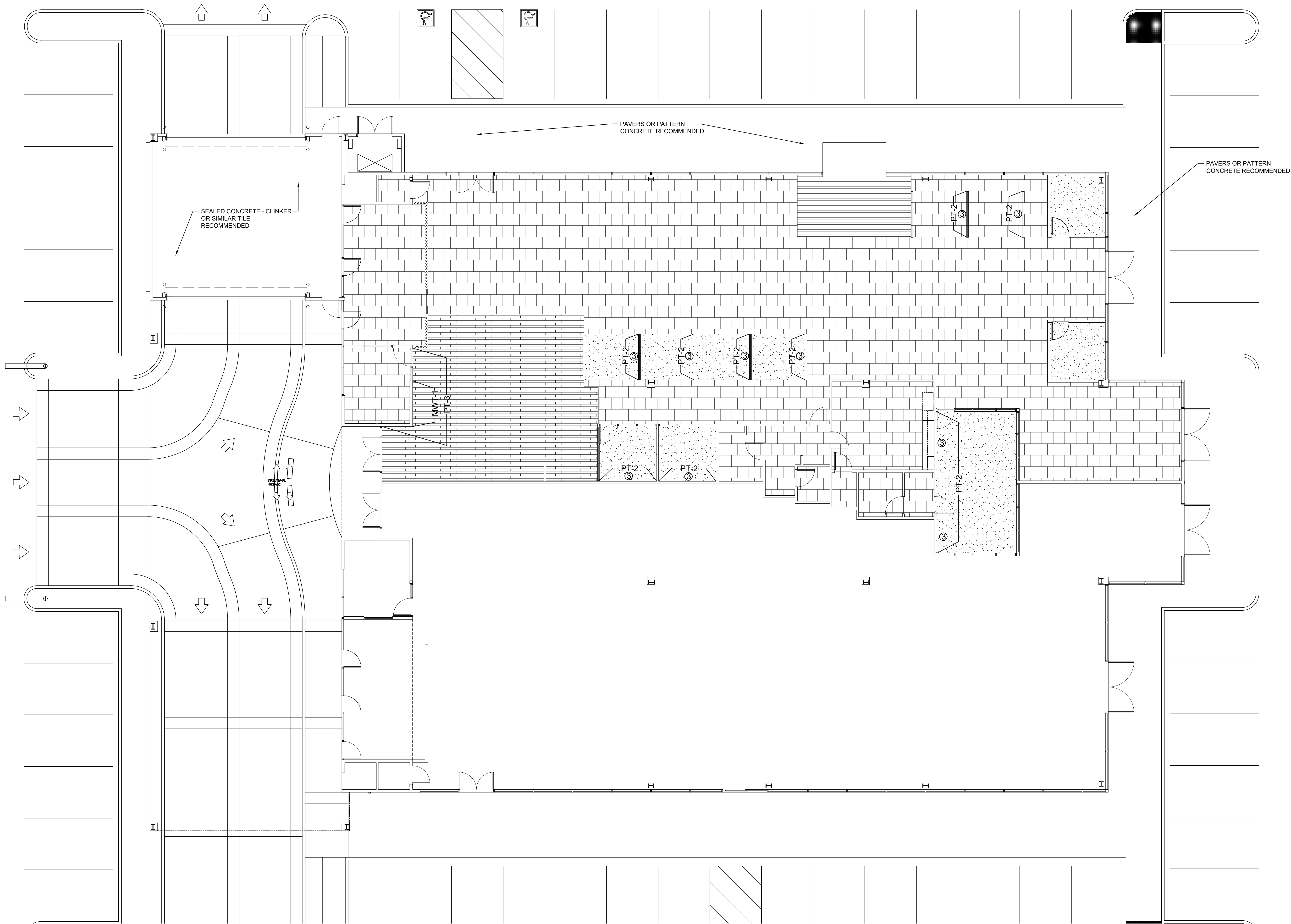
FHD project # 17021-1

drawn by MGW

checked by LHM

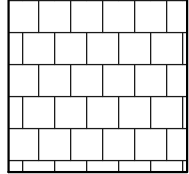
issue 03/03/18

revision

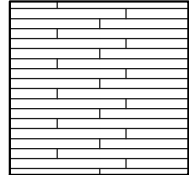


PROPOSED FLOOR FINISH PLAN

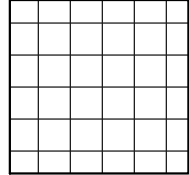
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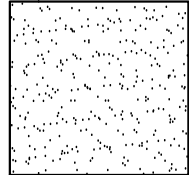
Porcelain Tile



Wood Floor



Porcelain Tile



Carpet

See Finish Schedule for finish requirements and specifications.

Proposed Floor Finish Plan

COURTESY SUBARU OF CHICO

Chico

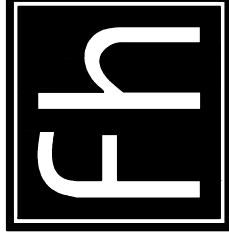
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FHD project #	17021-1
drawn by	MGV
checked by	LHM

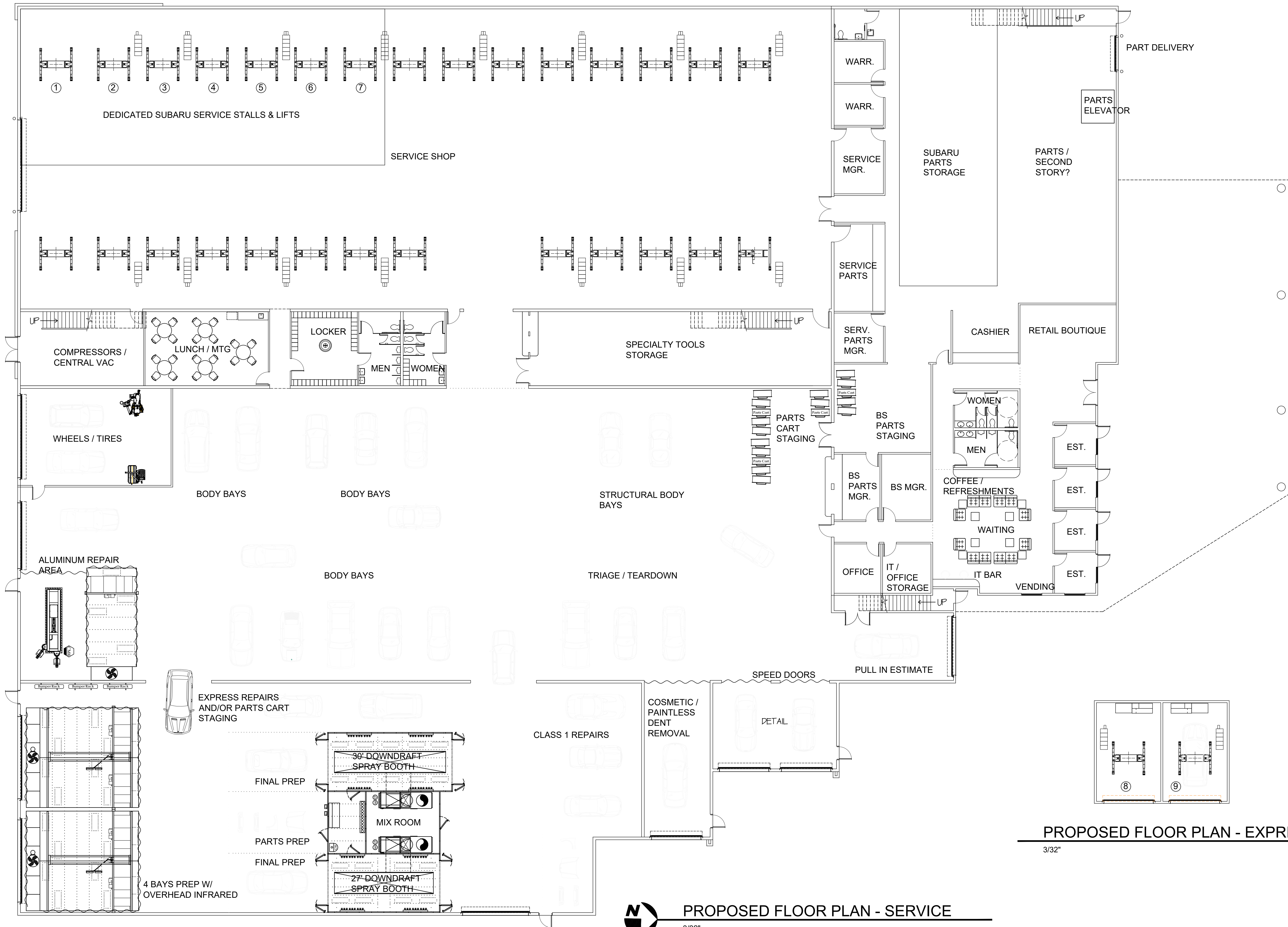
issue 03/03/18

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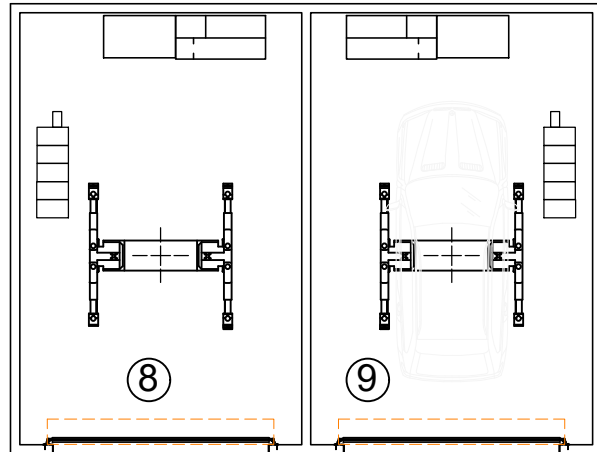
FELTUS HAWKINS DESIGN

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Nashville, TN 37203  
www.fhdesign.com



PROPOSED FLOOR PLAN - SERVICE

3/32"



PROPOSED FLOOR PLAN - EXPRESS

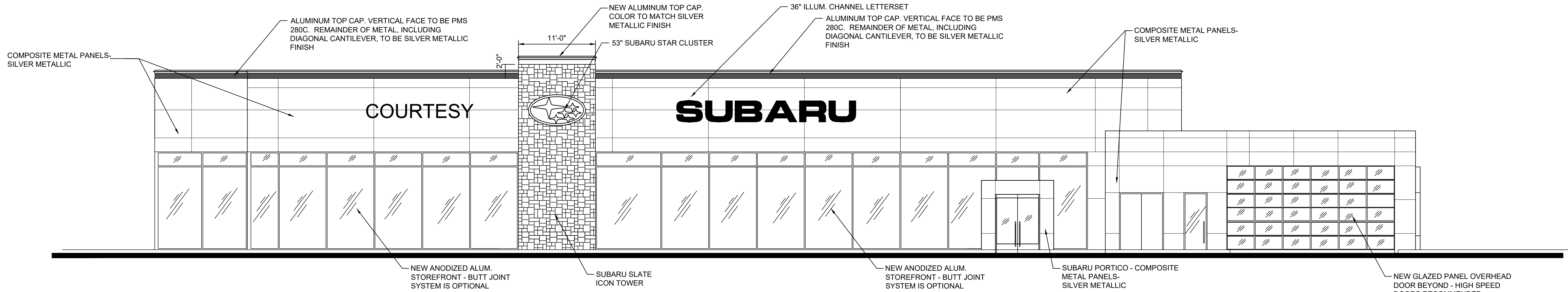
3/32"

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FHD project #	17021-1
drawn by	MGV
checked by	LHM

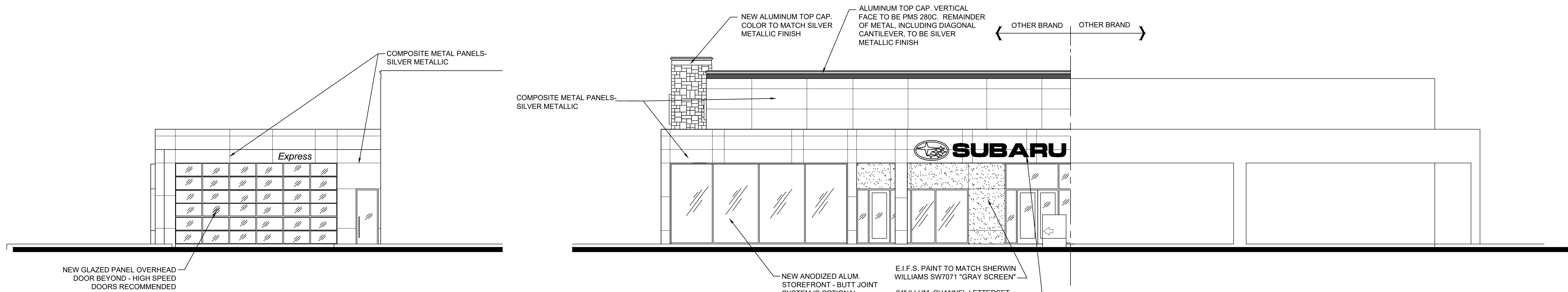
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PROPOSED NORTH ELEVATION

1/8" = 1'-0"

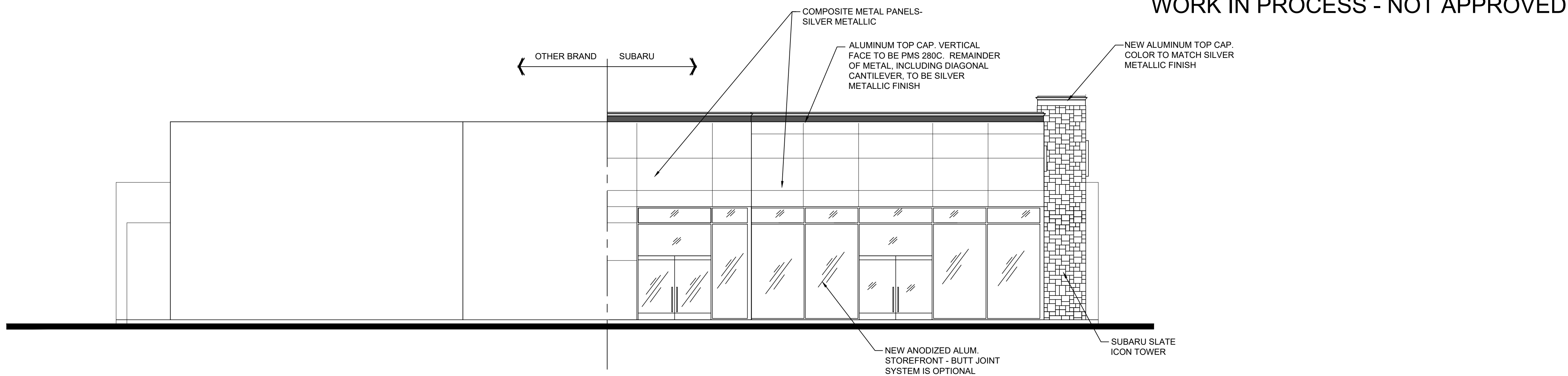


PROPOSED SOUTH ELEVATION

1/8" = 1'-0"

PROPOSED WEST ELEVATION

1/8" = 1'-0"



PROPOSED EAST ELEVATION

1/8" = 1'-0"

WORK IN PROCESS - NOT APPROVED





NAME	CEILING	FLOOR	BASE	WALL NORTH	WALL SOUTH	WALL EAST	WALL WEST	TRIM	CASEWORK COUNTER	CASEWORK CABINET	NOTES
SHOWROOM	ACT-1	CT-1	CB-1	GL-1	PT-1	GL-1	PT-1	PT-1			1,2,3,6,7,11
SALES 1/SALES MANAGER	ACT-1	CA-1	VB-1	GL-2	PT-2	PT-1	PT-1/ GL-2	PT-1			1,2,3,6,11
SALES 2-5	ACT-1	CA-1	VB-1	N/A	N/A	PT-2/ GL-2	PT-2/ GL-2	PT-1			1,2,3,6,11
SALES 6-7	ACT-1	CT-1	CB-1	N/A	N/A	PT-2/ GL-2	PT-2/ GL-2	PT-1			1,2,3,6,7,11
F&I 1-2	ACT-1	CA-1	VB-1	GL-1/ GL-2	GL-1/ GL-2	GL-1	GL-2	PT-1			1,2,6
VEHICLE DELIVERY	ACT-1	CT-1	CB-1	GL-1/ GL-2	PT-1	GL-1/ PT-1	GL-2	PT-1			1,2,3,6,7,11
GENERAL MANAGER	ACT-1	CA-1	VB-1	GL-2	GL-2	GL-2	PT-2	PT-1			1,2,6,11
RESTROOMS/CORRIDOR /TOILET	PT-1	CT-1	CWT-1/ CWT-2	PT-1	PT-1	PT-1	PT-1	PT-1	NS-1		1,6,9
CUSTOMER LOUNGE/ REFRESHMENTS	ACT-1	WF	CB-1	N/A	PT-1	PT-1/ GL-2	PT-1/ PT-3/ MWT-1	PT-1	NS-1	PL-3	1,2,3,6,7,10, 11
SERVICE MANAGER	ACT-1	CT-1	CB-1	PT-1/ GL-2	PT-1	PT-1/ GL-2	PT-1/ GL-2	PT-1			1,2,3,6,7
SERVICE WRITE-UP	ACT-1	CT-1	CB-1	PT-1	PT-1/ GL-2	PT-1	PT-1/ GL-2	PT-1			1,2,3,6,7
SERVICE DRIVE	EXPOSED	SC/CT- 2/CT-3	PT-1	PT-1	PT-1	PT-1	PT-1	PT-1			1,2
BREAK ROOM	ACT-1	CT-1	CB-1	PT-1	PT-1	PT-1	PT-1	PT-1	PL-1 or PL-2	PL-4	1,3,6,7
IT	ACT-1	CT-1	CB-1	PT-1	PT-1	PT-1	PT-1	PT-1			1,6,7

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**NOTES:**

1. ALL INTERIOR DOORS TO BE STAINED TO MATCH NEVAMAR BLOSSOM CHERRY WC5581.
2. ALL INTERIOR AND EXTERIOR GLAZING TO BE CLEAR.
3. WALLCOVERING (WC1) MAY BE SUBSTITUTED FOR PAINT (PT1).
4. RESTROOM PARTITIONS AND FIXTURES TO BE STAINLESS STEEL.
5. CUSTOM MILLWORK, REFER TO MILLWORK SECTION.
6. SHERWIN WILLIAMS SW7065 ARGOS LATEX SEMI-GLOSS CAN BE SUBSTITUTED FOR PT-1 ON TRIM.
7. SEE PROPOSED FLOOR PATTERN PLAN FOR MORE INFORMATION.
8. NOT USED.
9. RESTROOM FLOOR AND WALL TILE TO MATCH SHOWROOM FLOOR TILE.
10. MOSAIC WALL TILE OPTIONAL AS A BACKSPLASH BEHIND THE REFRESHMENT/COFFEE BAR AREA.
11. REFER TO FINISH PLAN FOR ACCENT PAINT LOCATIONS.

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SURFACE	CODE	MATERIAL	MANUFACTURER	MFR. PHONE NO.	PRODUCT INFORMATION
CEILING	DW	DRYWALL			TO BE SPECIFIED BY LOCAL ARCHITECT. PAINT TO MATCH ACT1.
CEILING	ACT-1	ACOUSTICAL CEILING TILE	ARMSTRONG		ULTIMA BEVELED TEGULAR/ #1901/ COLOR: WHITE/ 24" X 24"/ BEVELED TEGULAR TILE/ FINE TEXTURE/ PRELUDE XL 15/16 EXPOSED TEE GRID
CEILING	ACT-2	ACOUSTICAL CEILING TILE	ARMSTRONG		CORTEGA/ #769/ COLOR: WHITE/ 24" X 48"/ EXPOSED TEE GRID
FLOORS	CT-1	PORCELAIN TILE	LOUISVILLE TILE	615-424-1977 Contact: Marty Vaughn	LOUISVILLE TILE CHARCOAL UNPOLISHED/ LTDSBUMAC-24UNP UNPOLISHED 24x24/ 1/8" OR 1/16" JOINT/ GROUT SYSTEM: LACTICRETE SPECTRALOCK, COLOR: #60 DUSTY GREY
FLOORS	CT-1 ALT	PORCELAIN TILE	AUTOSTONE	800-625-5314 Contact: Subaru Team	PREMIER.4 SERIES/ NATURAL/ UNPOLISHED 24x24/ 1/8" OR 1/16" JOINT/ LATICRETE PERMACOLOR SELECT, COLOR: CHARCOAL
FLOORS	CT-2	PORCELAIN TILE	AUTOSTONE	800-625-5314 Contact: Subaru Team	DRIVESERIES/ AS.DS.SMOKEGREY.0808.DRIVESERIES! / SMOKE GREY / LINE- BRIGHT-R/12.A+B+C / 8X8 / GROUT SYSTEM: NORTH AMERICAN ADHESIVES / AS.NA4800.EVERCOLOR.MPG / AS.SMOKYCOAL.536
FLOORS	CT-3	PORCELAIN TILE	AUTOSTONE	800-625-5314 Contact: Subaru Team	DRIVESERIES/ AS.DS.CARBONBLK.0808.DRIVESERIES! / CARBON BLACK / LINE- BRIGHT-R/12.A+B+C / 8X8 / GROUT SYSTEM: NORTH AMERICAN ADHESIVES / AS.NA4800.EVERCOLOR.MPG / AS.BLACKDIAMOND.539
FLOORS	CA-1	CARPET	BENTLEY MILLS	615-920-0160 Contact: Travis Harter	STYLE: 146439-001: /CONSTRUCTION: TUFTED TEXTURED LOOP/18" X 36" TILE/ BACKING: AFIRMA HARDBACK/ ANTRON LUMENA TYPE 6,6 NYLON/ INSTALLATION: BRICK PATTERN, HEATHBOND ULTRA GREEN 2300 TILE ADHESIVE
FLOORS	CA-1 ALT	CARPET	MOHAWK GROUP	615-218-7313 Contact: Elizabeth Paxton	STYLE: FORWARD VISION GL135 / COLOR: 589 CREATIVITY / BROADLOOM / CONSTRUCTION STYLE: TUFTED / TEXTURED PATTERN LOOP/ BACKING: UNIBOND PLUS/ INSTALLATION: NUBROADLOK ADHESIVE FOR BROADLOOM, ENPRESS OR FLEXLOC TABS FOR TILE
FLOORS	WF	PORCELAIN TILE	LOUISVILLE TILE	502-276-2880 nationalaccounts @louisville- tile.com	SUBARU-WI-CHERRY 6x36 and 6x18 , 1/8"-3/16" JOINT, MUST USE APPROVED TILE PATTERN, GROUT AND GROUT JOINT WIDTH MUST INCLUDE DEALER NAME AND "SUBARU" ON PURCHASE ORDER /INVOICE ONLY AVAILABLE FROM LOUISVILLE TILE

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SURFACE	CODE	MATERIAL	MANUFACTURER	MFR. PHONE NO.	PRODUCT INFORMATION
FLOORS	VCT-1*	VINYL COMPOSITION TILE	ARMSTRONG	Shavonne Aument 717-396-3259	#52125/ PREMIUM EXCELON TILE/ STONETEX/ COLOR: GRANITE GRAY/ 12" X 12"/ 1/8" GAUGE
FLOORS	CB-1	PORCELAIN BASE			CT-1 or CT-1 ALT TO BE CUT TO 4" HIGH/ MATTE FINISH/ 3/8" THICKNESS/ 1/16" OR 1/8" JOINT
FLOORS	VB-1*	VINYL BASE	ROPPE	800-537-9527	#TV 8P100/ BLACK/ 4" STANDARD COVE BASE VINYL
FLOOR	SC	SEALED CONCRETE			TO BE SPECIFIED BY LOCAL ARCHITECT. FLOOR COLOR MUST BE CONSISTENT WITH IMAGE PROGRAM FINISHES.
WALLS	GL-1	GLASS			STOREFRONT GLAZING WITH ANODIZED OR SILVER METALLIC FRAME, TO BE SPECIFIED BY LOCAL ARCHITECT.
WALLS	GL-2	GLASS			CLEAR BUTT-JOINT GLAZING TO BE SPECIFIED BY LOCAL ARCHITECT
WALLS	WC-1	WALLCOVERING	MDC WALLCOVERING	615.479.7413 Contact: Monica Fox	ALPHA6470; FABRIC-BACKED VINYL; TYPE II, 20 OZ PER LINEAR YARD; NON-WOVEN BACKING; 54" WIDE; RANDOM REVERSIBLE PATTERN MATCH
WALLS	CWT-1	PORCELAIN TILE	LOUISVILLE TILE	502-276-2880 nationalaccounts@louisville-tile.com	LOUISVILLE TILE CHARCOAL UNPOLISHED/ LTDSBUMAC-24UNP UNPOLISHED 24x24/ 1/8" OR 1/16" JOINT/ GROUT SYSTEM: LACTICRETE SPECTRALOCK, COLOR: #60 DUSTY GREY
WALLS	CWT-1 ALT	PORCELAIN TILE	AUTOSTONE	800-625-5314 Contact: Subaru Team	PREMIER.4 SERIES/ NATURAL/ UNPOLISHED 24x24/ 1/8" OR 1/16" JOINT/ LATICRETE PERMACOLOR SELECT, COLOR: CHARCOAL
WALLS	CWT-1 ALT	PORCELAIN TILE	PANTHEON	614-286-2215 Contact: Stu Kinney	ENDURE #URB-015, 16"X16" OR 24"X24" MATTE FINISH/ 1/8" OR 1/16" JOINT/ THIN SET MORTAR / RECOMMENDED GROUT: MAPEI GROUT & MORTAR SYSTEM/ GROUT SYSTEM: KERACOLOR U UNSANDED GROUT, COLOR: #47 CHARCOAL
WALLS	CWT-2	PORCELAIN TILE	LOUISVILLE TILE	502-276-2880 nationalaccounts@louisville-tile.com	LOUISVILLE TILE CHARCOAL POLISHED/ LTDSBUMAC-24POL UNPOLISHED 24x24/ GROUT SYSTEM: LACTICRETE SPECTRALOCK, COLOR: #60 DUSTY GREY
WALLS	CWT-2 ALT	PORCELAIN TILE	AUTOSTONE	800-625-5314 Contact: Subaru Team	PREMIER.4 SERIES/ POLISHED 24x24/ 1/8" OR 1/16" JOINT/ LATICRETE PERMACOLOR SELECT, COLOR: CHARCOAL

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SURFACE	CODE	MATERIAL	MANUFACTURER	MFR. PHONE NO.	PRODUCT INFORMATION
WALLS	CWT-2 ALT	PORCELAIN TILE	PANTHEON	614-286-2215 Contact: Stu Kinney	ENDURE #URB-015, 16"X16" OR 24"X24", POLISHED FINISH/ 1/8" OR 1/16" JOINT/ THIN SET MORTAR / RECOMMENDED GROUT: MAPEI GROUT & MORTAR SYSTEM/ GROUT SYSTEM: KERACOLOR U UNSANDED GROUT, COLOR: #47 CHARCOAL
WALLS	MWT-1	MOSAIC WALL TILE	CROSSVILLE TILE	931-484-2110 Contact: Your Local Representative	EF04 / .1MIXMOS – LINEAR MIXED MOSAIC/ SERIES: EBB & FLOW/ COLOR: SAND AND SURF/ SHEET SIZE: 11-3/4" X 13", THICKNESS: 1/4"/ MATERIAL: NATURAL STONE AND GLASS/ PLEASE CONTACT YOUR LOCAL DISTRIBUTOR FOR NATIONAL ACCOUNT PRICING
WALLS	PT-1*	PRIMARY PAINT	SHERWIN WILLIAMS	800-4SHERWIN	SW 7009 PEARLY WHITE/ PREMIUM GRADE LATEX SEMI-GLOSS ENAMEL/ 2 COATS OVER PRIMER (USE "HARMONY" INTERIOR LATEX LOW ODOR COATINGS FOR REDUCED ENVIRONMENTAL IMPACT.)
WALLS	PT-2*	ACCENT PAINT	SHERWIN WILLIAMS	800-4SHERWIN	SW 7047 PORPOISE/ PREMIUM GRADE LATEX SEMI-GLOSS ENAMEL/ 2 COATS OVER PRIMER (USE "HARMONY" INTERIOR LATEX LOW ODOR COATINGS FOR REDUCED ENVIRONMENTAL IMPACT.)
WALLS	PT-3*	ACCENT PAINT	SHERWIN WILLIAMS	800-4SHERWIN	SW 6236 GRAYS HARBOR/ PREMIUM GRADE LATEX SEMI-GLOSS ENAMEL/ 2 COATS OVER PRIMER (USE "HARMONY" INTERIOR LATEX LOW ODOR COATINGS FOR REDUCED ENVIRONMENTAL IMPACT.)
WALLS	PT-4*	ACCENT PAINT	SHERWIN WILLIAMS	800-4SHERWIN	SW 6423 RYEGRASS/ PREMIUM GRADE LATEX SEMI-GLOSS ENAMEL/ 2 COATS OVER PRIMER (USE "HARMONY" INTERIOR LATEX LOW ODOR COATINGS FOR REDUCED ENVIRONMENTAL IMPACT.)
MILLWORK	NS-1*	NATURAL STONE	CAMBRIA	866-CAMBRIA	#5110 WILLISTON
MILLWORK	PL-1*	PLASTIC LAMINATE	WILSONART	800-433-3222	#6257 (419) SATIN BRUSHED NATURAL ALUMINUM
MILLWORK	PL-2*	PLASTIC LAMINATE	FORMICA	800-FORMICA	6220-RD SMOKE QUARSTONE RADIANCE FINISH
MILLWORK	PL-3*	PLASTIC LAMINATE	NEVAMAR	800-638-4380	WC5581N BLOSSOM CHERRY HI-LUSTER FOR VERTICAL APPLICATIONS ONLY
MILLWORK	PL-4*	PLASTIC LAMINATE	NEVAMAR	800-638-4380	S6001T BLACK TEXTURED
MILLWORK	SS	STAINLESS STEEL			TO BE SPECIFIED BY LOCAL ARCHITECT.

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EXTERIOR SURFACE	MATERIAL	FINISH	PRODUCT INFORMATION
ICON TOWER	SLATE	Camara/ Shadow Grey/ ¼" min. thickness/ natural cleft face, gauged back/ Pattern #1	See "Thin Veneer Slate Assemblies" document for more information on sizes and pattern/ Recommended grout color 1 shade lighter than slate or TEC #927 Light Pewter. Contact: Shawn or Mike Camara at 802-265-3200 or email: <a href="mailto:info@camaraslate.com">info@camaraslate.com</a> . <b>5-6 week lead time</b> <b>INSTALLATION NOTE: Must allow at least seven days for proper mortar curing. Follow "Thin Veneer Slate Assemblies" installation specification. Improper installation could cause efflorescence.</b>
STOREFRONT	ALUMINUM	Clear Anodized Coating	AAMA 611 Architectural Class 2
GLAZING	INSULATED GLASS	Outside lite: clear (grey as required for sun control) Inside lite: clear Low emissive coating: #3 surface	Glazing is captured with metal frames and retainers at head and sill. Vertical joints are captured with a structural silicone bond to the vertical mullion.
FASCIA	COMPOSITE PANEL	Silver Metallic	As manufactured by Mitsubishi Alpolic (757-382-5724), Citadel Architectural Products (708-479-6222), Alcoa Architectural Products - Reynobond (770-695-0973) or approved equal.
WALLS	SPLIT FACE BLOCK	Trenwyth Trendstone Rutherford Grey or equal	Split face concrete masonry units
WALLS	EXTERIOR PAINT*	Sherwin Williams Paint Color: SW7071 Gray Screen Pro-Industrial Zero VOC Acrylic paint	Exterior trim color, back and sides of exterior, as needed
WALLS	EXTERIOR PAINT*	Sherwin Williams Paint Color: SW7074 Software Pro-Industrial Zero VOC Acrylic paint	Exterior trim/accent color
EXTERIOR METAL TRIM CAP (ABOVE ACM)	PREFINISHED STEEL OR ALUMINUM PANEL	Angled Top Cap or Flashing to be Silver or Equal. Vertical Panel to be Award Blue or Equal	Metal Era, 800-300-1659 Contact: Eric Godfrey
EXTERIOR METAL TRIM CAP (ABOVE ICON TOWER)	PREFINISHED STEEL OR ALUMINUM PANEL	Angled Top Cap or Flashing to be Silver Metallic. Vertical Panel to be Silver Metallic.	Metal Era, 800-300-1659 Contact: Eric Godfrey
EXTERIOR METAL CAP (PAINT OPTIONS)	PAINT	Blue - Benjamin Moore Ben 100% Acrylic Exterior paint low VOC  Silver Metallic Paint – Sherwin Williams or Equal	Custom Mix Formula for 1 quart/ BB 1 X 0.00 (1 fl. oz.) MA 0 X 1.00 (1 shot) / High Gloss Metal and Wood Ultra Base 3094B for 12" Signature Series Blue Stripe (See exterior elevations for locations.) or match PMS 280 Blue. Silver Brite B59S11

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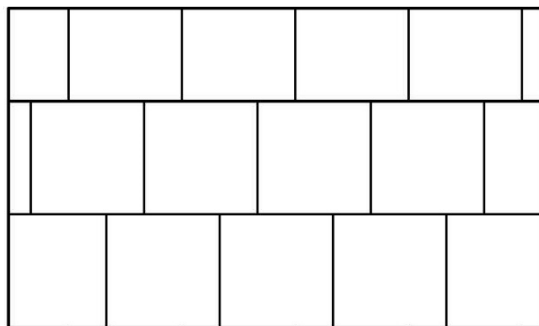




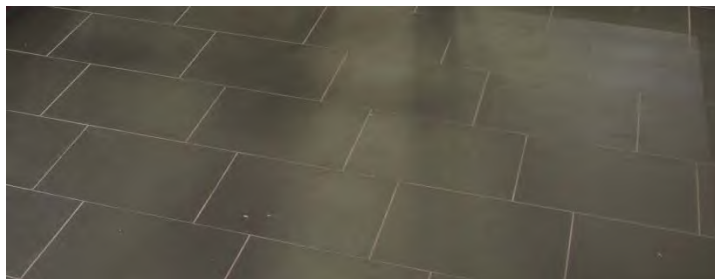
### CT-1/CT-1 ALTERNATES

Louisville Tile Charcoal Unpolished LTDSBUMCA-24UNP, 24" x 24", Unpolished

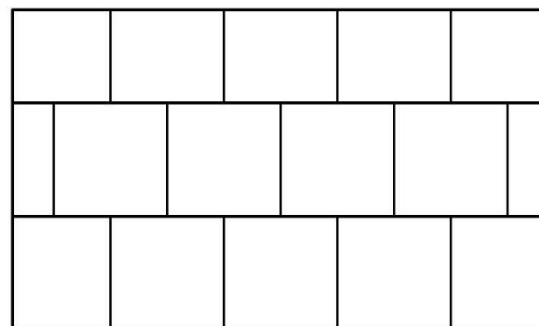
Autostone Premier.4 Series, 24" x 24", Unpolished



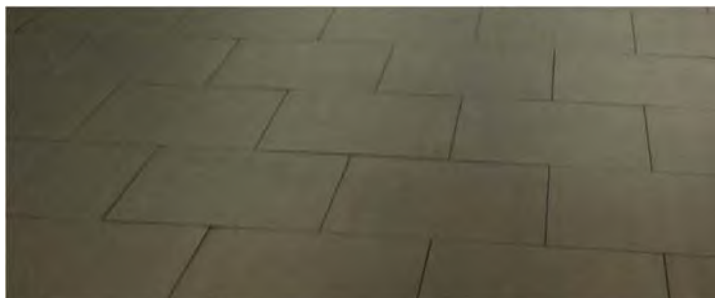
**1/3 Offset Running Bond Tile Pattern**



**CORRECT INSTALL PATTERN**



**1/2 Offset Running Bond Tile Pattern**



**CORRECT INSTALL PATTERN**

**Only use prescribed grout shown below. The use of wrong or alternative grout could damage tile or cause unwanted appearance change to tile surface.**

Grout to be 1/8" or 1/16" joint. Use appropriate Grout System for selected tile.

CT-1 - Louisville Tile: Laticrete Spectralock, color: #60 Dusty Grey

CT-1 Alt - Autostone: Laticrete Permacolor Select, color: Charcoal

Follow Manufacturer's recommended post-installation cleaning regimen.

Approved Tile Installation Pattern: 1/3 or 1/2 Offset Running Bond

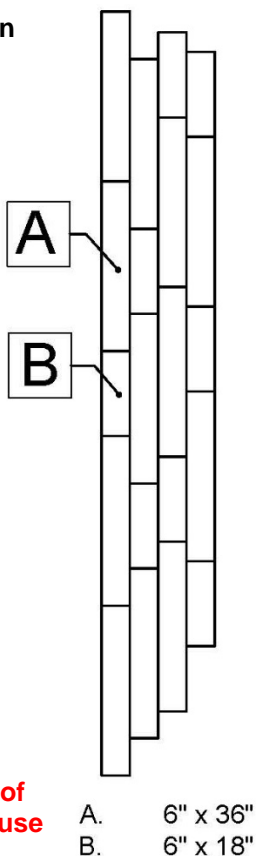
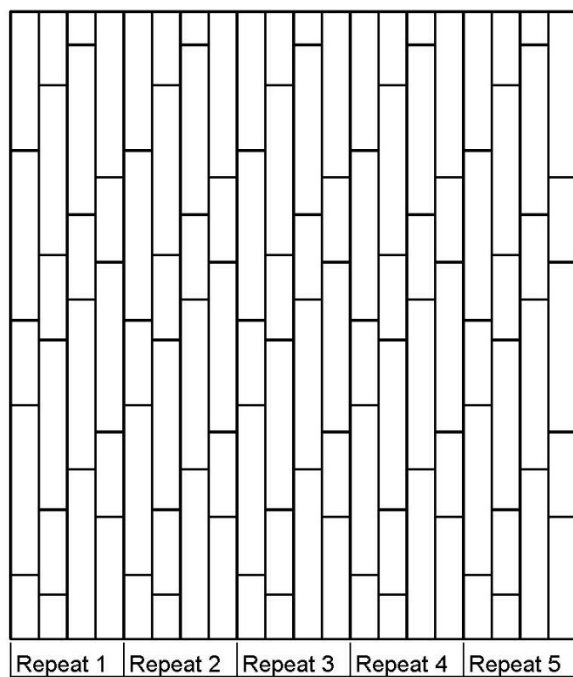
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**WF WOOD LOOK CERAMIC TILE**

Subaru-WI-Cherry

6" x 36" – 75% of pattern, 6" x 18" – 25% of pattern



**Only use prescribed grout shown below. The use of wrong or alternative grout could damage tile or cause unwanted appearance change to tile surface.**

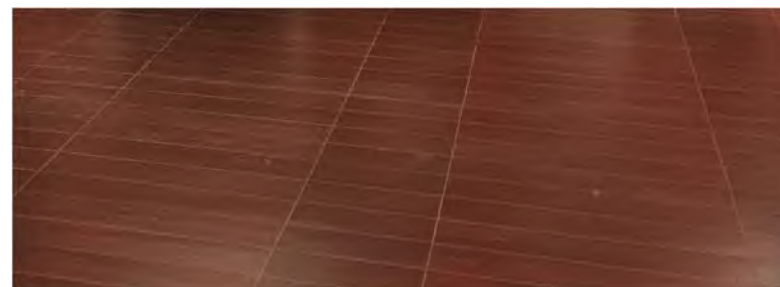
**Grout to be 1/8". Laticrete Spectralock, color: #59 Espresso.**

Follow Manufacturer's recommended post-installation cleaning regimen.  
See above for approved installation pattern

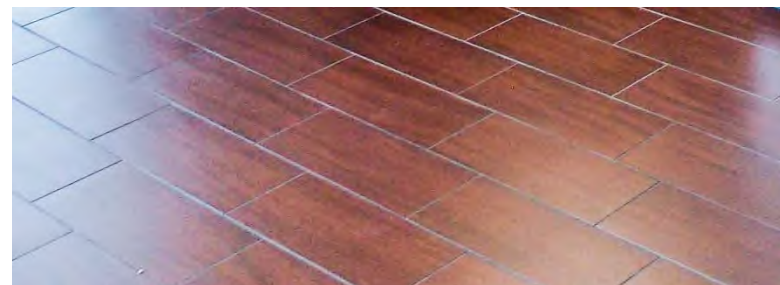
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**CORRECT INSTALL PATTERN:** Picture above shows the tile installation pattern as specified in finish schedule



**INCORRECT INSTALL PATTERN:** Picture above shows the correct tile sizes, but installed in a grid instead of pattern specified in finish schedule

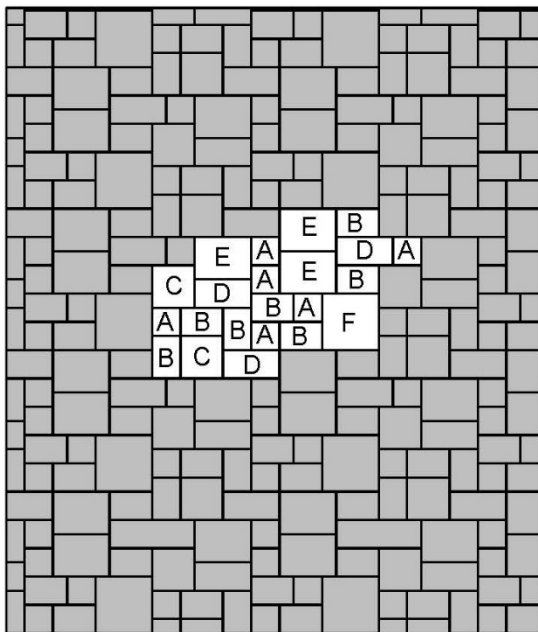


**INCORRECT INSTALL PATTERN:** Picture above shows only a single size of tile, not the mix of sizes specified in finish schedule



## SLATE

Camara Shadow Grey, 1/4" min. thickness, natural cleft face, gauged back



- A. 6 @ 6-inch by 6-inch units
- B. 7 @ 6-inch by 9-inch units
- C. 2 @ 9-inch by 9-inch units
- D. 3 @ 6-inch by 12-inch units
- E. 3 @ 9-inch by 12-inch units
- F. 1 @ 12-inch by 12-inch units

### Slate Pattern



Slate Pattern Photo

See *Thin Veneer Slate Assemblies* document for slate installation instructions  
Grout: 1 shade lighter than slate or TEC #927 Light Pewter

**INSTALLATION NOTE: Must allow at least seven days for proper mortar curing. Follow "Thin Veneer Slate Assemblies" installation specification. Improper installation could cause efflorescence.**

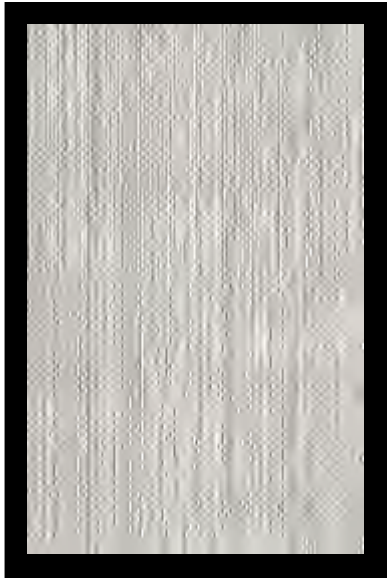


**CORRECT ICON TOWER TOP CAP:**  
Silver angled trim with silver accent band

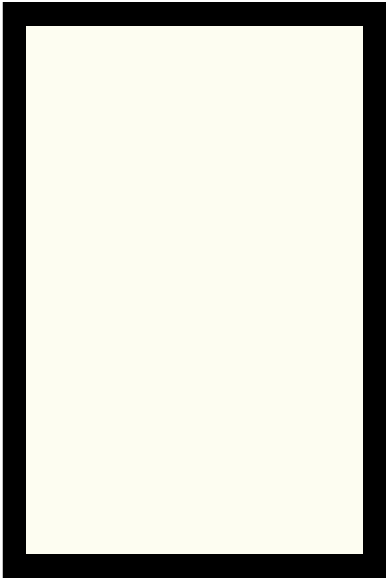


**INCORRECT ICON TOWER TOP CAP:**  
Silver angled trim with blue accent band

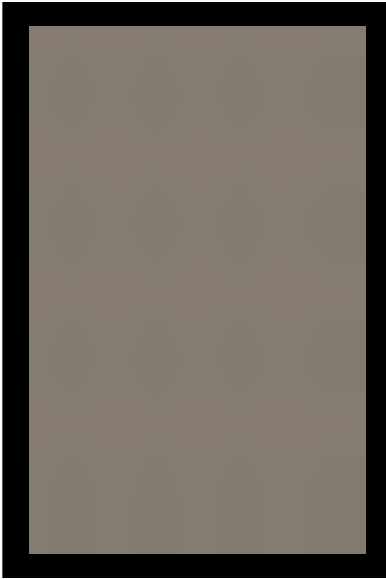
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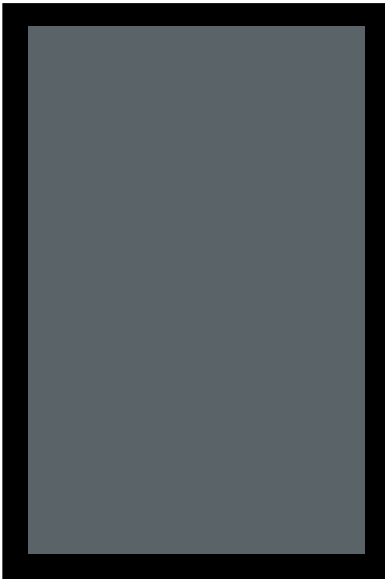
**WC1**



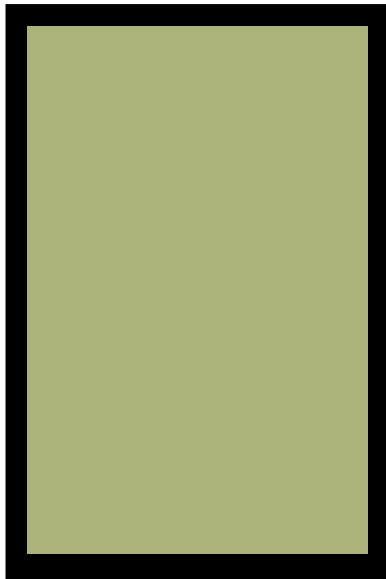
**PT1**



**PT2**  
**ACCENT**



**PT3**  
**ACCENT**



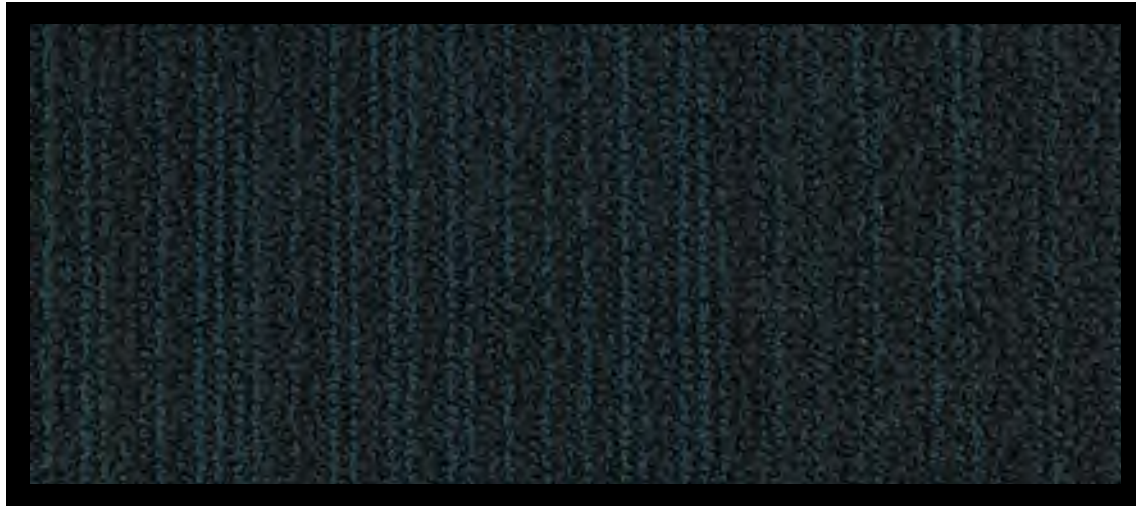
**PT4**  
**ACCENT**

**(Refer to Finish Schedule for Specific Locations.)**

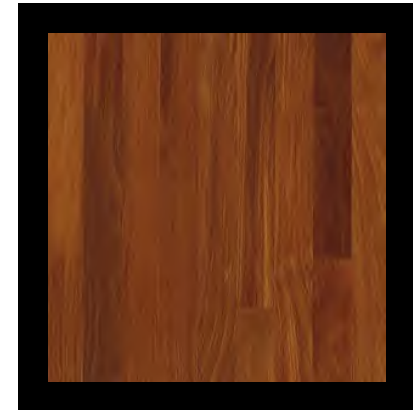


**Wallcovering**

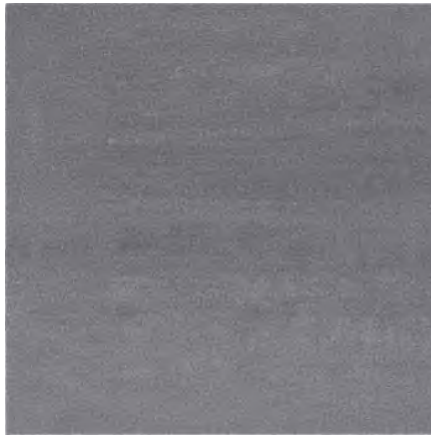




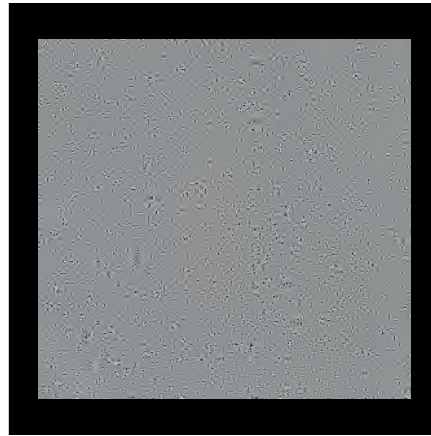
**CA1**



**WF**  
**Color Reference Only**



**CT1**  
**(Satin Finish)**

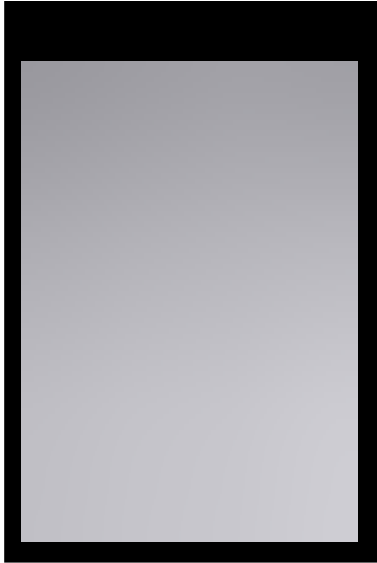


**VCT1**

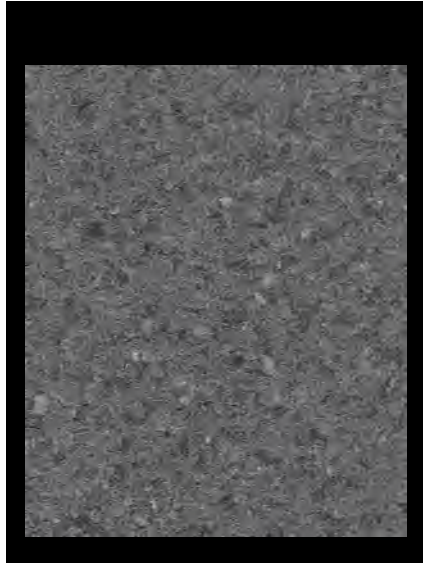
**(Refer to Finish Schedule for Specific Locations.)**



## **Flooring**



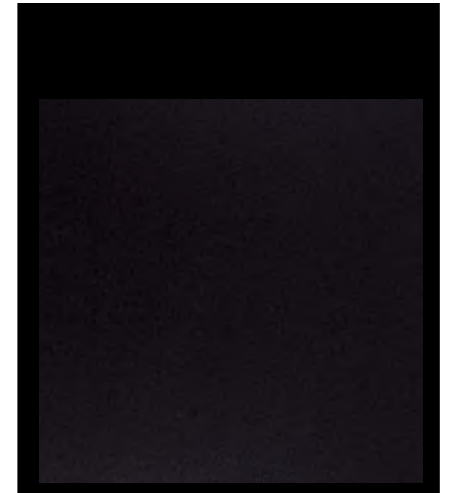
**PL1**



**PL2**



**PL3**



**PL4**

**(Refer to Finish Schedule for Specific Locations)**

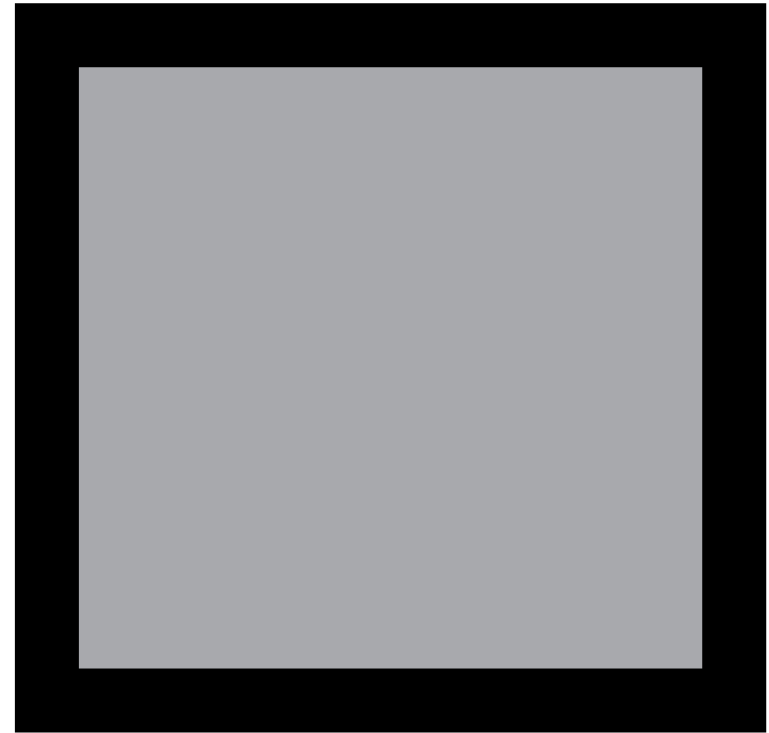


**Laminates**





**Slate Icon Tower**

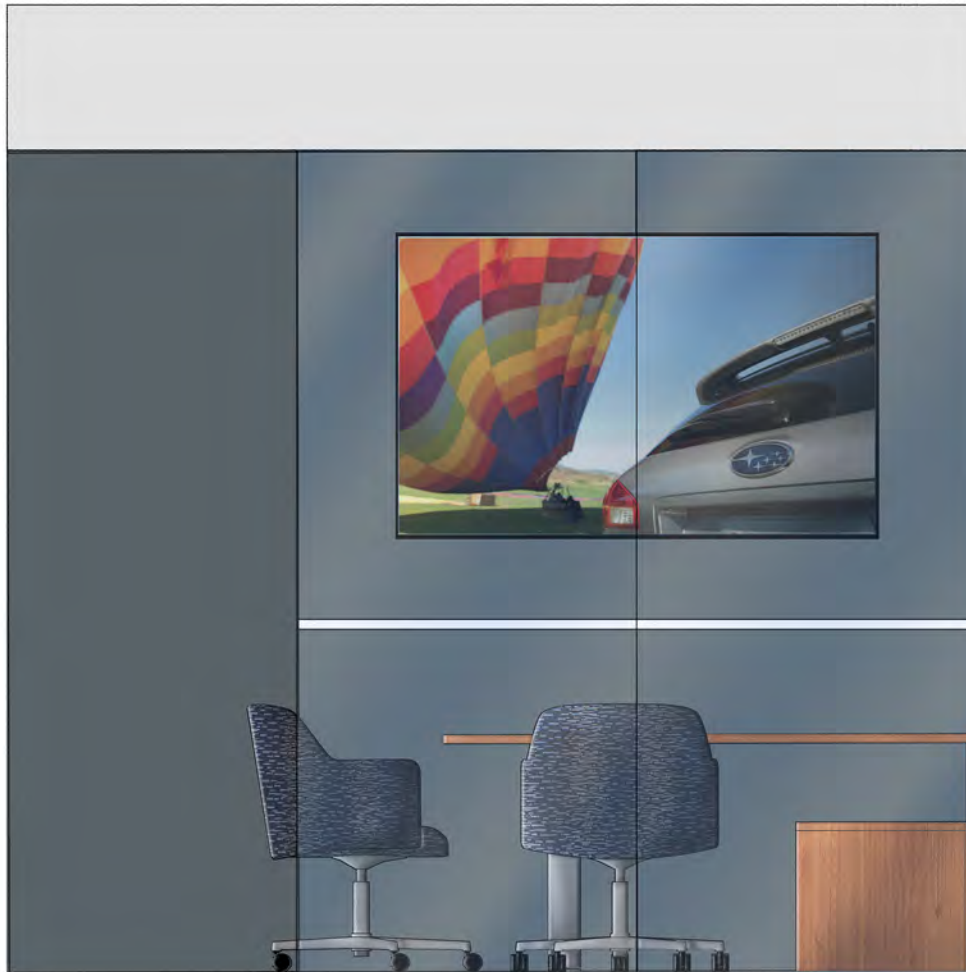


**Fascia/Composite Panel**

**Color Reference Only**



**Exterior Finishes**



**RECOMMENDED PRODUCT:**  
3M SCOTCHCAL MARKING FILM WINDOW  
GRAPHICS TO BE PLACED ON OFFICE  
WINDOWS TO INCREASE VISIBILITY

1.5" 3M SCOTCHCAL MARKING FILM  
WINDOW GRAPHIC PLACED 42" ABOVE  
BASE OF WINDOW



**Window Graphic**



**Signature Facility Program  
Phase II**

**ESTIMATED BUDGET MATERIALS PRICING**

<b>MANUFACTURER</b>	<b>COLOR/NAME</b>	<b>PRICE</b>
<b><u>CARPET</u></b>		
BENTLEY MILLS	Style: 146439-001; 18" x 36" Carpet Tile	\$18.00/Sq. Yd.
<b><u>PORCELAIN TILE</u></b>		
LOUISVILLE TILE	Charcoal - LTDSBUMAC-24UNP Unpolished; 24" x 24"	\$2.95/Sq. Ft.
LOUISVILLE TILE	Charcoal - LTDSBUMAC-24POL Polished; 24" x 24" (Wall Tile)	\$3.30/Sq. Ft.
AUTOSTONE	Premier.4 Series Natural/Unpolished; 24" x 24"	\$2.99/Sq. Ft.
AUTOSTONE	Premier.4 Series Polished; 24" x 24" (Wall Tile)	\$2.99/Sq. Ft.
CROSSVILLE	AV195 Brazilian Cherry 6" x 36" – 75% of pattern	\$4.54/ Sq. Ft.
CROSSVILLE	AV195 Brazilian Cherry 6" x 18" – 25% of pattern	\$4.87/ Sq. Ft.
<b><u>WALLCOVERING</u></b>		
MDC	Style: ALPHA6470; Type II Vinyl	\$14.50/Linear Yd.

PRICES SUBJECT TO CHANGE.

PRICE INCLUDES MATERIALS ONLY.

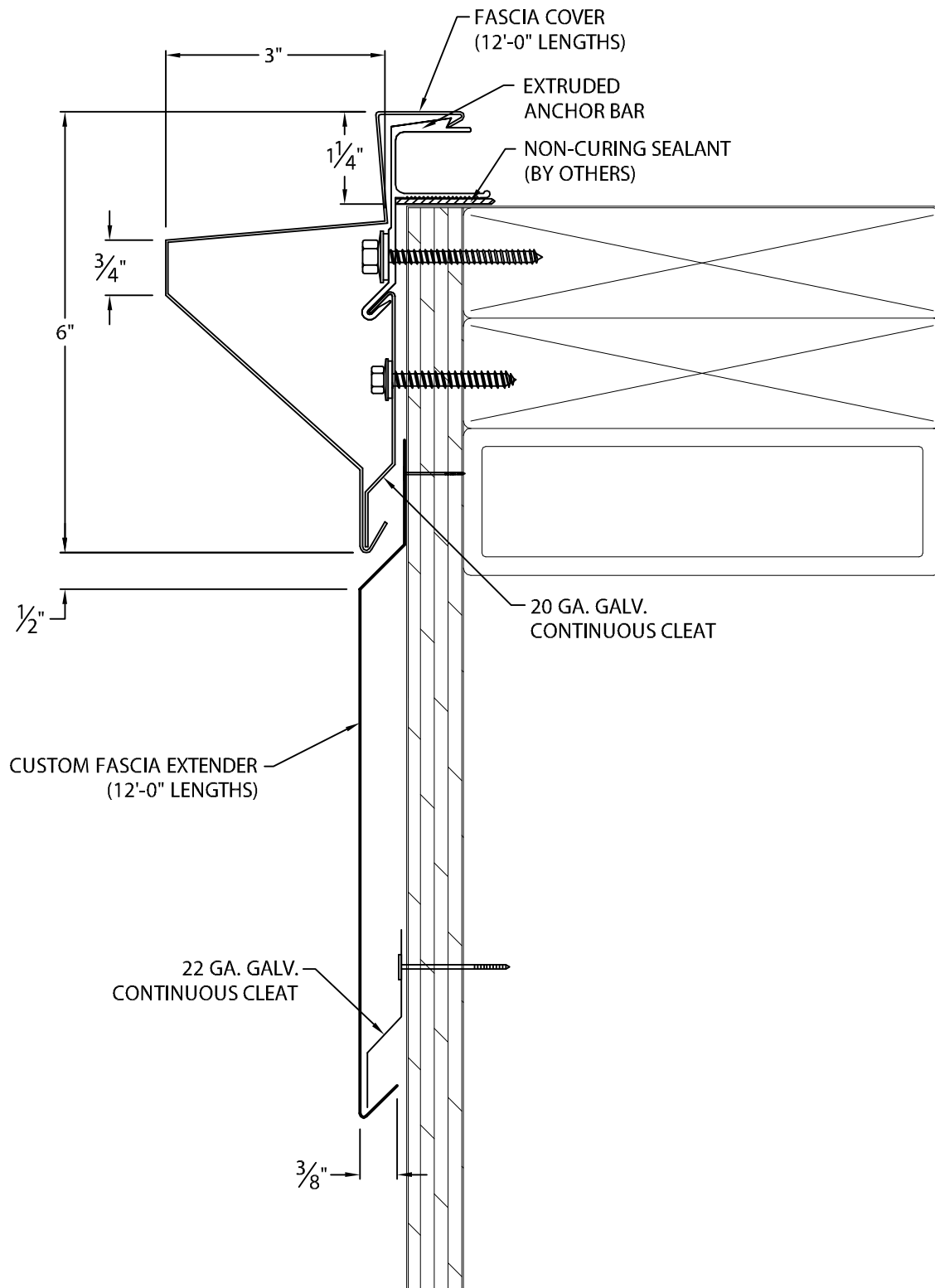
FREIGHT CHARGES AND INSTALLATION ARE NOT INCLUDED.

REFER TO FINISH SCHEDULE FOR CONTACT NAMES AND PHONE NUMBERS FOR ORDER.

# SUBARU SHADOW LINE FASCIA

WITH FLUSH FACE EXTENDER

OVERVIEW



## PART 1 GENERAL

## 1.1 SECTION INCLUDES

- A. Substrate preparation requirements.
- B. Thin natural slate set in latex modified cement mortar for exterior application over:
  - 1. Cementitious backer over plywood sheathing on metal studs.
  - 2. Concrete masonry units.
- C. Thin natural slate in randomly sized pattern with, square sawn edges.
- D. Installation of accessories.

## 1.2 REFERENCES

- A. ASTM C-629 Standard Specification for Slate Dimension Stone / Test C121 for Moisture Absorption to be less than 0.25%.
- B. ASTM Class S2 or S1 slate for exterior applications.

## 1.3 QUALIFICATIONS

- A. Slate Quarry: Company specializing in quarrying slate products specified in this section with minimum twenty-five (25) years documented experience.
- B. Slate Masonry Installer: Company specializing in performing Work of this section with minimum five (5) years documented experience.

## 1.4 DELIVERY, STORAGE, AND HANDLING

- A. Store products on pallets, under cover and in manufacturer's unopened packaging until ready for installation.
- B. Store slate materials on pallets on a dry level surface. Pallets shall not be stacked and shall be covered with tarps.
- C. Store mortar under cover and in an area where temperature is maintained between 40 degrees F to 110 degrees F.

## 1.5 PROJECT CONDITIONS

- A. Maintain environmental conditions (temperature, humidity, and ventilation) within limits recommended by manufacturer for optimum results. Do not install products under environmental conditions outside manufacturer's absolute limits.
- B. Ambient temperature shall be 40 degrees F or above during erection of slate masonry. When ambient temperature falls below 50 degrees F, mortar mixing water shall be heated.

## PART 2 PRODUCTS

## 2.1 GRAY SLATE WITH LIGHT BLACK MOTTLE

- A. Subaru-approved slate:
  - 1) Natural cleft face, gauged back, sawn edges.
  - 2. Allow for 3/8" slate joint, pattern repeats every 2.5-feet by 4-feet.
  - 3. 1/4" thick in an interlocking, random 10 SF pattern containing:
    - a. 6 @ 6-inch by 6-inch units
    - b. 7 @ 6-inch by 9-inch units
    - c. 2 @ 9-inch by 9-inch units
    - d. 3 @ 6-inch by 12-inch units
    - e. 3 @ 9-inch by 12-inch units
    - f. 1 @ 12-inch by 12-inch units



- B. Slate and Quarry:
  - 1. Slate: Shadow Grey, Heathermoor or Vermont Grey-Black Slate
  - 2. Pattern Pattern 1
  - 3. Quarry: Camara Slate Products – Shadow Grey  
963 South Main Street / Fair Haven, VT 05743  
Shawn or Mike Camara  
Phone 802-265-3200  
Fax 802-265-2211  
Email [info@camaraslate.com](mailto:info@camaraslate.com)
- C. Premixed Grey Sanded Grout, TEC 927 Light Pewter
- D. Building Paper: ASTM D 226, No. 30 asphalt saturated felt.
- E. Concrete Bonding Agent: Latex type as approved by the slate quarrier.

## 2.2 SETTING MATERIALS

- A. Flexible, dry-set mortar: Complying with ASTM A118.4 and A118.11
  - 1. Shear bond at 28 days: 375 psi, minimum
  - 2. Gray color
  - 3. Recommended by mortar manufacturer for installing slate to exterior walls.
- B. Polymer modified latex additive: Complying with ASTM A118.4 and A118.11
  - 1. Recommended by mortar manufacturer for installing slate to exterior walls.
  - 2. Mix in sufficient quantities as recommended by the manufacturer.
- C. Water: Clean and potable.
- D. Trowel: Match the weight of the tile, the tensile strength of the setting material, and the trowel type. When in doubt, select a bigger notch pattern. Use of V-notched trowels is not acceptable.
  - 1. The type of trowel used for a particular tile installation depends on the kind of setting material being used and on the size and type of tile being installed.
  - 2. Notched trowels provide a bead (rib) pattern which ensures both uniform thickness of material and full contact with the tile after beating in.
  - 3. Non-absorbent slate has no suction and therefore requires sufficient latex modified mortar to grip their edges as well as their backs.
  - 4. Extremely large or uneven-backed tile may require "back butter" setting material on the tile to ensure contact with all points, full coverage and complete contact with the substrate.
- E. Slate is a product of nature. Determine the suitability of all the setting materials before proceeding with the installation.
  - 1. Natural Cleft Finish is a rough textured, split face finish. The bottom is gauged to an even plane and the thickness, although varying due to the facial deviation of the cleft, is constant within the maximum thickness specified.
  - 2. The facial deviation in Natural Cleft Finish may appear more pronounced with regard to the outside corners.

## 2.3 PANEL SUBSTRATE MATERIALS

- A. Back up materials:
  - 1. 14 to 20 gauge galvanized metal studs to not exceed L/360 deflection based on the studs alone. Laterally brace framing.
  - 2. ½" exterior grade plywood screwed to the studs with #8 x 1 1/4-inch corrosion

- resistant screws @ 12" o.c..
- 3. Cover plywood sheathing with waterproof building paper with all joints lapped 4-inches.
- 4. Plastic drip and starter strips.
- B. 2" wide DUROCK brand joint reinforcement, as manufactured by USG.
- C. 1/2" thick DUROCK brand cement board, as manufactured by USG.
- D. #8 x 1 5/8-inch corrosion resistant screws to attach the cementitious backer into the plywood at 8" o.c.

### PART 3 EXECUTION

#### 3.1 EXAMINATION

- A. Do not begin installation until backing structure is plumb, bearing surfaces are level and substrates are clean and properly prepared.
- B. Verify that built-in items are in proper location, and ready for roughing in.
- C. Notify Architect or Dealer of unsatisfactory preparation before proceeding.

#### 3.2 PREPARATION FOR INSTALLATION OVER PLYWOOD SHEATHING & CEMENTITIOUS BACKER BOARD

- A. Cover plywood sheathing with waterproof building paper with all joints lapped shingle style a minimum of 4 inches.
- B. Orient cementitious backer board with rough side out.
- C. Screw cementitious backer board into plywood with coated fasteners as approved by board manufacturer.
- D. Fill joints with tile setting mortar and immediately embed tape and level the joints.
- E. Continuously reinforce outside corners with mesh and compound.

#### 3.3 PREPARATION FOR INSTALLATION OVER CONCRETE OR CONCRETE MASONRY

- A. Clean or sandblast concrete masonry to assure a proper mortar bond. Verify no bituminous, water repellent, or deleterious agents exist on the surface.
- B. Apply bonding agent in accordance with the manufacturers printed instructions.

#### 3.4 PREPARATION FOR THIN VENEER SLATE INSTALLATION

- A. Coordinate placement of signage, anchors and accessories, flashings and weep holes and other moisture control products supplied by other sections.
- B. Clean all built-in items of loose rust, ice, mud, or other foreign matter before incorporating into the wall.
- C. If required, provide temporary bracing during installation of masonry work. Maintain bracing in place until building structure provides permanent support.

#### 3.5 THIN VENEER SLATE INSTALLATION

- A. Maintain 3/8-inch joint with the use of wooden or metal spacers.
- B. Maintain masonry courses to uniform dimensions. Form vertical and horizontal joints of uniform thickness.
- C. Pattern Bond:
  - 1. Lay slate with the split face exposed. Take care to avoid a concentration of any one size adjacent to another similarly sized slate tile.
  - 2. Do not use stacked vertical joints.
  - 3. Lay out work in advance and distribute pattern range of slate uniformly over total work area.
- D. Placing and Bonding:
  - 1. Inadequate coverage results in bond failure and/or cracking of the tiles.
  - 2. To ensure 100% coverage, remove and re-inspect several tiles after they

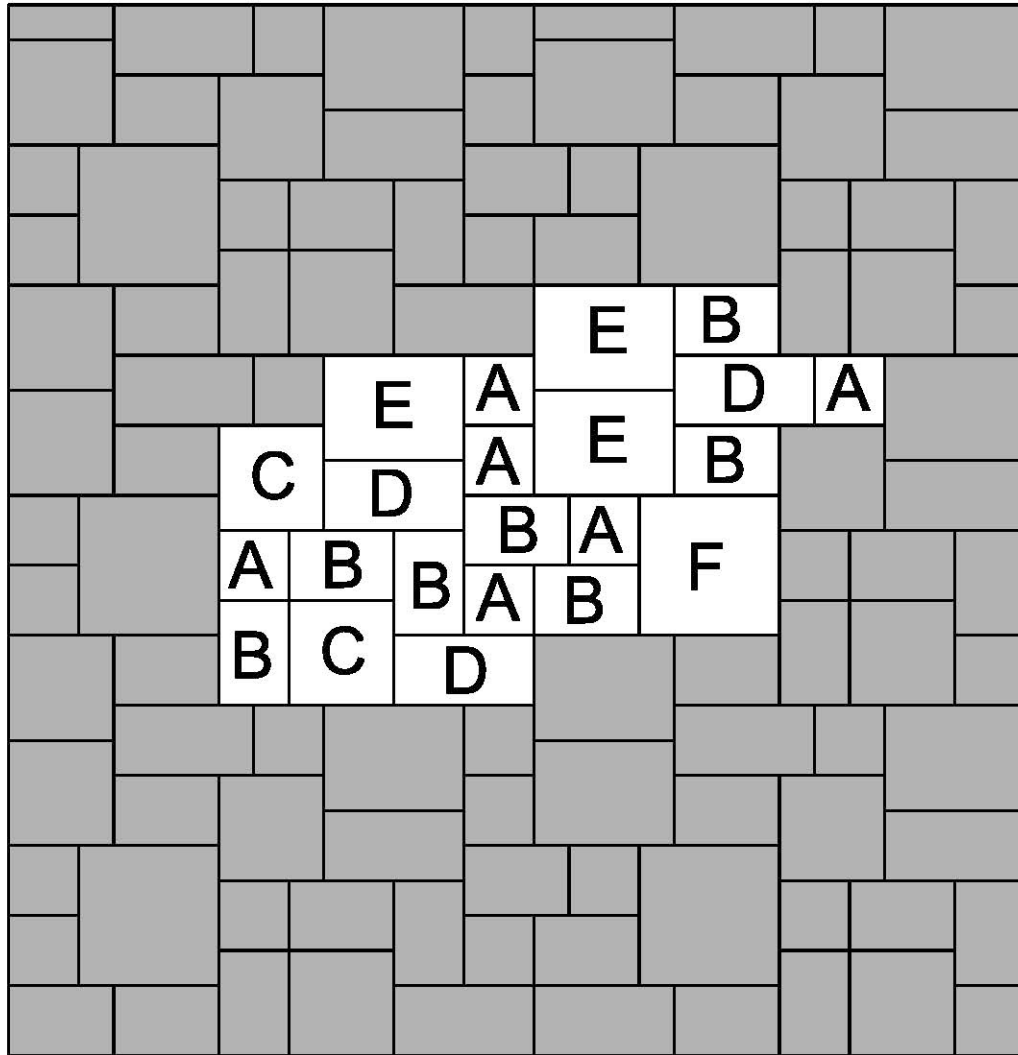
- have been placed. Photograph and place in log book.
- 3. Do not spread more than a workable area of 5 to 10 SF so that mortar will not set before slate is applied. Set tile while mortar is fresh and before it has skimmed over.
- 4. Lay out work in advance and distribute pattern range of slate uniformly over total work area.
- 5. Place your finger in the setting material which has been spread on the substrate. If no material comes off on your finger, it will not bond to the tile, either.
- 6. If the setting material has skimmed over, pressing the tile into it may create a mirror image of the tile's back on the substrate, but it will not bond to the tile.
- 7. Remove any skimmed material from the substrate and apply fresh material.
- E. Beating In
  - 1. Beat in the tile to seat it firmly in the setting material and thus ensure a good bond by maximizing the contact area between the setting bed and the tile.
  - 2. The more beating in, the better the bond.
- F. Quality control
  - 1. Remove one tile for every 100 installed and inspect its back for coverage.
  - 2. Save the removed tile for verification by the A/E or dealer.
  - 3. If insufficient bond is found, remove and replace tiles until tile are found that are properly beaten in with a strong bond and sufficient coverage.
- G. Control and Expansion Joints: Keep joints open and free of debris. Coordinate control joint for optimum sealant performance.
- H. Sealant Recesses: Provide open joint 1/2 inch deep and 1/4 inch wide, where masonry meets any openings. Coordinate sealant joints in accordance with sealant manufacturer for adequate performance.
- I. Cutting And Fitting: Cut and fit for chases, pipes, conduit, sleeves, grounds, and other penetrations and adjacent materials. Coordinate with other sections of work to provide correct size, shape, and location.

### 3.6 GROUTING

- A. Never apply to a wet or cementitious substrate cured less than seven days.
- B. Thicker setting beds and thinner joints require longer times before grouting.
- C. Large slate tile pieces require longer times before grouting.
- D. Damp cure by placing porous Kraft paper or polyethylene sheets over the surface.
  - 1. Portland cement mortars, screed beds, thin-set mortars, & grouts will not reach their full strength and serviceability if they dry out before curing.
  - 2. Water can also be misted over the surface after initial set. Hot dry conditions may require this to be repeated at regular intervals for several days.
  - 3. If insufficient bond is found, remove and replace tiles until tiles are found that are properly and fully embedded in setting compound.
- E. Control job conditions for uniform curing to ensure no shade variations.
- F. Maintain uniform temperature, ventilation and direct sunlight exposure throughout the installation of each surface.
- G. Grout mixing
  - 1. Precisely measure water using the same clean container for the same amount of water for every batch to produce a firm wet mix. Record in log book.
  - 2. Soupy mixes dilute grout causing shade variations, and powdering.
  - 3. Thoroughly mix every batch to the manufacturer's recommendations. Allow to slake for a minimum of 10 minutes, then re-stir.
  - 4. Log mixing time and temperature so all employees maintain the same amount of mixing time with every batch.
- H. Grout Application
  - 1. Prior to grouting, Verify joints between tiles are be clean and free of excessive

- setting bed materials, and dirt. Remove all deleterious material.
  - 2. Apply grout with a rubber float trowel, forcing it into joints to fill completely.
  - 3. Remove excess grout with float.
  - 4. Begin cleaning immediately.
    - i. Sprinkle dry grout or sawdust over a workable area.
    - ii. Use terry-cloth rags & circular motion to rub dry grout / sawdust into the fresh joints.
    - iii. Rub until the joints are uniform and the slate is clean.
    - iv. A second, very light sprinkling of grout/sawdust over the same given area, polished in the same manner, will create an acceptable joint.
    - v. This method increases joint hardness, removes excess water, and fills the joints, making them flush with the slate tile surfaces.
    - vi. Proceed to the next area and continue grouting in the same manner.
  - I. Finishing
    - 1. If grout film appears, wipe with a lightly dampened sponge. Rinse & wring in clear water repeatedly.
    - 2. Re-polish surface with terry-cloth rags.
    - 3. Do not use acid or bleach when cleaning.
  - J. Curing
    - 1. Damp cure with either method to improve grout strength.
      - a) Cover the finished installation with non-staining kraft paper for 3 days.
      - b) Wipe the joints with a damp sponge or mop daily, after the initial 24 hours, for a period of 3 days. Do not use metal brushes or acids.
    - 2. Touch-up, repair or replace damaged products before Substantial Completion.
- 3.7 SLATE TERMINATION AT VERTICAL TOWER CORNERS
- A. Align horizontal joints of each corner tile, so vertical dimensions of each slate tile forming the corner matches the dimension of the adjoining corner slate tile.
  - B. Adjust horizontal length of each corner slate tile as required to quickly resume & continue the random pattern.
  - C. Field finish corner slate tiles with 1/8 inch to 3/16 inch reverse arris to create a quirk miter to be fully grouted.
  - D. Design intent is to visually minimize corner joint.

END OF SECTION



- A. 6 @ 6-inch by 6-inch units
- B. 7 @ 6-inch by 9-inch units
- C. 2 @ 9-inch by 9-inch units
- D. 3 @ 6-inch by 12-inch units
- E. 3 @ 9-inch by 12-inch units
- F. 1 @ 12-inch by 12-inch units

Scale: NTS

03.07.12



## Subaru Slate Pattern



FELTUS|HAWKINS DESIGN  
1207A MCGAVOCK STREET NASHVILLE, TN 37203 p. (615)320.1777 f. (615)320.1880



Retailer Graphics Program





# INTRODUCTION

## Retailer Graphics Program

As part of our continuing support of your retail store sales goals and branding efforts, Subaru is making available an array of owner lifestyle graphics in custom sizes and installation materials. These graphics offer retailers the ability to place images that have an extended lifespan and are consistent with the Subaru brand throughout your retail facility. You will also find photos of the items available to you displayed at many retail locations.

This program is designed with flexibility in mind for your individual needs such as:

- **Image Selection** – Featuring 8 new horizontal wallpaper images, 10 new vertical fabric panels, 40 new horizontal fabric panels and 2 new freestanding banners to choose from. The historical Subaru models are available as well as the LOVE collage freestanding banner. The refreshed lifestyle images feature different regions of the country and reinforce the Subaru brand messaging.
- **Materials** – Depending on your needs, the images can be produced on wallpaper, fabric panels or on freestanding banner stands.
- **Size and Layout** — Wallpaper images are customizable in both vertical and horizontal layouts. See inside for maximum dimensions. Fabric panels and banners are fixed sizes that are not customizable. Please note all materials provided are for interior use only and are not suitable for outdoor purposes.

## Ordering Retailer Graphics

Each item displayed in the plan-o-gram is available for order via the Subaru Marketing Resource Center ([subarumarketing.com](http://subarumarketing.com)), click “Print-on-Demand”, then click on “Retailer Graphics Program” to select the items you wish to order.

## Important Information Regarding Wallpaper Installation

### Self-Installation (Retailer is 100% responsible for installation)

- You are required to provide measurements and a photo of the wall space with your order on [subarumarketing.com](http://subarumarketing.com).
- You may opt to measure the wall space yourself. Should you prefer a professional installer to take measurements, please check the appropriate box on the website and SOA will have a referred installer contact you.
- The photo will establish whether the selected image can be properly installed without jeopardizing corporate branding. Obstructions such as a clock or fire extinguisher within the placed image may disqualify the location.
- Upon approval of the photo, the wallpaper will be produced as close as possible to the requested size.

### Professional Site Survey and Installation

- A professional installer is recommended and can be requested prior to placing your order at [subarumarketing.com](http://subarumarketing.com). The installer will survey the wall space for approval, take measurements and install the wallpaper.
- To have a Subaru referred installer contact you prior to your purchase, please check the appropriate box on the print-on-demand area at [subarumarketing.com](http://subarumarketing.com).

## Retailer Graphics Program

Bring your retail store to life and place wallpaper graphics as a focal point in your facility.

### Wallpaper

The wallpaper options consist of 10 vertical and 31 horizontal image selections, all of which can be printed at a size that meets the needs of your retail facility.

- Maximum size of the vertical image is 64"W x 96"H.
- Maximum size of the horizontal image is 144"W x 96"H

**You may customize the size of an image but it must be scaled proportionally.** Neither vertical nor horizontal images may be cropped or altered in any manner during printing or installation. A custom image will be fabricated as close as possible to the requested size. The final dimensions will be determined by the correct proportions of the image so please specify whether the width or height is most important.

### Customized Wallpaper Print-on-Demand

If a retailer wishes to further customize an image for larger or smaller showroom walls, submit a request to the Subaru Marketing Resource Center with the image desired and wall dimensions (width x height) to determine if the original image recropping and quality will accommodate the size desired to produce a quality print. If cropping and quality are approved, the image will be sized accordingly and a proof will be sent to the retailer for approval along with an estimate for time to print, ship and install (if applicable). Upon retailer authorization, the customized wallpaper will be produced. Production time varies per size and production schedule.

Note: A professional installer is recommended and can be requested prior to placing your order at [subarumarketing.com](http://subarumarketing.com). To have a Subaru referred installer contact you prior to your purchase, please check the appropriate box on the print-on-demand area at [subarumarketing.com](http://subarumarketing.com).

### Vertical Wallpaper



Wallpaper - Map



Wallpaper - Family



Wallpaper - Ski Couple



Wallpaper - MY17 Full Line (New!)



Wallpaper - Adventure



Wallpaper - Climbing



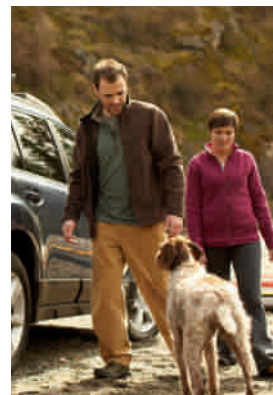
Wallpaper - Winding Road



Wallpaper - Dog



Wallpaper - Bike



Wallpaper - Pet



## Horizontal Wallpaper



Wallpaper - Friends (New!)



Wallpaper - Winter Fishing (New!)



Wallpaper - Mountain View (New!)



Wallpaper - Lake Cabins (New!)



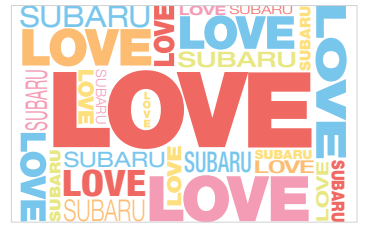
Wallpaper - Motorsports Higgins (New!)



Wallpaper - Downhill Skiing (New!)



Wallpaper - Dog Day Afternoon (New!)



Wallpaper - Subaru Love (New!)



Wallpaper - Go Fly A Kite



Wallpaper - Beach Campfire



Wallpaper - Beach Dog



Wallpaper - Flying



Wallpaper - Kids Corner



Wallpaper - Two Dogs



Wallpaper - Couple



Wallpaper - Three Boys



Wallpaper - Tent



Wallpaper - Children



Wallpaper - Camping



Wallpaper - All-Wheel Drive



Wallpaper - Ice Hockey



Wallpaper - Handle Bars



Wallpaper - Active Couple



Wallpaper - Mountain Bike



Wallpaper - Trail Bike



Wallpaper - Wilderness



Wallpaper - Mountain Top



Wallpaper - Rock Climbing

## Horizontal Wallpaper (continued)



Wallpaper - Hikers



Wallpaper - Kayaking



Wallpaper - Ocean Kayak

## Fabric Panels

The wall panels are lightweight framed images printed on fabric. The 17 vertical and 76 horizontal panels are fixed sizes, they cannot be customized.

- Vertical image dimensions are 36"W x 48"H
- Horizontal image dimensions are 48"W x 36"H

Choose the number of panels, format and images that best speaks to the customer in your showroom.

### Fabric Panels



Vertical



Horizontal



## Vertical Fabric Panels



Panel - Lake View (New!)



Panel - Campfire (New!)



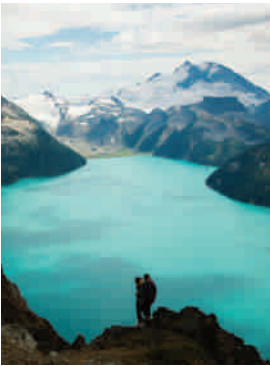
Panel - Mountain Skies (New!)



Panel - Lake Cabins (New!)



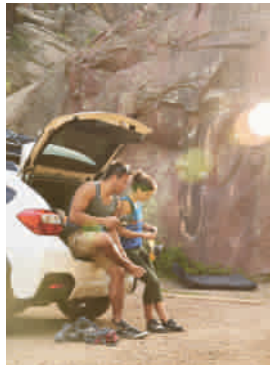
Panel - Jumping In (New!)



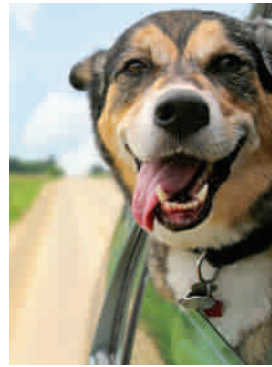
Panel - Blue Waters (New!)



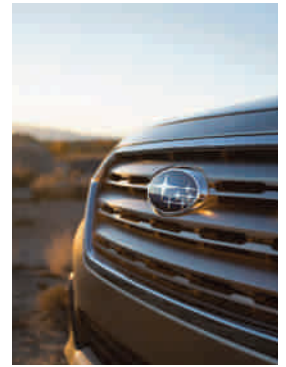
Panel - Family Outing (New!)



Panel - Before the Climb (New!)



Panel - Dog Passenger (New!)



Panel - Subaru Front Grille (New!)



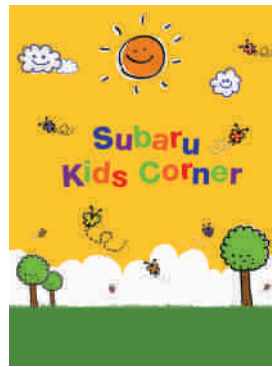
Panel - Map



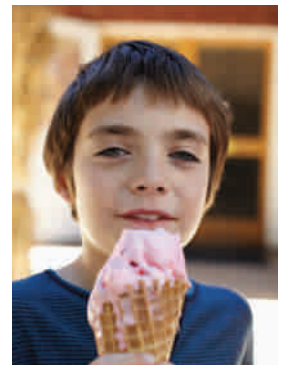
Panel - Fall Family



Panel - Winter



Panel - Kids Corner



Panel - Summer



Panel - Landscape



Panel - Camping



## Horizontal Fabric Panels



Panel - Beach Family (New!)



Panel - Friends (New!)



Panel - Winter Fishing (New!)



Panel - Desert Hills (New!)



Panel - Snowdrift (New!)



Panel - Riverside Camping (New!)



Panel - Telescope (New!)



Panel - Lake View (New!)



Panel - Bikers (New!)



Panel - Photographer (New!)



Panel - Campfire (New!)



Panel - Organic Gardening (New!)



Panel - Friends (New!)



Panel - Pre-Loved Subaru (New!)



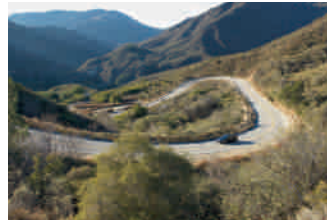
Panel - Doggie Bandana (New!)



Panel - Odometer (New!)



Panel - STI Grille (New!)



Panel - Winding Roads (New!)



Panel - Ice Skates (New!)



Panel - Dog Tested Canoe (New!)



Panel - Dog Tested Surfboard (New!)



Panel - Mountain View (New!)



Panel - Golden Retriever (New!)



Panel - Sunset View (New!)



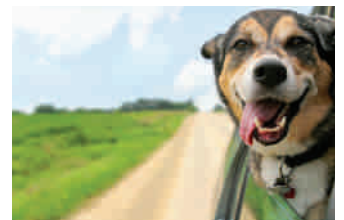
Panel - Mountain Skies (New!)



Panel - Lake Cabins (New!)



Panel - Window View (New!)



Panel - Dog Passenger (New!)



## Horizontal Fabric Panels *(continued)*



Panel - Mountain Sunset **(New!)**



Panel - Bike Wheel **(New!)**



Panel - Jumping In **(New!)**



Panel - Blue Waters **(New!)**



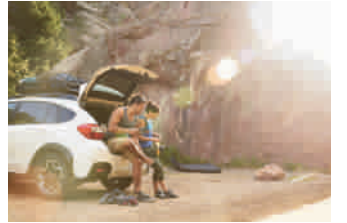
Panel - Family Outing **(New!)**



Panel - Friends Walking **(New!)**



Panel - Bike Journey **(New!)**



Panel - Before the Climb **(New!)**



Panel - Motorsports Higgins **(New!)**



Panel - Motorsports Lasek **(New!)**



Panel - Motorsports **(New!)**



Panel - Motorsports Pastrana **(New!)**



Panel - Go Fly A Kite



Panel - Beach Campfire



Panel - Beach Dog



Panel - Flying



Panel - Gauges



Panel - Gone Fishing



Panel - Bike Break



Panel - Hiking with Dog



Panel - Gardening



Panel - Family Bike Ride



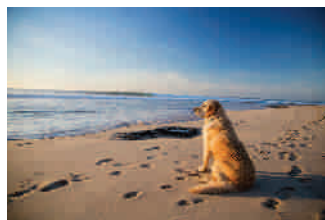
Panel - Fun on the Beach



Panel - Mountain Hike



Panel - Downhill Skiing



Panel - Dog Day Afternoon



Panel - Walk on the Beach



Panel - Paddleboarding



## Horizontal Panels *(continued)*



Panel - All Wrapped Up



Panel - STI Dirt



Panel- STI Trunk Spoiler



Panel - Subaru Front Grille



Panel - Desert Camping



Panel - Fall Fun



Panel - Kids Corner



Panel - In a Hurry



Panel - Children



Panel - Trail Ride



Panel - White Water Rafting



Panel - Active Couple



Panel - Mountain Bikes



Panel - Kayakers



Panel - Travel



Panel - Ice Hockey



Panel - Couple



Panel - Mountain Top



Panel - Two Dogs



Panel - Three Boys

## Fabric Panels *(continued)*

### Historical Images - Horizontal Panels



Historical Panel - 360



Historical Panel - DL Sedan



Historical Panel - Subaru Family



Historical Panel - FF-1



Historical Panel - Leone

## Freestanding Banners

The 8 vertical images are designed to fit stand-alone, single and double-sided retractable banner stands. The durable banners are also ideal for frequent use at events and promotional activities. These vinyl banners are a fixed size which cannot be customized.

- Image dimensions are 33"W x 84"H

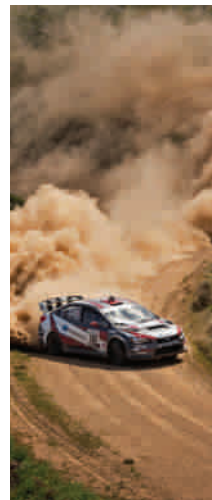
After selecting the desired banner image(s) on [subarumarketing.com](http://subarumarketing.com), proceed to check-out to view the retractable banner stand hardware options and select the one that meet your needs.

### Freestanding Banner Stands

### Banner Images



Banner - MY17 Full Line *(New!)*



Banner - Motorsports *(New!)*



## Freestanding Banners *(continued)*

### Banner Images



Banner - Winter



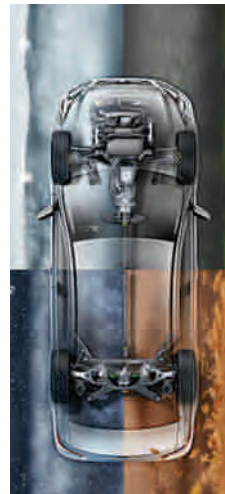
Banner - Winding Road



Banner - Desert Camping



Banner - Active Couple



Banner - All-Wheel Drive

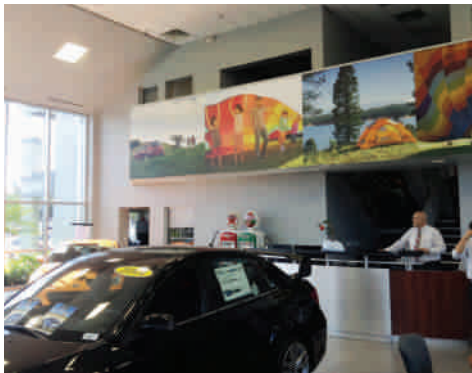


Banner - Love Collage

## Installed Retailer Photos

The images below are examples of how a Subaru retail facility used the Subaru Retailer Graphics Program to add warmth and visual interest to their retail facility. Consider grouping images in a creative way for visual impact such as installing several images to run together. For high ceilings consider stacking images vertically in a group with equal space between them. Install one large image and divide it into three sections with a few inches of space between them to add texture. Cover a column, soffit or walkway area. Hang multiple fabric panels to create a collage style or photo wall. Use the Kids Corner graphics to designate a children's play area. Feel free to be creative in how these items are displayed.

### Wallpaper Examples



### Fabric Panel and Wallpaper Examples







ALL SHOWROOM PRODUCTS

Subaru Primary Kits

Showroom Elements

Digital Elements

SUBARU PRIMARY KITS



The Subaru Digital & Showroom Elements Primary Kits are designed to provide an engaging and impactful customer experience across all Subaru retailers. We've created a set of powerful retail tools to dynamically showcase Subaru vehicles, service, accessories, and more!

Having a consistent set of leading-edge resources in every Subaru facility will increase the consistency and effectiveness of our overall sales and parts/service operations. The Subaru Digital & Showroom Elements Primary Kits are a critical component of our retail strategy and a requirement for all Subaru retailers. New retailers should order all elements (Digital and Showroom) directly on this site.

The Subaru Digital Primary Kit\* includes the following components:

- (1) Digital Showroom Touch-Screen Kiosk\*\*
- (1) Service Media Center\*\*

The Subaru Showroom Elements Primary Kit\* includes the following components:

- (2) Performance Pylons
- (2) Performance Pylon Literature Racks
- (4) Aluminum Poster Frames
- (2) Digital or Graphic Wheel Feature Stands
- (1) Accessory Display

\* Subaru of America, Inc. maintains the right to update the physical display and electronic hardware after the warranty expiration, beginning at time of purchase. Monthly payments are subject to change.

\*\* Monthly Payment includes LiveGuide license fee, digital content, POP materials typically included in the update kits.

Located at:

Subarunet>>Retail Environment>>SOE Merchandise

**SUBARU.**

QUALITY DRIVEN® SERVICE

# Field Sales Organization

**Tom Campbell**

National Director of Field Sales

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**SubaruDealerSolutions.com****1-866-213-4690**





To speak with our Equipment and Systems Planning team, contact me:

**Tom Campbell 724-693-9335**

[tom.campbell@us.bosch.com](mailto:tom.campbell@us.bosch.com)

## Expert Service Equipment & Systems Planning...

### *At No Cost to You!*



#### **FOUR Easy Steps:**

#### **Detailed CAD Drawing**

Includes detailed equipment and systems layout in service area as well as a lighting plan with photometric data.

#### **Equipment & Systems Needs Assessment**

Key project document detailing contact information, target launch/phase dates, building requirements and recommended shop equipment to enhance fixed operations.

#### **Detailed Specifications & Budget**

Includes detailed specifications for all major equipment called out in the Needs Assessment. Also includes a preliminary equipment & systems budget.

#### **Project Coordination & Support**

Single point of contact for service equipment and installation.

## **Most architects and contractors don't understand the needs of a service facility – *we do!***

Equipment and Systems Planning team members know service areas need to be set up to provide an optimal flow of people, equipment and vehicles into and out of the area. Because of our close partnership with the OEM, we know the Subaru-approved equipment – where to place it for the best usage and work flow throughout the shop and how to get it installed.

*We are the experts!*

**Call today to speak with an Equipment & Systems  
Planning Specialist!**

Special lease programs available for new facilities.  
Lease rates will vary. Please call for details.

# **1-866-213-4690**

**Let our experts make sure your facility:**

- Accommodates Future Vehicles
- Provides Layout Efficiency
- Maximizes Shop Throughput



# **SUBARU.**

QUALITY DRIVEN® SERVICE

**[SubaruDealerSolutions.com](http://SubaruDealerSolutions.com)**

## Courtesy Subaru of Chico

Required Furniture Elements (Typicals)	Estimated Cost Range		
	Level 1	-	Level 2
Sales 2-7/General Mgr. - Consultation Table 7 Layouts	\$ 10,782.24	\$	15,298.43
Sales 1/ Sales Mgr./F&I 1-2 - L Shaped Desk without overheads 60" 4 Layouts	\$ 10,333.48	- \$	14,016.68
General Mgr./ Serv. Mgr. - U shaped desk with overheads 72" 2 Layouts	\$ 7,963.04	- \$	11,045.76
Customer Lounge/Quiet Lounge - Lounge Seating 5 Layouts	\$ 21,300.95	- \$	42,669.80
Kids Play Area - Seating 1 Layout	\$ 748.08	- \$	1,571.85
Customer Lounge - Workstation chairs 4 Chairs	\$ 1,774.76	\$	2,974.76
Service Write-Up - Service Writers 3 Layouts	\$ 6,547.74	- \$	7,540.74
Total	\$ 59,450.29	\$	95,118.02

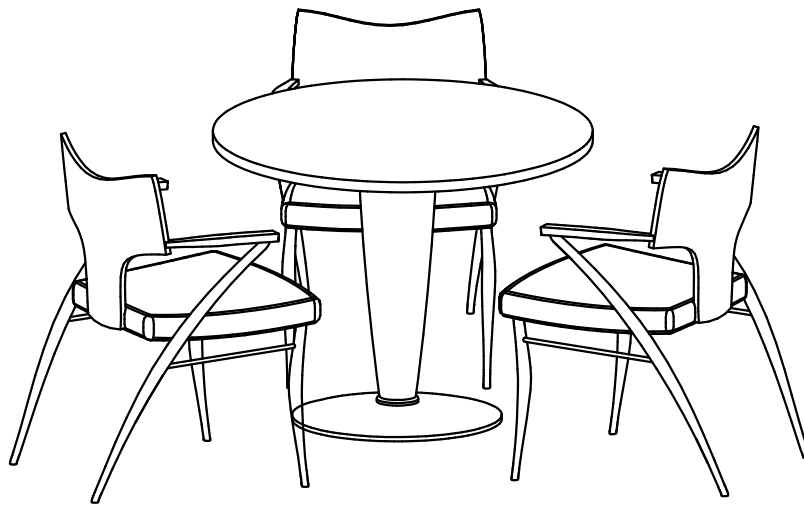
-A quote for Freight and Installation will be provided at time of order.

-Optional furniture areas will be specified to meet Dealership's need at time of order.

-Sales tax will be added at time of invoicing

-Prices subject to change.

**-Standard lead time is 8-10 weeks.**



Cafe Seating

3 - Cafe chair with wood back, upholstered seat and brushed metal leg

1 - Cafe Table with brushed & chrome leg, laminate top with wood edge

Totals

\$1,540.32 - \$2,185.49

Scale: NTS

03.24.18

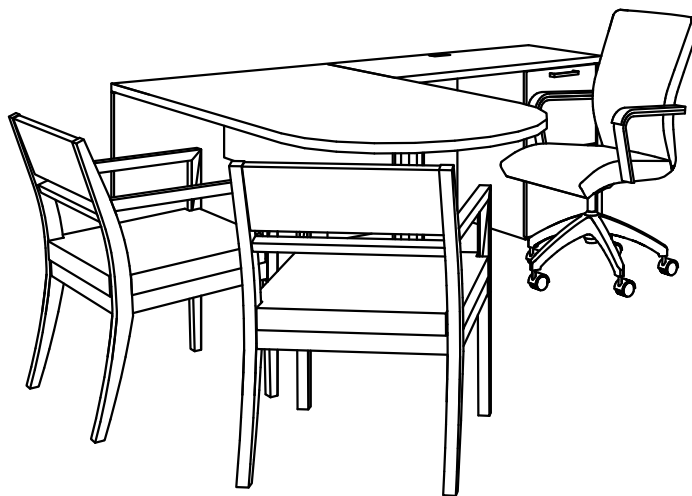


Sales 2-7, General Mgr.

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**fh** FELTUS HAWKINS DESIGN  
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Office - L shape

- 1 - 60"x30" Peninsula Desk with brushed nickel leg & frosted glass modesty panel
- 1 - 42"x22" Return Desk with (1) Box, Box, File Pedestal
- 1 - Pencil drawer
- 1 -Task Chair
- 2 -Guest Chairs

Totals (Varies Per Level Selected)  
\$2,583.37 - \$3,504.17

Scale: NTS

03.24.18

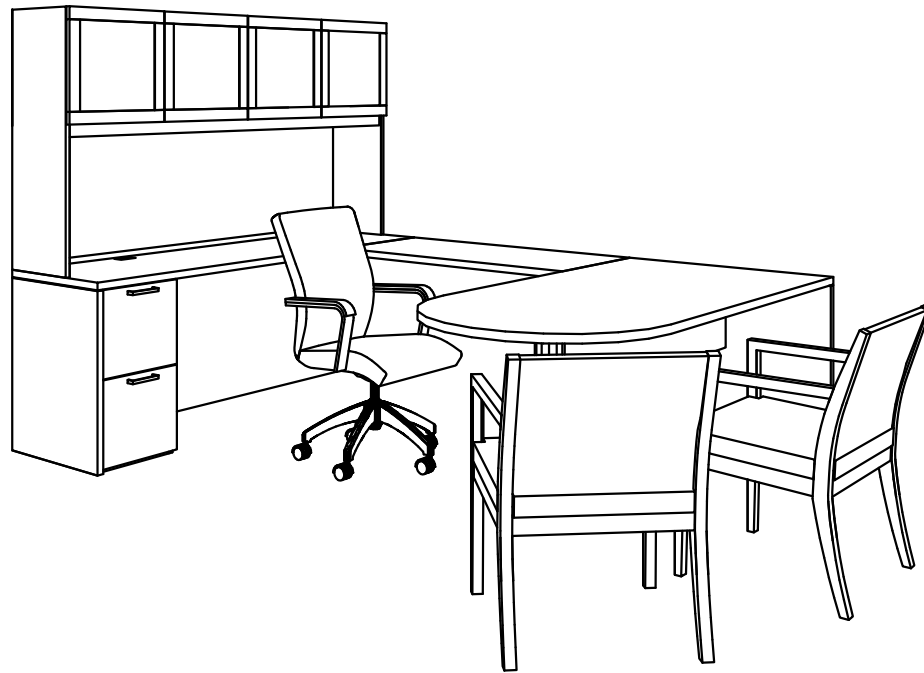


Sales Mrg., Sales 1, F&I 1-2



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### Manager's Office- U shape

- 1 - 72"x30" Peninsula Desk with brushed nickel leg & frosted glass modesty panel
- 1 - 42"x22" Bridge
- 1 - 72"x22" Return Desk with (1) Box, Box, File Pedestal
- 1 - 72" Overhead Storage unit with frosted glass doors
- 1 - Pencil drawer
- 1 - Task Light
- 1 - Tackboard
- 1 -Task Chair
- 2 -Guest Chairs

Totals (Varies Per Level Selected)

\$3,981.52 - \$5,522.88

Additional filing cabinets or wardrobe cabinets not included in price.

Scale: NTS

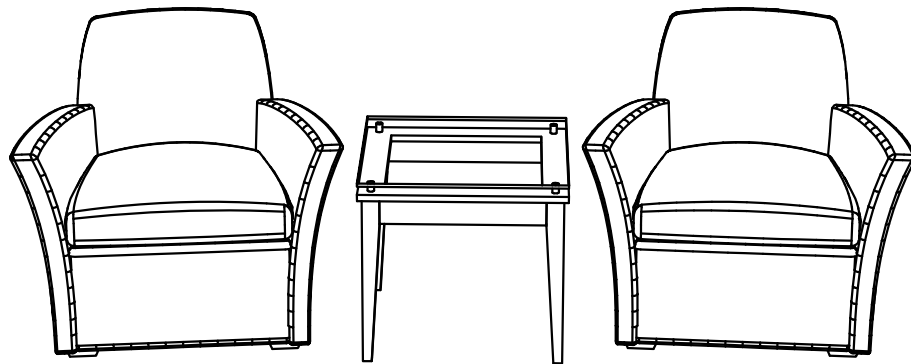
03.24.18



General Mgr., Service Mgr.



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### Customer Lounge

- 4 - Fully Upholstered Lounge Chair
- 1 - 24" x 24" Square end table, cherry veneer with glass top

Totals (Varies Per Level Selected)  
\$4,260.19 - \$8,533.96

Scale: NTS

03.24.18

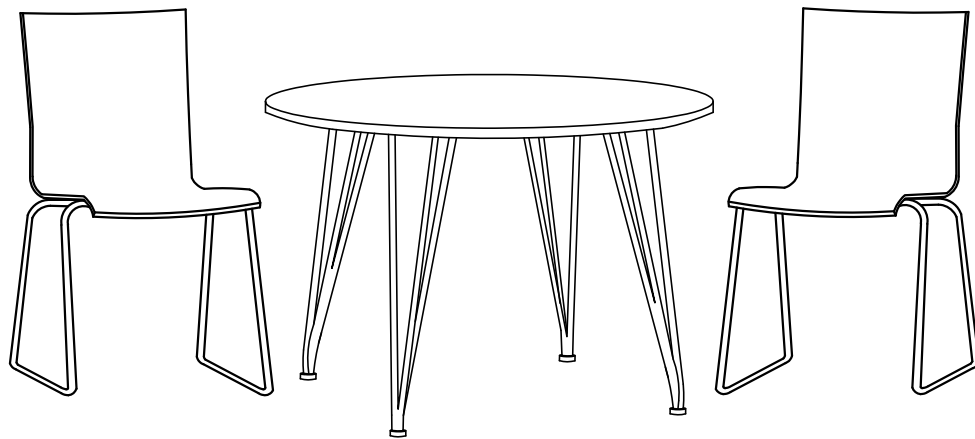


## Customer Lounge/Quiet Lounge

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### Customer Lounge

3 - Kids Chair, cherry finish  
1 - 36" Diameter table, blue top, black legs

### Totals

\$748.08 - \$1,571.85

Scale: NTS

03.24.18

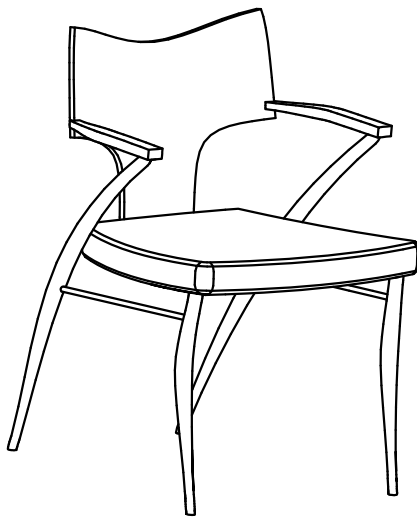


## Kids Play Area

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### Customer Workstation Chair

1 - Cafe chair with wood back, wood arms, upholstered seat and brushed metal leg

Totals

\$443.69 - \$743.69

Scale: NTS

03.24.18

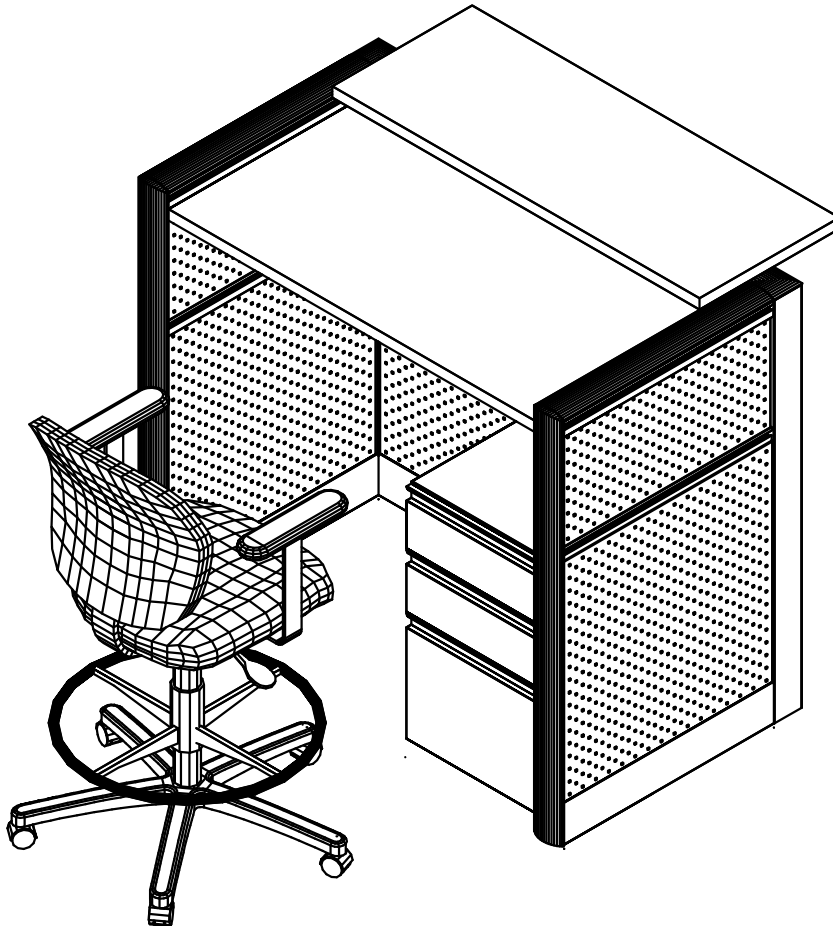


## Customer Lounge

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### Service Advisor

- 1 - Stand-up height desk with transaction surface
- 1 - Box-box-file pedestal
- 1 - Stool with upholstered seat and back and caster base.

Total

\$2,182.58 - \$2,513.58

Estimates are non-powered stations. Power capabilities may be added for an additional charge. Widths available are 36", 42", 48", and 54" wide.

PRICE DOES NOT INCLUDE FREIGHT AND INSTALLATION

Scale: NTS

03.24.18



## Service Write-Up



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# Signature Facility Program, Phase II

## Furnishings Options



FELTUS HAWKINS DESIGN

INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT



**SUBARU**

The Furnishings Options for the Signature Facility-Phase II include some options of furniture. Each option delivers a similar look that is appropriate for the concept, but with different levels of finishes and costs.

The following pages provide images, specifications and pricing for typical examples used throughout the facility. The specific design, layout, and specification for each Signature facility will be developed by F|H Design, in response to input from the dealership.

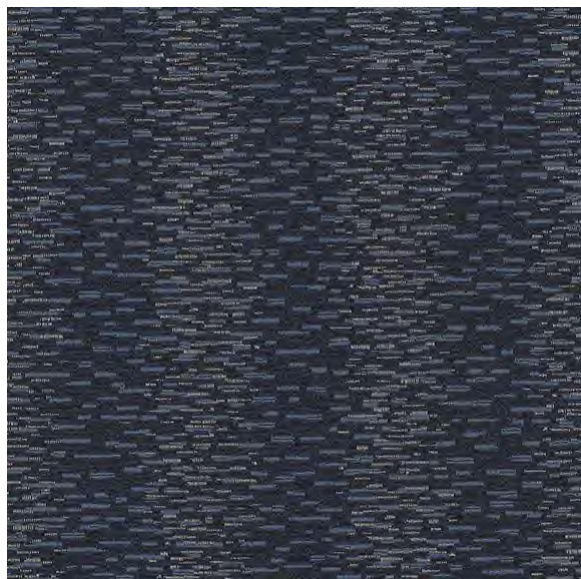


For additional information, please contact F|H Design at 615.320.1777:

Daniella Gatlin

dgatlin      esign.com

Ext. 235



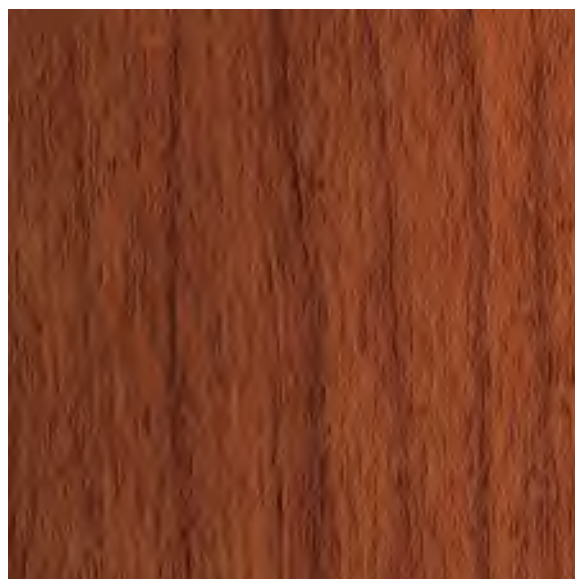
**Guest Chair Upholstery**  
CF Stinson Jala Wave



**Café Chair and Stool Upholstery**  
DesignTex Beam Indigo, Hold # 5119588



**Task and Lounge Chair Upholstery**  
Catalina Black Leather  
- OR -  
Momentum Canter Onyx



**Wood/Laminate Finish**  
OFS Brands Light Cherry  
OR  
Nevamar Blossom Cherry-  
WC558IN  
Wilsonart 7054-60 Wild Cherry



**Custom Cherry Laminate Greeter and Credenza—**

7' wide desk and credenza with bullnose edge and tempered glass transaction top with metal standoffs.

Brushed metal panels with black reveal, brushed metal base and accents on face of desk

Millwork drawings available upon request.



### **Open Peninsula Office**

72"x 30" Peninsula Desk, 90" x 22" Bench Storage with lateral files and open storage, monitor arm, and 3 swivel chairs; Fits in standard 10'x 10' office - \$3,906\*



### **Lounge Office**

2 Loveseats, mobile stool, 96" x 22" working credenza, side table, 36" dia. mobile table, monitor arm; Fits in 12' x 10' office - \$5,938\*



### **First Office "Pulse" Casegoods**

Light Cherry Laminate Surface with Square Edge Detail, Satin Nickel Cylinder Base

**Units available with wall-mounted shelves and monitor panel**

### **“L” Shaped Configuration**

72”x 30” Peninsula Desk,  
42”x22” Return, and Over-  
head Storage - \$2,660\*



### **“U” Shaped Configuration**

72”x30” Peninsula Desk,  
42”x22” Bridge, 72”x 22” Cre-  
denza, and Overhead Storage -  
\$3,999\*



### **OFS “Impulse” Casegoods**

Light Cherry Custom Wood Veneer with Square Edge Detail, Frosted Overhead Doors  
and Modesty Panel with Matte Silver Frame, Satin Nickel Cylinder Base

#### **Units available without overhead storage**

*These casegoods are suggested for use in Dealer Office or Private Office  
and are not suggest for use in high traffic sales offices.*

**“L” Shaped Configuration**

72”x 30” Peninsula Desk,  
42”x22” Return, and Over-  
head Storage - \$2,446\*


**“U” Shaped Configuration**

72”x30” Peninsula Desk,  
42”x22” Bridge, 72”x 22” Cre-  
denza, and Overhead Storage -  
\$2,842\*


**First Office “Pulse” Casegoods**

Light Cherry Laminate Surface with Square Edge Detail, Frosted Overhead Doors and Modesty Panel with Matte Silver Frame, Satin Nickel Cylinder Base

**Units available without overhead storage**

### **Sales Workstation (duplex) non-powered**

Kimball Xsite 55" high systems furniture with glass, metallic silver painted, embossed tiles and wood trim 60" x 30" cherry laminate peninsula worksurface with metallic silver leg and 42"x 24" matching return worksurface with pencil drawer metallic silver box, box, file cabinets below worksurface

Also available with base power

\$3770\*



### **Service Advisors**

Kimball Xsite systems furniture with metallic silver painted and embossed tiles 42"x24" cherry laminate worksurface and transaction counter, cherry topcaps and finished ends, metallic silver mobile box/ box/ file cabinet, plastic center drawer

Available in 36", 42", 48" and 54" wide units and as desk height units

Contact F|H Design for specific pricing

Estimate for 42" non-powered station - \$1862\*



### **Option 1**

#### **Desk Chair-Faux Leather**

Sit On It “ReAlign” Chair - Swivel Tilt, Faux Leather Upholstered Seat and Back, Polished Aluminum Base - \$360\*

27W x 27D x 39 1/2” H



### **Option 2**

#### **Desk Chair-Faux Leather**

Keilhauer “Tom” Chair - Arc Arms, Faux leather upholstered Seat and Back, Black Frame and Base - \$785\*

28W x 33D x 28H



### **Option 3**

#### **Desk Chair-Mesh and Faux Leather**

SitOnIt “Focus” Chair - Swivel Tilt, Faux Leather Upholstered Seat, Mesh Back. Adjustable Arms, Polished Aluminum Base - \$325\*

27.3W x 25D x 35H





**Option 1****Stool—Faux Leather**

Sit On It “ReAlign” Armless Task Stool -  
Black Faux Leather Upholstered Seat and  
Back, Black Base - \$388\*

27W x 27D x 45.25” - 56.38” H

**Option 3****Stool—Faux Leather**

Sit On It “Focus” Armless Task Stool -  
Black Faux Leather Upholstered Seat,  
Mesh Back, Black Base - \$380\*

27W x 27D x 45.25” - 56.38” H



**Option 1****Guest Chair—Metal Frame**

Keilhauer “Also” Chair -Upholstered  
Seat and Back, Nickel Frame - \$399\*

Upholstery—CF Stinson Jala Wave  
22.5W x 24D x 42H

**Option 2****Guest Chair—Casters**

Loewenstein “Cinque” Chair  
Upholstered Seat, Aluminum Star Base on  
Casters- \$665

Upholstery—CF Stinson Jala Wave  
25.75W x 27.75D x 37.5H



**Option 1**
**Guest Chair—Closed Back**

OFS “Aria” Chair -

Upholstered Seat and Back,

Light Cherry Wood Frame - \$591\*

Upholstery—CF Stinson Jala Wave

22.75W x 20.5D x 33H


**Option 2**
**Guest Chair—Wood Back**

David Edward “Aussie” Chair

Upholstered Seat, Light Cherry Finish

Wood Frame - \$638

Upholstery—CF Stinson Jala Wave

22.5W x 25.25D x 33H



**Option 1A**
**Lounge Chair**

Ideon "Composium Sharp"

Wood Feet with Medium Cherry Finish ,

-Black Faux Leather Upholstery - \$929\*

-Black Leather Upholstery - \$1125\*

31W x 28D x 34H


**Option 1B**
**Lounge Chair with Tablet Arm**

Ideon "Composium Sharp"

Wood Feet with Medium Cherry Finish ,

-Black Faux Leather Upholstery with Wood Tablet Arm: \$1358\*

-Black Leather Upholstery with Wood Tablet Arm - \$1555\*

31W x 28D x 34H


**Option 2**
**Lounge Chair**

Cabot Wrenn "Lisbon" - Fully Upholstered

Chair Upholstery - Black Leather -\$1863\*

35W x 31D x 33H



**Option 1**
**Coffee Table—Glass Top**

OFS “Travata” Magazine Table

Wood Base with Custom Cherry Finish, Glass Top with Brushed Metal Hardware -

-Rectangle Table \$670\*

42W x 22D x 17H


**Option 2**
**Coffee Table—Wood Top**

Bernhardt B.6 Square Occasional Table

Brushed Nickel Base with Cherry Finish Wood Top - \$1,665\*

42W x 42D x 15.5H





**Option 1****Occasional Table—Glass Top**

OFS “Travata”

Wood Base with Custom Cherry Finish,  
Glass Top with Brushed Metal Hardware -  
\$546\*

24Wx 24D x 22H

**Option 2****Occasional Table—Wood Top**

Bernhardt “B.6”

Brushed Nickel Base

Cherry Wood Finish Top -\$1082\*

22W x 22D x 20.5H



### Option 1

#### Bar Chair - “Parfait II”

Leland “Parfait II”

Wood Back with Cherry Finish (22 Copper), Upholstered Seat, Sterling Frame - \$447\*

Upholstery—Designtex Beam Indigo

17.5W x 21.5D x 40.5H

**18.25W x 23D x 30SH**



### Option 2

#### Bar Chair - “Jaunt”

Loewenstein Jaunt

Wood Back with Light Cherry Finish, Upholstered Seat, Polished Chrome Frame - \$575\*

Upholstery—Designtex Beam Indigo

18.5W x 19.5D x 39.5H



**Option 1****Bar Table—"Parfait"**

Leland "Parfait "  
Sterling Dome Base, 30" Diam.  
Laminate Top with Vinyl Edge -  
\$688\*

30D x 42H

**Option 2****Bar Table—"40000 Series"**

Loewenstein " 40000 Series"  
with stainless disc base, 30" Dia  
Laminate Top with Wood Edge -  
\$538\*

30D x 42H



**Option 1**
**Cafe Chair—"Parfait II"**

Leland "Parfait II"  
Wood Back with Cherry Finish (22 Copper),  
Upholstered Seat, Sterling Frame - \$337\*

Upholstery—Designtex Beam Indigo

18.5 W x 37.75H 25.5 SH


**Option 2**
**Café Chair - "Jaunt"**

Loewenstein "Jaunt"

Wood Back with Light Cherry Finish, Upholstered Seat, Polished Chrome Frame - \$554\*

Upholstery—Designtex Beam Indigo

24W x 22D x 31H



**Option 1**
**Cafe Table— “Parfait”**

Leland “Parfait”

Sterling Dome Base, 36” Diam. Lami-  
nate Top with Vinyl Edge - \$805\*

36D x 30H


**Option 2**
**Cafe Table— “40000 Series”**

Loewenstein “ 40000 Series”  
with stainless disc base, 36” Laminate Top  
with Wood Edge - \$524\*

36D x 30H





**Community Table - “Impression”**

Enwork Impression O-Leg

Silver Base Finish

Wild Cherry Laminate Top with Vinyl  
Edge and USB/Outlet Power - \$706

30D x 72W x 42H

\*Seated Height Also Available



**Table Option 1****Kid's Play Table—"Little Marquette"**

Leland "Little Marquette"

Beveled Plywood Edge

Black Base, Copper Wood Finish - \$863\*

36" Dia. x 25"H

**Table Option 2****Kid's Play Table—"Bola"**

Fixtures Furniture "Bola"

Silver Base, Wild Cherry Laminate Top-

\$319\*

36" Dia. x 24"H

**Chair Option 1**
**Kid's Chairs—"Little Marquette"**

Leland "Little Marquette"  
 Arc Shell with no cutout,  
 Black Base, Cobalt Shell - \$236\*  
 16" W x 19" D x 28" H, 15" SH


**Chair Option 2**
**Kid's Ball Chairs—"Runtz"**

Safco "Runtz"  
 Black, Pink or Green Seat, Silver  
 base - \$143\*  
 22 1/2" Dia. x 17" H





INTERIOR ARCHITECTURE | PLANNING | PROCUREMENT

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**Custom Cherry Laminate Cashier Desk —  
7' wide desk with bullnose edge and tempered glass  
transaction top with metal standoffs.**

**Brushed metal panels with black reveal, brushed metal  
base and accents on face of desk.**

**Millwork drawings available upon request.**



**SUBARU®**

**Greeter/ Cashier**





Custom Cherry Laminate Greeter and Credenza—  
7' wide desk and credenza with bullnose edge and  
tempered glass transaction top with metal standoffs.

Brushed metal panels with black reveal, brushed metal  
base and accents on face of desk .

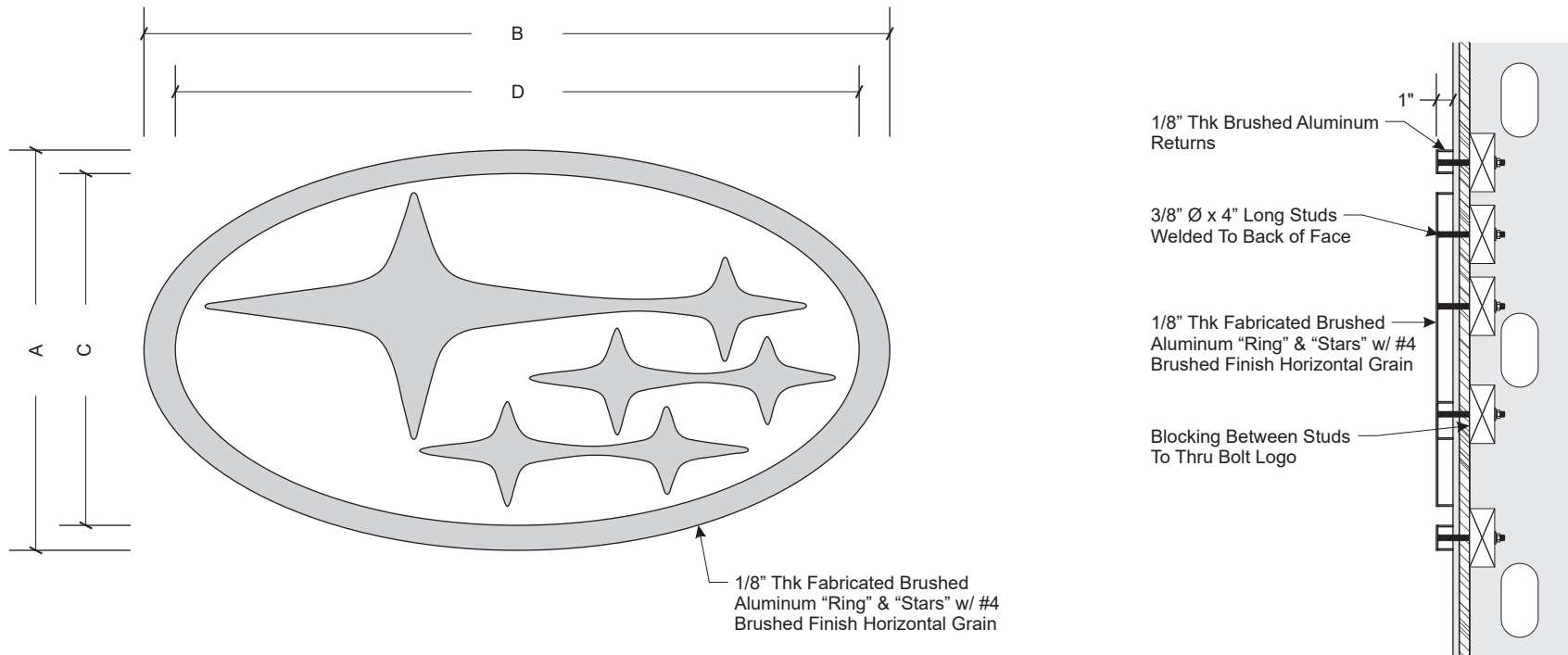
Millwork drawings available upon request.



**SUBARU®**

**Greeter and Credenza**

# Non-Illuminated Logo



	A	B	C	D
Non-Illuminated Logo	53"	98-3/4"	46-1/2"	90-1/2"
	48"	89-7/16"	42-3/16"	82"
	36"	67"	31-5/8"	61-1/2"
	24"	44-3/4"	21"	41"



**PHILADELPHIASIGN**  
BRINGING THE WORLD'S BRANDS TO LIFE

TITLE  
**Subaru**  
ADDRESS  
**Subaru Various**

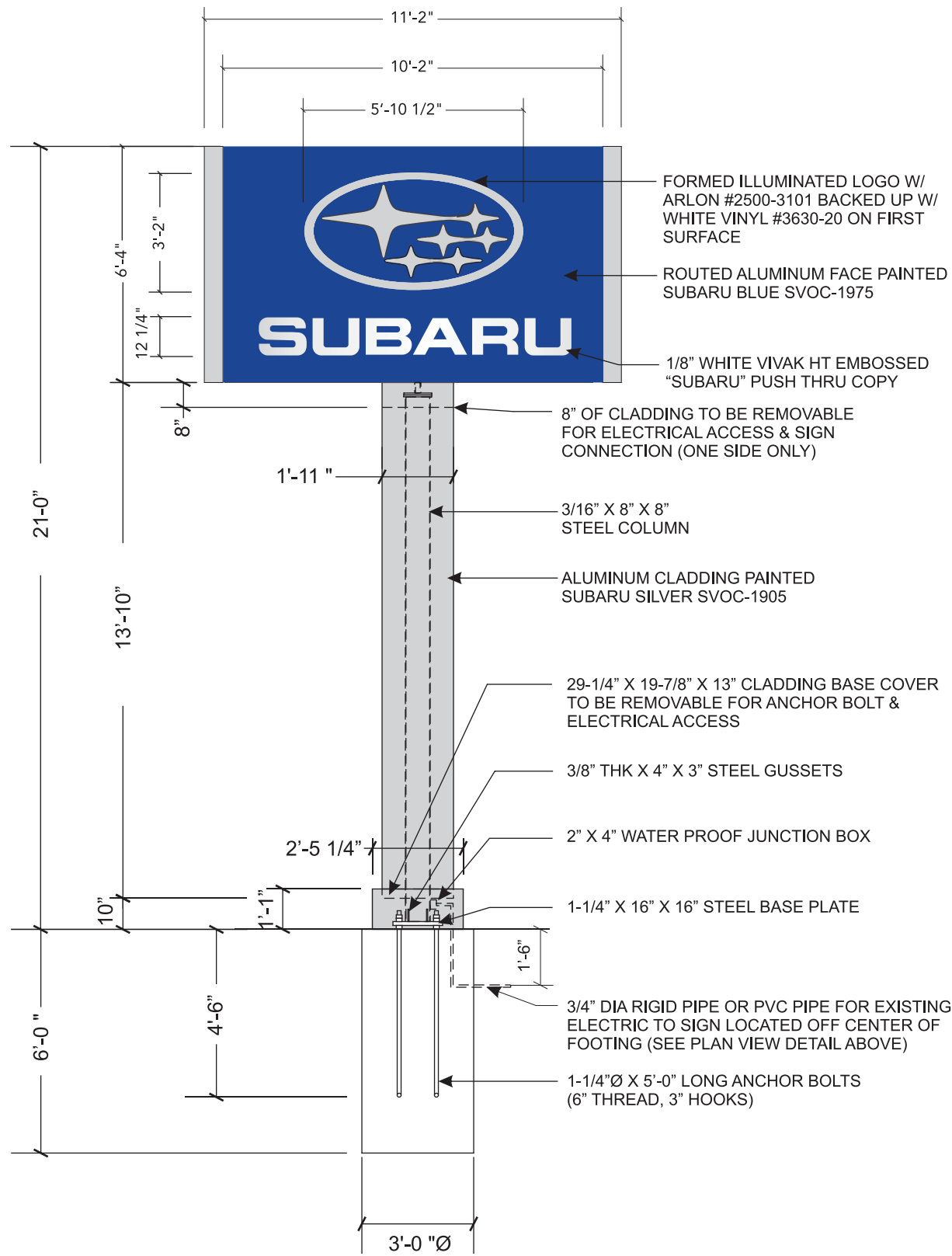
DWG BY  
**AFR**

DATE  
**05.18.16**  
DWG NUM  
**A26649**  
SHEET  
**1**

DATE  
REVISION

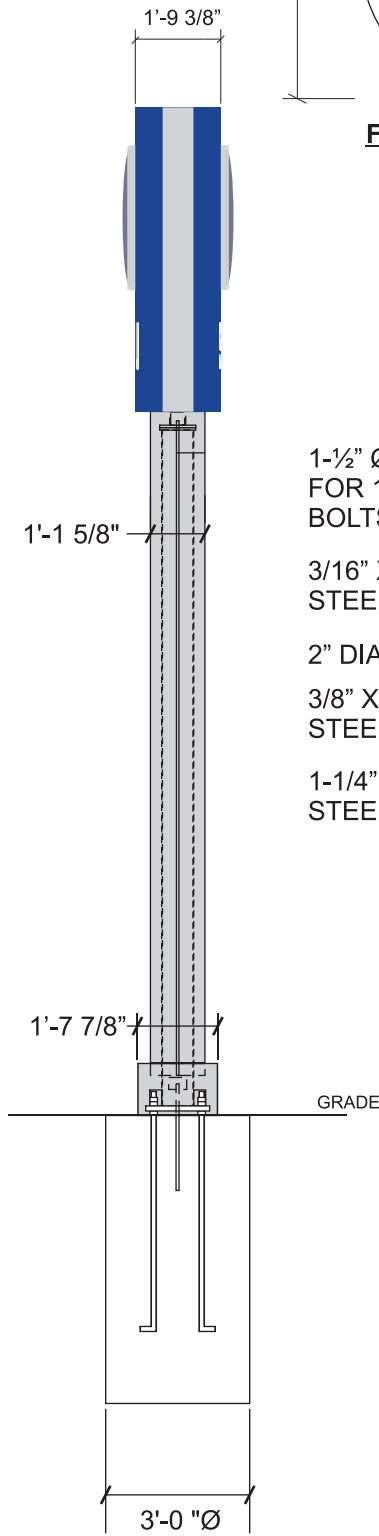
BY  
THIS IS AN ORIGINAL UNPUBLISHED DRAWING CREATED BY P.S.C.O. IT IS SUBMITTED FOR YOUR PERSONAL USE IN CONJUNCTION WITH A PROJECT BEING PLANNED FOR YOU BY P.S.C.O. IT IS NOT TO BE SHOWN TO ANYONE OUTSIDE YOUR ORGANIZATION NOR IS IT TO BE USED, COPIED, REPRODUCED, OR EXHIBITED IN ANY FASHION.

ENGINEERING  
SHOP  
VINYL / LAYOUT  
ROUTING / KNIFE



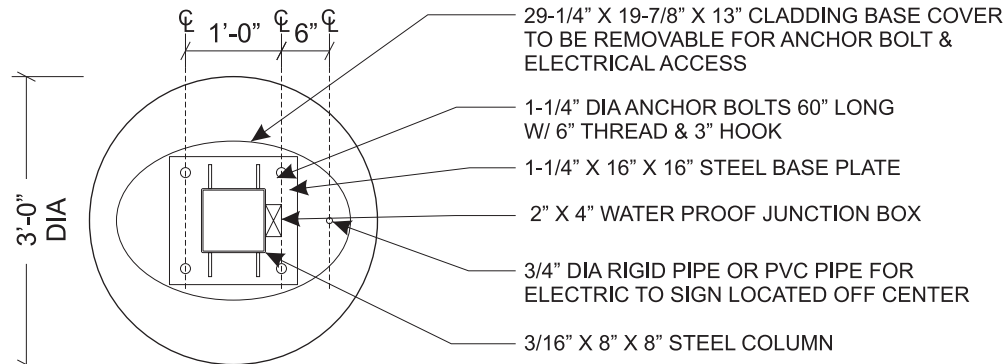
FRONT VIEW  
SCALE: 1/4" = 1'-0"

Note: This sign is intended to be installed in accordance with the requirements of Article 600 of the National Electrical Code and/or other applicable local codes. This includes proper grounding and bonding of the sign.

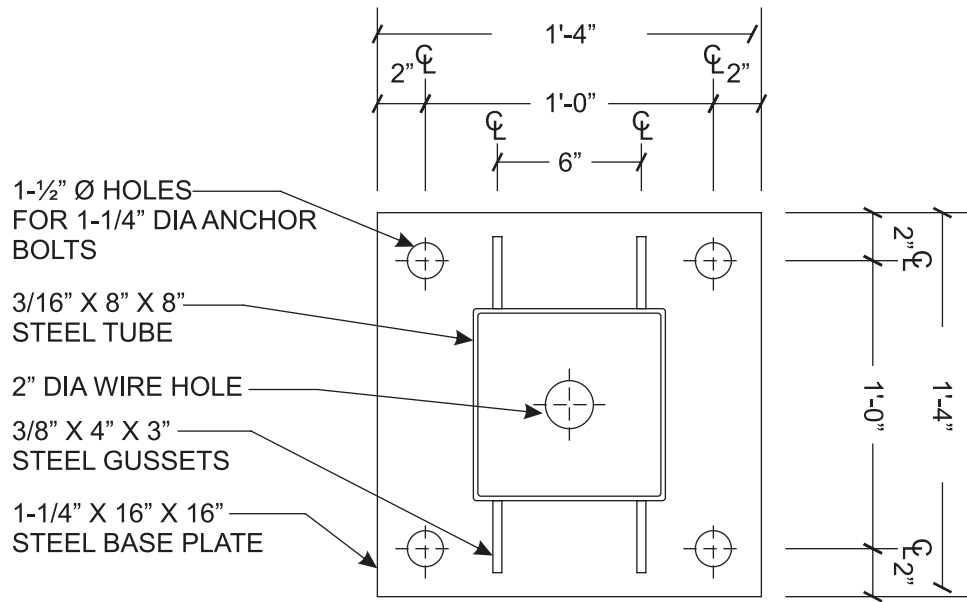


SIDE VIEW  
SCALE: 1/4" = 1'-0"

Rated for Standard Wind Load  
30 lbs./ft<sup>2</sup>



FOOTING PLAN VIEW  
SCALE: 1/2" = 1'-0"



BASE PLATE DETAIL  
SCALE: 1-1/2" = 1'-0"

PERMITS  
ONLY

**ELECTRICAL LOAD**  
(6.4) Amps @ 120 Volts  
**ELECTRICAL REQ'MTS**  
(1) 20 Amp/120 Volt Circuit

STANDARD PYLON NOTES:

1. Sufficient Primary Circuit In Vicinity Of Sign By Others.
2. Final Primary Hook-up By Sign Installer, Where Allowed By Local Codes.
3. Sign Shall Be U.L. Listed.
4. Soil Assumed To Be Medium Clay, Or Better, With Minimum Soil Bearing Capacity Of 2,500 PSF.
5. Concrete 3,000 PSI @ 28 Days.
6. Reinforcing Steel Shall Be ASTM A615 GR-40.
7. Structural Steel Shall Be ASTM A36.
8. All Welds Shall Conform To A.W.S Standards.



Philadelphia Sign  
C O M P A N Y

707 West Spring Garden Street  
Palmyra, New Jersey 08065

Phone: 856 829 1460  
Fax: 856 829 8549  
E-mail: mail@philadelphiasign.com

CUSTOMER:

SUBARU

JOB NUMBER:

REVISIONS:

Date:	Description:	By:
10/01/07	FLUSH FOOTING W/ GRD.	TS
10/10/07	UPDATED DRAWINGS	TS

DRAWING TYPE:

PERMIT DRAWING

SIGN TYPE:

P65 PYLON SWL

LOCATION:

Various

DATE:

10-02-06

DRAWN BY:

TS

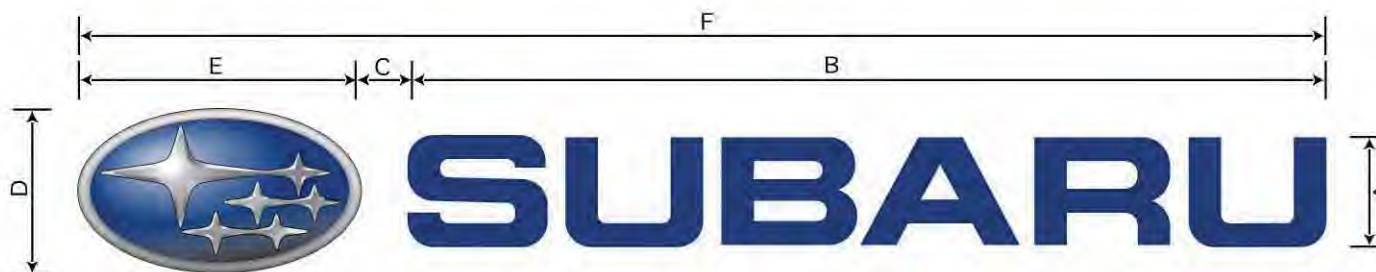
SHEET:

1 of 1

DWG NUMBER:

B-23399 SWL

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### Channel Letter Schedule

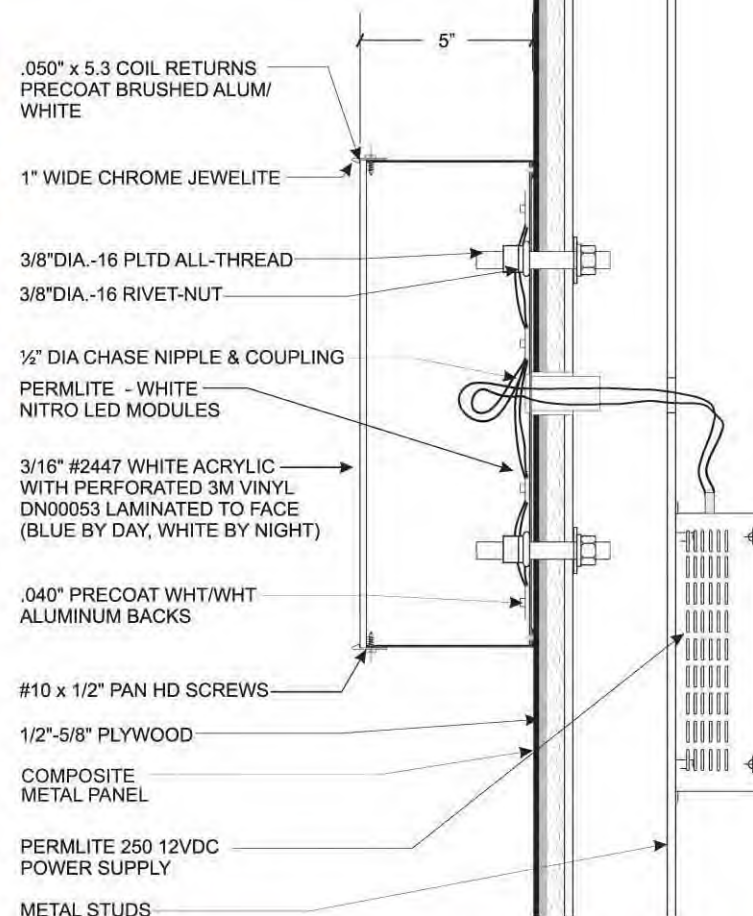
A	B	C	D	E	F	ELECTRICAL LOADS	AMPS / CIRCUITS
36"	25' 7- <sup>3</sup> / <sub>4</sub> "	14- <sup>3</sup> / <sub>8</sub> "	4' 5"	8' 2"	35' 0- <sup>1</sup> / <sub>8</sub> "	10.3 AMPS@ 120 VOLTS	(1) 20 AMP 120 VOLT CIR.
24"	17' 1- <sup>1</sup> / <sub>4</sub> "	9- <sup>5</sup> / <sub>8</sub> "	3' 0"	5' 2- <sup>1</sup> / <sub>2</sub> "	23' 0- <sup>3</sup> / <sub>8</sub> "	6 AMPS@ 120 VOLTS	(1) 20 AMP 120 VOLT CIR.

BLUE DAY/WHITE NIGHT FACES  
CHROME TRIM  
METALLIC SILVER RETURNS

**ILLUMINATED CHANNEL LETTER POWER SUPPLY.**  
**ADEQUATE WIRING ACCESS INSIDE BLDG. WALL**  
**REQUIRED FOR INSTALLATION.**

### STANDARD LETTER NOTES:

1. Sufficient Primary Circuit In Vicinity Of Sign By Others.
2. Letter To Letter Wiring And Final Primary Hook-up By Sign Installer, Where Allowed By Local Codes.
3. Sign Shall Be U.L. Listed.
4. Mounting Hardware By Sign Installer.
5. Full Size Drilling Template Furnished With Sign.



CROSS SECTION





**P48**  
6' 2" H X 7' 7"  
X 16' 4" OAH



**P30**  
4' 4" H X 7' 7"  
X 15' 3" OAH



**P50**  
5' 7" H X 9' 9"  
X 20' 3" OAH



**P65**  
6' 4" H X 11' 2"  
X 21' 0" OAH



**P90**  
7' 6" H X 13' 1"  
X 25' 9" OAH



**P120**  
8' 8" H X 15' 2"  
X 26' 11" OAH





**M30**  
4' 4" H X 7' 10"  
X 6' 10" OAH



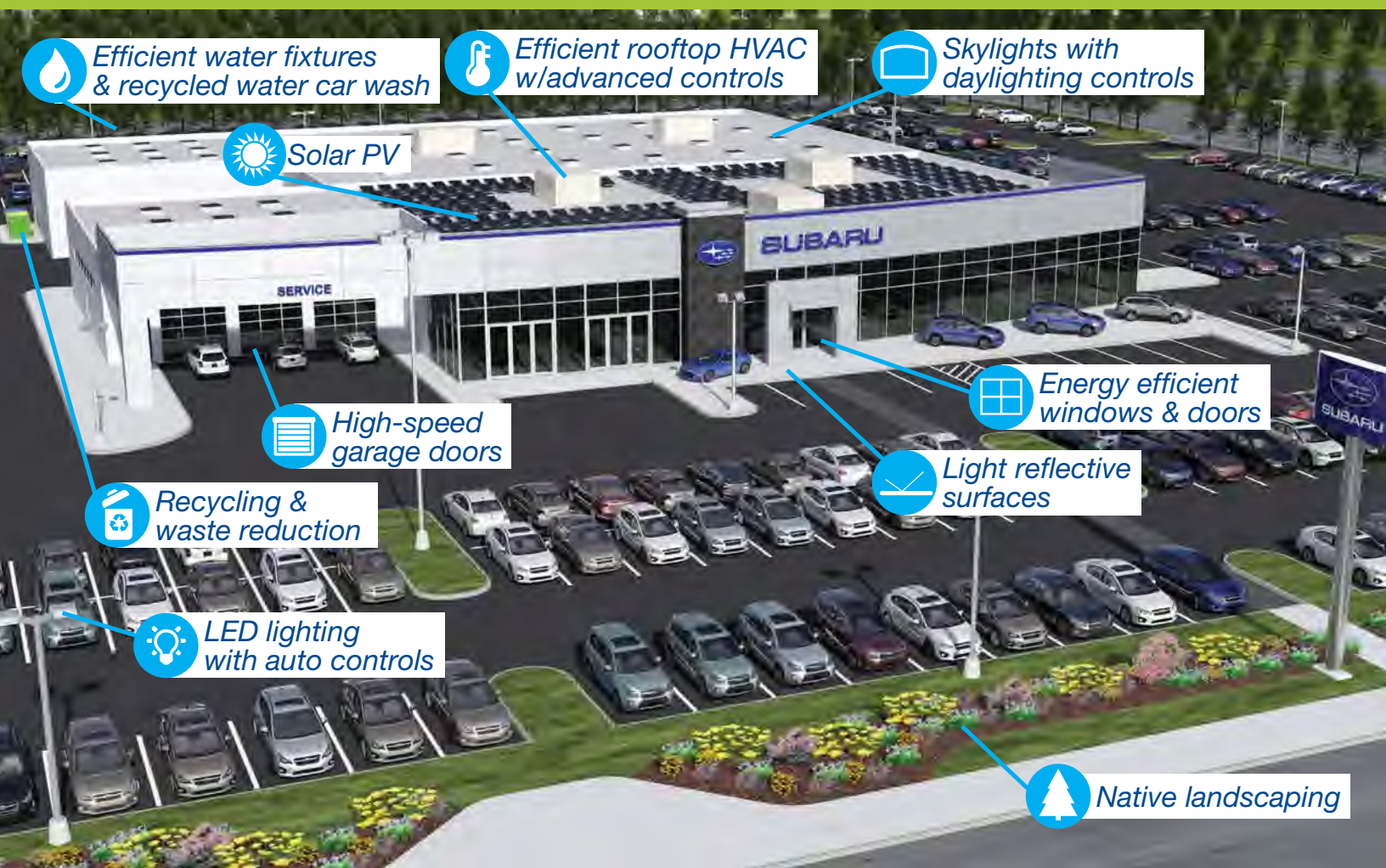
**M50**  
5' 7-1/2" H X 9' 11"  
X 8' 1-1/2" OAH



**M65**  
6' 4" H X 11' 1"  
X 8' 10" OAH

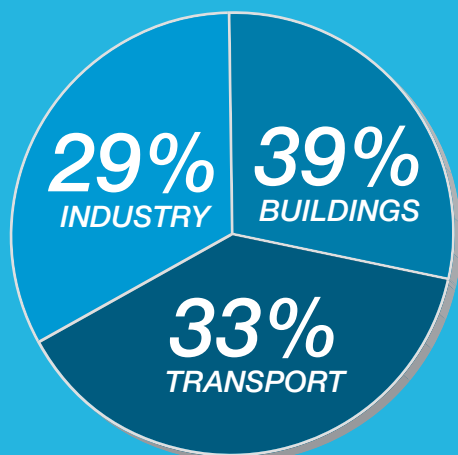


# Subaru Eco-Friendly Retailer Program



## Why It Matters:

CO Emissions by Source



## The Industry Opportunity:



17,000  
U.S. auto retailers



680 Million  
square feet of retail space



10,000 GWh  
of electricity consumed annually

## ABOUT THE PROGRAM

The Subaru Eco-Friendly Retailer Program is a voluntary environmental program designed for retailers who want to make a positive impact of their community and local environment.

This comprehensive program aims to help Subaru retailers minimize environmental impact by focusing on reduced energy consumption and cost savings while promoting community outreach.

The program focuses on five key areas of a facility:

- Energy Efficiency
- Water Conservation
- Recycling
- Waste Management
- Community Involvement

### ENERGY EFFICIENCY

Certified Eco-Friendly Retailers use occupancy sensors, LED lighting and programmable thermostats to minimize costs of daily operations and the amount of CO2 released into the atmosphere.

### WATER EFFICIENCY

Certified Eco-Friendly Retailers reduce water consumption by installing low flow fixtures and a water efficient car wash. They also conserve water by using non-potable sources for landscaping.

### RECYCLING

By recycling material such as paper; light metals; cardboard; small batteries; and plastic, Certified Eco-Friendly Retailers help divert massive amounts of material from landfills.

### WASTE MANAGEMENT

Certified Eco-Friendly Retailers ensure proper disposal of harmful waste including oil, coolant, batteries, and tires.

### COMMUNITY INVOLVEMENT

Caring about the environment extends beyond a retailer's facility. Certified Eco-Friendly Retailers are involved in community programs focused on preserving and protecting the environment. Some examples of community involvement include Adopt-A-Highway and Leave No Trace.

## HOW TO BECOME SUBARU ECO-FRIENDLY CERTIFIED

### ENROLL IN PROGRAM

Complete and submit the enrollment form available on Subarunet under Retail Environment

### TAKE SELF ASSESSMENT

Upon enrollment, you will be provided access to our environmental website with the complete program overview and self-assessment questionnaire. The completed questionnaire will help determine how close you already are to certification.

### CREATE AN ENVIRONMENTAL TEAM

This cross-functional team leads the rest of facility toward the goal of Subaru Eco-Friendly status.

### SCHEDULE ON-SITE INSPECTION

SOA arranges an on-site inspection by one of our consultants. The inspection is comprised of a checklist covering all five areas of the program and takes approximately five hours. The consultant meets with the Environmental Team after the inspection to review the results.

### CREATE A PLAN OF ACTION

Our consultant works with the Environmental Team to address any deficiencies.

### IMPLEMENT CHANGES

The Environmental Team makes the necessary changes or improvements to become certified.

### RECEIVE CERTIFICATION

Once a retailer earns enough points, SOA proudly certifies them as a Subaru Eco-Friendly Retailer. In addition, SOA will provide marketing materials and assist in promoting the retailer's achievement.

### COST TO RETAILERS

Although voluntary, the Subaru Eco-Friendly Retailer Program is comprehensive and includes a facility assessment performed by a professional consultant so there may be cost associated with participation in the program.



**Subaru Eco-Friendly Retailer Program**



**SUBARU**

*Confidence in Motion*



# Subaru Eco-Friendly Best Practices Field Guide

## Energy Conservation

### Electricity reduction

- **Lighting**
  - Use lower wattage lamps or LED bulbs. LED is the preferred lighting for both interiors and exteriors.
  - Install On/Off controls such as motion detectors, dimming timers, and photocell switches to further regulate usage.
- **Efficient HVAC equipment** to include blower motors and AC compressors.
- **Compressors, pumps and fans** should have efficient/correct size motors

### Natural Gas Conservation

- **High efficiency furnaces or alternative systems** such as infrared reduce gas usage for heat.
- **Temperature control**
  - Lower temperatures during non-working hours.
  - Design and maintain building envelope integrity to minimize air/moisture infiltration.

### Alternative Energy

- **Recycling waste oil** to generate heat.
- **On-site electricity generation** from solar panels.
- **Natural lighting** through solar tubes, skylights and clerestory windows.
- **Geothermal units** to channel stable temperatures found below ground level.

## Water Use Reduction

### Water irrigation

- **Capturing of non-potable water** for irrigation and/or car washes.

## Waste to Landfill Reduction

### Limit Containers

- **Develop purchasing policies/practices** that limit the need for disposable items (Ex: Bulk Oil Program)

### Proper Disposal

- **Reuse/Renew/Recycle** appropriate items.
- **Disposal and recycling bins** should be accessible and correctly labeled.
- **Monitor flow** to confirm proper disposal.

### Reduce Plastic Use

- **Providing reusable cups, bottles and mugs** will reduce the use of Styrofoam and plastic.

## Community Involvement

### Environmental Involvement/Outreach

- **Communicates Eco-Friendly initiatives** to employees, customers and the community..
- **Work with the community** to further Eco-Friendly efforts already in place.
- **Capitalize marketing opportunities** by participating in local activities that interact with people of your local community.



Energy	Monthly Savings	Price Per Unit	Product specs	Suggested Make/Model
<b>Electricity</b>				
Lot Lighting switch from HID to LED	\$ 28.44	\$ 1,200.00	1100 to 250 watts	GE, Cree
Dimmers and Motion Detectors	\$ 8.00	\$ 100.00	EMS controlled	GE, Cree
Interior Lighting from Fluorescent to LED	\$ 1.83	\$ 71.00	T12 to LED	GE, Phillips
High Efficiency AC units	\$ 150.00	\$ 4,500.00	3 ton**	Rheem, Bryant, Trane
Upgrade Exit Signs to LED	.\$ 2.00	.\$ 15.00	Incandescent to LED	Home Depot, Lowes
<b>Natural Gas</b>				
High Efficiency furnace units	\$ 100.00	\$ 3,500.00	90+% eff. furnaces	Lennox, Bryant, Trane
<b>Both Electricity and Gas</b>				
Occupancy sensors for less used rooms	\$ 6.00	\$ 100.00	Total Room Sensor	Grainger, Leviton, Hubbel
Fast Track garage doors	\$ 75.00	\$ 14,000.00	2-3 second cycle	Rytec
Programmable thermostat	\$ 4.00	\$ 50.00	7 day	Honeywell, Nest, Lennox
Low E-windows	\$ 2.00	\$ 50.00	SHGC=.29, LSG=1.85	PPG
<b>Alternative Energy</b>				
Waste Oil Heaters	\$ 200.00	\$ 7,000.00	300,000 btu	Lanair,
Solar Panels	\$ 13.00	\$ 1,600.00	50 watt panels	Sunergy, DM Solar, Solar Cynergy
Skylights/Solar Tubes	\$ 9.00	\$ 400.00	10 inch	Solartube, Velux
<b>Water Efficiency</b>				
Low-flow toilets	\$ 12.50	\$ 200.00	Less than 1.5 GPF	TOTO, American Standard, Kohler
Low-flow faucets	\$ 5.00	\$ 10.00	1 gal per minute	Delta, Moen, Grainger
Car washes with recycled water	\$ 1,000.00	\$ 30,000.00	90% Recycled water	Broadway
Efficient lawn irrigation systems, xeriscape	\$ 200.00	\$ 5,000.00	Low flow system	Rain Bird, Krain
<b>Waste</b>				
Reduced Waste volume by recycling	\$ 10.00	\$ 200.00	Multiple waste bins	Granger
Reduced Waste by purchasing practices	\$ 20.00	\$ 500.00	Water bottles vs cooler	Elkay
Replace Styrofoam coffee cups w/ceramic	.\$ 10.00	.\$ 100.00	Styrofoam vs Ceramic	
Elimination of bathroom hand towels	\$ 100.00	\$ 1,300.00	100 uses per day	Dyson, Xlerator

\*Claims and recommendations are based on information provided by [www.energy.gov](http://www.energy.gov) and [www.energystar.gov](http://www.energystar.gov)

\*\* Additional or larger units may be in place



# **EXHIBIT B**

**SUBARU  
DEALERSHIP SIGN LEASE AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_\_,  
by and between SUBARU LEASING CORP., a New Jersey corporation, with  
its \_\_\_\_\_ at One Subaru Drive, Camden, NJ 08103 (hereinafter "SLC"), and  
a(n) \_\_\_\_\_, whose address is \_\_\_\_\_ in  
Addendum "A" (hereinafter "Retailer").

WHEREAS, SLC is a wholly-owned subsidiary of Subaru of America, Inc. ("SOA"), which possesses the exclusive right to sell Subaru products in the United States, and Retailer is a party to a Dealership Agreement with SOA providing for the sales and service, at retail, by Retailer of Subaru products, and

WHEREAS, SOA has entered into an agreement with SLC under which SLC has assumed responsibility for leasing Subaru signs to Retailers; and

WHEREAS, SLC desires to lease to Retailer and Retailer desires to lease from SLC certain \_\_\_\_\_, identifying Retailer as an authorized Subaru Retailer.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, SLC and Retailer agree as follows:

1. LEASE. SLC will lease to Retailer, subject to the terms and conditions herein, the Signs in Addendum "A", attached hereto and made a part hereof ("Signs"), to be installed upon Retailer's \_\_\_\_\_ Addendum "A".
2. LEASE TERM. The lease will commence on the \_\_\_\_\_ day of the month following the installation of the Signs (or in the case of a Retailer that is a party to a buy-sell agreement, the \_\_\_\_\_ day of the month following its appointment as a Subaru Retailer) and will continue for a period as on Addendum "A" ("Initial Term") unless terminated in accordance with Paragraph 13 of this Agreement. In the event that this is a single-payment lease as \_\_\_\_\_ on Addendum "A", then the Initial Term will be 60 months.
3. LEASE PAYMENT. Retailer agrees to pay to SLC for the use, maintenance and insurance of the Signs the amount indicated on Addendum "A". This sum is comprised of two components, (a) use, plus (b) maintenance and insurance. SLC reserves the right to adjust the maintenance and insurance component annually by an amount no greater than the twelve (12) month cumulative increase each December in the United States Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics in Washington, D.C. (or a comparable replacement index) upon thirty (30) days written notice to the Retailer. The payment will be automatically charged on a monthly basis on the Retailer's Accounts Receivable Statement. SLC, at its sole option, may change the method of payment upon ninety (90) days prior written notice to Retailer.

4. EXTENSION OF LEASE. Upon the expiration of the Initial Term hereof, unless terminated earlier pursuant to Paragraph 13 of this Agreement, the lease will automatically extend for successive one (1) year terms ("Renewal Terms") until terminated at any time by SLC upon a minimum of sixty (60) days' prior written notice to Retailer or unless terminated earlier pursuant to Paragraph 13 of this Agreement. Notwithstanding the foregoing, and subject to the early termination provisions of Paragraph 13, the minimum combined duration of the Initial Term and the Renewal Terms shall be ten (10) years. All Renewal Terms of this Agreement shall be on the same terms and conditions herein except that SLC will change the monthly payment to only the cost of maintenance, insurance, painting of the sign cabinet and replacement of acrylic panels which, in SLC's sole judgment, are no longer usable. SLC will provide Retailer with written notice of same at least thirty (30) days prior to the expiration of the term or extension.

5. REMOVAL OF EXISTING SIGNS. SLC, in its sole discretion, will remove any signage and sign structures which in SLC's sole judgment are obsolete (hereinafter referred to as "Obsolete Signage") as in Addendum "A". Signs will be removed in a manner that is generally commercially acceptable, including leaving the footings in place and cutting them off below grade. If a structure is affected, a patched repair will be made. If, in SLC's judgment, any poles, pylons or other sign structures located at the Premises are suitable for SLC's use in connection with installing the Signs, SLC, at its option, may use any such structures for such purpose.

Retailer will notify SLC in writing if Retailer desires to retain any Obsolete Signage or sign structures SLC determines should be removed from the Premises. Upon receipt of such notice, and upon SLC's consent (which SLC may withhold in its sole discretion), SLC will place such Obsolete Signage or sign structures (loose, uncrated and on the ground) at any location on the Premises designated by Retailer. Thereafter, Retailer assumes responsibility for such Obsolete Signage or sign structures and for disposing of same. If Retailer retains any such Obsolete Signage, Retailer will destroy, mutilate or obliterate all names and symbols on such Obsolete Signage that are associated with Subaru. Retailer will not use or reinstall any Obsolete Signage SLC removes from Premises unless SLC approves in writing the appearance and location of the Obsolete Signage at the Premises. Except for the Obsolete Signage or sign structures Retailer has SLC it desires to retain (as provided in this paragraph), SLC will dispose of all Obsolete Signage and sign structures removed from the Premises and SLC may salvage and use any parts or material therefrom, or scrap them as SLC may elect. Retailer acknowledges that all Obsolete Signage removed from the Premises by SLC will not be eligible for repurchase by SLC under the termination provisions of the Dealership Agreement to which Retailer is a party with SOA. Upon SLC's installation of the new Signs as herein provided, Retailer releases SLC from any and all obligations with respect to any Obsolete Signage which shall have been removed hereunder.

6. INSTALLATION OF SIGNS. SLC will endeavor to install the Signs described in Addendum "A", provided the following conditions are met: (a) such Signs meet all state or local codes, ordinances, regulations or variances to same, and appropriate permits for the installation thereof can be obtained from authorities having jurisdiction over the same; (b) structural changes can be made to the Premises as by SLC to provide support to the Signs; (c) Retailer provides electrical service as by SLC to illuminate and operate such Signs; and (d) the owner(s),

mortgagee(s), and lessor(s), if any, of the Premises consent to SLC's installing such Signs and making any structural changes to the Premises by SLC to support the Signs. Retailer shall employ its best efforts to help insure that the foregoing conditions are met. All costs to install Signs and sign structures which exceed currently estimated costs included in the estimated monthly payment as on the Dealership Sign Lease Order, Addendum "A", will automatically be charged on Retailer's Accounts Receivable Statement. If the Signs described in Addendum "A" cannot be installed within the foregoing conditions, SLC will select suitable alternate signs which can be installed within the foregoing conditions. SLC will calculate a new lease payment of the suitable alternate signs which can be installed within the foregoing conditions. In such event, SLC and Retailer agree to execute a new Addendum "A" under which SLC will install Signs as provided herein at such time and according to such schedules as it establishes, and SLC assumes no responsibility for any delays that may occur, regardless of cause, in completing such installation. SLC may, at its discretion, change or alter the type or types of signs installed hereunder at any time, and calculate a new lease payment of such signs. If no signs offered by SLC can be installed within the foregoing conditions, this Agreement shall become null and void and the parties released from all obligations in this paragraph.

Retailer covenants and agrees that without the prior written consent of SLC, (a) no banners, signs, lights, or other materials of any kind whatsoever will be attached or to the Signs or any part thereof, including supporting structures and electrical circuits used to energize the Signs; and (b) no measures will be taken by or on behalf of Retailer that interfere with the sight line or otherwise, in SLC's sole determination, detract from the appearance of the Signs. In the event Retailer installs banners, signs, lights, or other materials to the Signs, supporting structures or electrical circuits, SLC will have the right to remove the added elements and make any necessary changes which will restore the Signs to original condition and automatically charge the costs thereof on Retailer's Accounts Receivable Statement.

7. POWER SOURCES. Retailer, at its cost, shall provide all necessary electrical power to properly illuminate all Signs in a manner acceptable to SLC in its sole discretion. If existing power sources meet established by SLC, such existing power sources will be used wherever possible. Retailer will be responsible for all costs associated with rewiring, re-routing or installing additional wiring as may be required to provide electrical power sources meeting SLC's including, but not limited to, costs for relocating, rewiring or installing additional wiring to meet all current state and local codes, ordinances or other regulations. All repairs to the electrical system providing power to the Signs shall be at Retailer's expense. Should Retailer not provide electrical power as described above, SLC reserves the right to enter the Retailer's Premises, to install the necessary electrical power source(s), and shall automatically charge any and all costs on Retailer's Accounts Receivable Statement.

Retailer will provide, at its expense, electrical power to illuminate the Signs, and Retailer shall operate and illuminate all such Signs during hours customary in the area where Retailer is located.

8. OWNERSHIP & MAINTENANCE. All Signs and supporting structures installed by SLC at the Premises are, and shall at all times remain, the property of SLC. Retailer agrees to take such measures and precautions as are necessary to assure that the Signs remain on the Premises

as installed and are protected from damage, defacing or other marring. SLC, at its expense, shall maintain in good working order and repair all Signs and their structures installed by SLC hereunder except for any custom made sign(s). The custom made sign(s), if any, noted on Addendum "A" of this Agreement will not be maintained by SLC. If custom signage is part of this installation, Retailer agrees to maintain appearance and all electrical systems that illuminate the aforementioned custom sign face. SLC shall provide Retailer with information and procedures for obtaining such service as may be required from time to time for the standard (not custom) signs. Retailer shall grant access to the Premises to SLC or to such sign service personnel retained by SLC to perform Sign service at all reasonable times to permit such service to be performed. Retailer shall notify SLC or a sign company designated by SLC promptly of any dangerous condition of the Signs or sign structures installed by SLC or of any maintenance that may be required for the Signs.

9. RISK OF LOSS. SLC assumes responsibility for all risk of loss, damage or destruction to the Signs, excepting only such damage or destruction as shall be caused by Retailer's willful, careless or negligent acts, or failure to meet its obligations under this Agreement. SLC will indemnify Retailer and hold Retailer harmless from any and all such claims and liabilities for injuries to persons or property damage caused by the Signs or the installation thereof, except as such claims or liabilities result from Retailer's willful, careless or negligent acts, failure to notify SLC or a local sign service company designated by SLC in a timely manner of any dangerous conditions existing on the Signs or Retailer's failure to perform Retailer's obligations under this Agreement. Retailer will indemnify and hold SLC, its parent, subsidiaries, and their respective directors and employees, harmless from any and all such claims and liabilities for injuries to persons or property damage caused by such exceptions.

In the event of any damage to or destruction of the Signs by any cause whatsoever, SLC shall have the right to rebuild, replace or restore said Signs. Retailer shall be responsible for damage or destruction of Signs caused by Retailer's willful, careless or negligent acts, or failure to meet its obligations under this Agreement. SLC shall automatically charge the cost of repairing or replacing Signs on Retailer's Accounts Receivable Statement when damages result from Retailer's willful, careless or negligent acts or failure to meet its obligations under this Agreement.

10. TAXES PERMITS AND LICENSES. Retailer shall be responsible for the of any required tax returns and shall have the obligation for the payment of any and all taxes, including real and personal property taxes, which may be levied upon or result from the Signs and any sales, use or gross receipts tax on or measured by the payments. Retailer agrees that such taxes will be promptly paid by Retailer when the bills are rendered, and agrees further that upon demand by SLC, Retailer will furnish evidence of the payment of any and all taxes.

Retailer shall be responsible for and shall obtain and maintain any necessary permits or licenses for the Signs (except the original installation permits or licenses). If Retailer fails for any reason to pay taxes as provided herein or maintain such permits or licenses, SLC may do so and automatically charge the cost of said taxes, permits or licenses, or any other such costs due to failure to pay, on Retailer's Accounts Receivable Statement.



11. MODIFICATION, REPLACEMENT & RELOCATION OF SIGNS. Retailer will not move, remove, modify or alter in any way the Signs and/or their supporting structures without the prior written consent of SLC. In the event Retailer moves, removes, or alters the Signs and/or supporting structures without SLC's prior written approval, then SLC will have the right to restore the Signs and/or supporting structures to their original condition and appearance and to automatically charge the costs thereof on Retailer's Accounts Receivable Statement. In the alternative, SLC shall have the right to declare Retailer in breach of this Agreement (in which case SLC shall not be required to provide Retailer with a notice of breach and a thirty-day opportunity to cure under Paragraph 13) and Retailer's remaining lease payments shall become immediately due and payable. SLC shall have the right to charge those accelerated lease payments, along with any applicable early termination fee assessed pursuant to Paragraph 13 of this Agreement, on Retailer's Accounts Receivable Statement.

SLC reserves the right to change the size, style, design, and type of Signs installed hereunder, to make other changes in the manner in which Signs are provided to Retailer or to replace the Signs, if similar changes or replacements are applicable to other authorized Subaru Retailers. In the event such changes or replacements are made by SLC, Retailer agrees to execute a revised Addendum "A" under which it undertakes a new obligation to make use payments which are based upon (a) the capital cost SLC incurs as a result of making the changes or replacements and (b) maintenance and insurance costs. In no event shall SLC be entitled to make changes or replacements that require Retailer's execution of a revised Addendum "A" more frequently than once every ten (10) years.

SLC also reserves the right to change the size, style, design, or to otherwise change or relocate, at SLC's expense, any and all Signs installed hereunder if, in SLC's

Should Retailer relocate to another SLC authorized location, Sign relocation must be performed by an entity authorized to do so by SLC. Retailer shall assume all costs associated with the relocation and reinstallation of the Signs to positions approved by SLC at the new SLC authorized location. An early termination fee will be charged for unrecoverable costs in accordance with the provisions noted in paragraph 13, Termination, below.

12. OWNERS', LESSORS', AND MORTGAGEES' CONSENT. Retailer shall obtain the consent of the owner(s), lessor(s) and/or mortgagee(s), if any, of the Premises as may be required for SLC to install the Signs on the Premises as provided herein, including but not limited to, consent to make structural changes to any buildings or other structures on the Premises which SLC considers necessary to install such Signs, and consent for Retailer to make any necessary changes to the Premises to provide electrical power to the Signs. Such consent shall include an acknowledgment of the clear and unencumbered title to Signs and supporting structures with SLC and the right to remove the Signs and supporting structures as provided in this Agreement. Such consent shall be in substantially the same form as Addendum "B", which is attached to and made part of this Agreement.

13. TERMINATION. This Agreement shall terminate automatically, without notice to either party, (a) upon Retailer's vacating the Premises, (b) upon Retailer's ceasing to operate the Dealership in the regular course of business, or (c) concurrently with the termination for any reason of its Dealership Agreement with SOA. Upon such termination, Retailer shall remain responsible for any damage to the Signs until they are removed.

In the event Retailer is in default under any provision of this Agreement, then SLC may terminate this Agreement upon thirty (30) days prior written notice, unless such breach is cured within such notice period. Any waiver or non-enforcement by SLC of a breach of this Agreement on the part of Retailer shall not constitute a waiver of any further or future breach by Retailer.

In the event this Agreement is terminated or any Signs are removed or replaced with a different size or style sign prior to expiration of the Lease Term, Retailer agrees to pay SLC an early termination fee. The early termination fee will be calculated at the time this Agreement is terminated or at the time any Signs are removed or replaced, as noted above, by dividing the number of months remaining until Agreement expiration by the total number of months in the Lease Term indicated in paragraph 2 above and multiplying that result by the unrecoverable costs. Unrecoverable costs are as all amounts paid by SLC in conjunction with all Sign delivery and erection on the Premises and include but are not limited to Retailer surveys, permits, licenses, variance and other fees, freight, crating, footings, supporting structures, custom signs, Obsolete Signage and installation. The Retailer is responsible for the cost of removing the signage. The early termination fee and the cost of removing signage described in this paragraph will be automatically charged on Retailer's Accounts Receivable Statement.

It is agreed by all parties that the Signs shall at all times remain the property of SLC and shall not by reason of attachment or connection to real estate become or be deemed to be real estate improvements, or appurtenances. Upon the termination or expiration of this Agreement, whichever comes SLC shall have the right, without legal proceedings, to enter the Premises at any time, without notice to the owner(s), lessor(s) or mortgagee(s) of the Premises, and remove the Signs and sign structures belonging to SLC. If, because of any acts or omissions of Retailer, SLC is required to expend funds for attorneys' fees and other related costs and expenses in connection with the removal of the Signs and sign structures from the Premises, Retailer agrees to reimburse SLC for all such fees, costs and expenses.

This Agreement shall not operate or be construed to extend, or imply intention to extend, Retailer's Dealership Agreement with SOA beyond its expiration or in any way whatsoever affect the rights and obligations of any of the parties to such Dealership Agreement.

14. ADVANCE NOTICE. Retailer covenants and agrees to notify SLC in writing at least forty-(45) days in advance of any impending sale, mortgage, or property lease expiration of the real estate and improvements used by Retailer as dealership facilities or bankruptcy of Retailer, in order to protect SLC's right to remove the Signs.

15. SLC OBLIGATIONS. All obligations to be performed by SLC may, at SLC's option, be performed by parties with whom SLC has contracted for such performance or such parties as may be designated by SLC to perform the obligations.

16. ASSIGNMENT. This Agreement may not be assigned by Retailer without the prior written consent of SLC. Any attempt by Retailer to assign this Agreement without such written consent shall be deemed a void assignment and shall constitute a default by Retailer of the terms and covenants of the Agreement. SLC may assign this Agreement to its parent company or to any

17. NOTICES. Any notice to be given to either party with respect to this Agreement must be in writing and shall be effective upon receipt if hand delivered, sent by overnight courier (with ability to receipt), or by registered or mail, return receipt requested, to the respective parties at the addresses set out at the beginning of this Agreement. Either party may change its address for notices by giving notice to the other party in accordance with the terms of this Paragraph 17. SLC shall have the right to have announcements addressed to Subaru Retailers in general posted on Subarunet or issued to Retailers in a similar manner.

18. AMENDMENT. This Agreement may not be altered or amended, nor any rights waived hereunder, except by written agreement of both parties. No waiver of any term, provision or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any other term, provision or condition.

19. NO JOINT VENTURE. This Agreement does not constitute and may not be construed as constituting a partnership or joint venture between the parties. Neither party may obligate or bind the other in any manner whatsoever, and nothing in this Agreement gives any rights to any third person. At all times, the parties are independent contractors.

20. PARAGRAPH HEADINGS. Paragraph headings in this Agreement are for convenience only. They form no part of the Agreement and shall not affect its interpretation.

21. SEVERABILITY. If for any reason one or more provisions of this Agreement are held to be invalid, illegal or unenforceable in any respect, such provision will be deemed deleted, and the deletion will not affect the validity of the other provisions of this Agreement. In that event, the parties shall negotiate in good faith a substitute valid, legal and enforceable provision which most nearly effects the parties' intent in entering into this Agreement.

22. CONSTRUCTION. The rule of construction to the effect that any drafting ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

23. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties with respect to the subject matter herein and supersedes all prior understandings, written or oral, between the parties with respect to this subject matter. No variations, or changes in this Agreement are binding upon any party to this Agreement unless set forth in a document duly executed by or on behalf of such parties.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be executed and delivered by their proper and duly authorized representatives as

**SUBARU LEASING CORP.**

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name, Title and Company of Person  
Authorized to Sign on SLC's Behalf

**ADDENDUM "B"**

**OWNERS', LESSORS' AND MORTGAGEES' CONSENT**

\_\_\_\_\_  
(Owner, Lessor or Mortgagee)

a(n) \_\_\_\_\_  
(Individual, Partnership, Corporation)

is the (owner) (lessor) (mortgagee) of premises located at

\_\_\_\_\_  
(referred to as the "Premises") in a certain Subaru Dealership Sign Lease Agreement between  
Subaru Leasing Corp. ("SLC") and

\_\_\_\_\_  
dated \_\_\_\_\_, and as (owner) (lessor) (mortgagee) hereby consents to SLC's  
installing Signs and sign structures on the Premises as described in said Agreement. This will  
acknowledge that the Signs and sign structures installed by SLC on the Premises are and shall  
remain the property of SLC with no security interest in any way attaching thereto, and in the event  
of any termination of said Subaru Dealership Sign Lease Agreement, SLC shall have the right to  
enter the Premises at any time and remove the Signs and sign structures belonging to SLC.

\_\_\_\_\_  
Name of (Owner) (Lessor) (Mortgagee)

Date:

By \_\_\_\_\_  
(Signature)

Title \_\_\_\_\_



## ADDENDUM "A"

### Subaru Dealership Sign Program Lease Order Form

Legal Name: Courtesy Automotive Group, Inc.

Dealership: Courtesy Subaru of Chico

Address: 896 East Ave  
City/State/Zip: Chico, CA, 95926

Telephone #: (530)345-9444  
Executive Manager: Shahram Mihanpajouh

13" Subaru Logo	New Installation
13" Subaru Logo	New Installation
9" SUBARU Blue LED	New Installation
9" SUBARU Blue LED	New Installation
Pickup & Disposal of 24" SUBARU Blue LED & 36" Subaru Logo	Removal

<u>Dealer MUST Select One:</u>	<u>Lease Term</u>	<u>Est. Monthly Use Payment</u>
_____	Single Payment	\$ 15,186
_____	36 Months	\$ 472.39
_____	60 Months	\$ 304.30
_____	84 Months	\$ 232.93
Estimated Capital Cost*		\$ 15,186

\$85 is the total estimated monthly maintenance and insurance charges for all signs listed above.  
Above payments may increase to account for taxes due.

Executive Manager's Signature

Date

Regional Vice President's Signature

Date

#### **Special Notes**

Executed Retailer Sign Lease Agreement required.

Retailer to support variance if permit is denied.

Retailer will provide electrical power services per the terms of the SOA Sign Lease Agreement (overhead "drop" power sources are prohibited).

In the event of a change in Signs to be installed or lease term, Retailer agrees to execute a new Addendum "A"

Estimated Capital Cost subject to adjustment for actual sign installation/removal costs and variance fee, if applicable.

Such costs will be automatically charged to Retailer's Accounts Receivable Statement.

**Permits and associated charges (i.e. special engineer drawings) will be charged separately to retailer's Accounts Receivable Statement.**

**The price quoted is valid through - 8/24/2019**

**PROOF OF SERVICE  
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Nelson Mullins Riley & Scarborough LLP and my business address is 19191 South Vermont Avenue, Suite 900, Torrance, CA 90502.

On July 20, 2022 I served the foregoing document entitled

**DECLARATION OF RAYMOND SMIT IN SUPPORT OF RESPONDENT SUBARU OF AMERICA, INC.'S RESPONSE TO PETITION**

on all the appearing and/or interested parties in this action by placing a true copy thereof as follows:

**LAW OFFICES OF GAVIN M. HUGHES**

Gavin M. Hughes  
Robert A. Mayville, Jr.  
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Sacramento, CA 95864  
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*Counsel for Petitioner*

**NEW MOTOR VEHICLE BOARD**

1507 21st Street, Suite 330  
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[danielle.phomsopha@nmvp.ca.gov](mailto:danielle.phomsopha@nmvp.ca.gov)

**[X] BY ELECTRONIC TRANSMISSION:** I transmitted a PDF version of this document by electronic mail to the party(s) identified above and/or on the attached service list using the email address(es) indicated.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was Executed on July 20, 2022 at Torrance, California.

  
Jenny Prado

VIA EMAIL

New Motor Vehicle Board

Received  
July 20, 2022

FILED

New Motor Vehicle Board

Date: 7-20-22

By: dp

Lisa M. Gibson (SBN 194841)  
Amy M. Toboco (SBN 149508)  
NELSON, MULLINS, RILEY &  
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Attorneys for Respondent  
SUBARU OF AMERICA, INC.

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of:

COURTESY AUTOMOTIVE GROUP, INC.  
dba COURTESY SUBARU OF CHICO,

Petitioner,

vs.

SUBARU OF AMERICA, INC.,

Respondent.

Petition No. P-463-22

**RESPONDENT SUBARU OF  
AMERICA, INC.'S REQUEST FOR  
OFFICIAL NOTICE IN SUPPORT OF  
VERIFIED RESPONSE TO PETITION**

Section 452(h) of the California Evidence Code provides that judicial notice may be taken of “[f]acts and propositions that are not reasonably in dispute and are capable of immediate and accurate determination by resort to sources of reasonably and indisputable accuracy.” Cal. Evid. Code §452(h). Government Code section 11515 provides for official notice “. . . of any fact which may be judicially noticed by the courts of the state.” Pursuant to California Evidence Code section 452 and Government Code section 11515, Respondent Subaru of America, Inc. (“SOA”) hereby requests that the New Motor Vehicle Board (“Board”) take official notice of the following documents:

1. [Redacted] Petition for Writ of Administrative Mandate filed by Subaru of America, Inc. in the Superior Court of the State of California, County of Alameda, as *Subaru of America, Inc. v. New Motor Vehicle Board*, Case No. 22CV010968. A true and correct copy of the redacted Writ Petition is attached hereto as **Exhibit 1**.

2. Complaint filed by Petitioner Courtesy Automotive, Group, Inc. dba Courtesy Subaru of America in the Superior Court of the State of California, County of Butte, Case No. 22CV00702, entitled *Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico v. Subaru of America, Inc.*, which has been removed to the United States District Court, Eastern District of California as Case No. 2:22-cv-00997-WBS-DMC. A true and correct copy of the Complaint is attached hereto as **Exhibit 2**.

3. Minutes of the New Motor Vehicle Board meeting on October 10, 2019 in *Mitsubishi Motors North America, Inc. v. NextMotors Corporation*, Petition No. P-461-19. A true and correct copy of the Minutes from the meeting on October 10, 2019 is attached hereto as **Exhibit 3**.


4. Order of United States District Court Judge William B. Shubb, dated July 20, 2022, in the matter entitled *Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico v. Subaru of America, Inc.*, Eastern District of California Case No. 2:22-cv-00997-WBS-DMC. A true and correct copy of the Order is attached hereto as **Exhibit 4**.

Dated: July 20, 2022

Respectfully submitted,

**NELSON MULLINS RILEY & SCARBOROUGH  
LLP**

By:

  
\_\_\_\_\_  
Lisa M. Gibson  
Amy M. Toboco  
Attorneys for Respondent  
SUBARU OF AMERICA, INC.

# **EXHIBIT 1**



**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**05/09/2022 at 11:46:08 AM**

By: Cheryl Clark, Deputy Clerk

1 Lisa M. Gibson (SBN 194841)  
Amy Toboco (SBN 149508)  
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7 Attorneys for Petitioner  
SUBARU OF AMERICA, INC.

8 COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 SUBARU OF AMERICA, INC.,

11 Petitioner,

12 vs.

13 NEW MOTOR VEHICLE BOARD,

14 Respondent.

15  
16 \_\_\_\_\_  
17 COURTESY AUTOMOTIVE GROUP, INC.  
DBA COURTESY SUBARU OF CHICO,

18 Real Party in Interest.  
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**Case No. 22CV010968**

**[REDACTED]  
PETITION FOR WRIT OF  
ADMINISTRATIVE MANDATE**

**[C.C.P. § 1094.5]**

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1           Petitioner Subaru of America, Inc. (“Petitioner” or “SOA”) hereby petitions the above-entitled  
2 Court for a Writ of Administrative Mandate pursuant to Code of Civil Procedure section 1094.5, which  
3 permits a party to seek judicial review of any final order or decision of an administrative agency, and  
4 alleges as follows:

5       **I.     INTRODUCTION**

6           [REDACTED] On March 24, 2022, Administrative Law Judge (“ALJ”) Evelyn Matteucci of  
7 Respondent, the New Motor Vehicle Board (the “Board”), issued the 85-page unauthorized  
8 Confidential Decision Resolving Stipulated Decision and Order Dispute (the “Determination”),  
9 effectively [REDACTED] to a stipulated decision

10 (“Stipulated Decision”) between SOA and Real Party in Interest Courtesy Automotive Group, Inc. dba  
11 Courtesy Subaru of Chico (“Courtesy”), [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15           [REDACTED] Almost three years earlier (on or about March 20, 2019), and pursuant to Sections  
16 3050.7, 3060, 3061, 3066 and 3067 of the California Vehicle Code, the Board was asked to adopt the  
17 Stipulated Decision as an order of the Board. [REDACTED]

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22           [REDACTED] The Stipulated Decision (and the confidential settlement agreement incorporated  
23 therein) is an order (the “Order”) which was adopted by the Board on April 9, 2019. Pursuant to  
24 Section 3050.7, an order adopted by the Board cannot be amended without a subsequent adoption by  
25 the Board of an amended order proposed by the parties. The Order has never been so amended in  
26 accordance with applicable law. The Order stands as it did when it was adopted by the Board over  
27 three years ago. [REDACTED]  
28 [REDACTED]

[REDACTED]

5. “It is fundamental that an administrative agency has only such power as has been conferred upon it by the constitution or by statute and an act in excess of the power conferred upon the agency is void.” (BMW of N. Am., Inc. v. New Motor Vehicle Bd. (1984) 162 Cal.App.3d 980, 995.)

6. Further, “The Board’s jurisdiction to preside over claims is limited by its statutory authorization.” (Mazda Motor of Am., Inc. v. New Motor Vehicle Bd. (2003) 110 Cal.App.4th 1451, 1457.) Vehicle Code section 3050 grants and defines the Board’s jurisdiction. Section 3050(d) states, in relevant part, that the Board may “hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060... .”

7. California Vehicle Code Section 3050.7 (“Section 3050.7”) is the applicable statute specifically governing stipulated decisions and the subsequent orders adopted by the Board (without a hearing) to resolve protests, including those filed pursuant to Vehicle Code Section 3060 (which constitutes the statutory basis for an underlying protest that was filed in 2018 by Courtesy and resolved by the parties by entering into the Stipulated Decision). Section 3050.7 is violated in a multitude of ways by the Determination as set forth further below.

[REDACTED] The Determination also violates other applicable statutory provisions, in particular, those contained in Vehicle Code Section 11713.3(g) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Vehicle Code Section 11713.3(g) restricts a motor vehicle manufacturer from being able to enforce certain provisions except in the instance involving a term or provision of a stipulated order of the Board. By this same statutory authority, there is no limitation or restriction on the terms upon which parties can settle, resolve, or stipulate to during the course of a protest or other proceeding, [REDACTED]

10. With respect to Section 11713.3(g), the Board's authority under Vehicle Code Section 3050(c) is strictly limited to: (1) ordering the Department of Motor Vehicles to conduct an investigation and issue a written report; (2) resolving disputes between manufacturers or dealers and members of the public—but not between dealers and manufacturers; or (3) ordering the Department to take licensing actions against manufacturers, dealers, or other DMV licensees. (See generally *Mazda Motor*, supra, 110 Cal.App.4th at pp.1460-1461.)

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Under Vehicle Code Section 3050(e), the freedom of negotiating any term or provision to resolve a protest or include in a stipulated order of the Board is an issue the Legislature saw fit to express in a statutory provision where jurisdiction is originally cognizable in the courts, and not at the Board.

12. [REDACTED]

[REDACTED]

[REDACTED] of Vehicle Code section 11713.3(g), and in particular its subparagraphs 3(A) and (B) that provide:

(3) This subdivision does not do any of the following:

(A) Limit or restrict the terms upon which parties to a protest before the board, civil

1 action, or other proceeding can settle or resolve, or stipulate to evidentiary or  
2 procedural matters during the course of, a protest, civil action, or other proceeding.

3 (B) Affect the enforceability of any stipulated order or other order entered by the board.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 [REDACTED] Section 3050.7(b) further provides in pertinent part that, “[i]f the board adopts a  
21 stipulated decision and order to resolve a protest filed pursuant to Section 3060 or 3070 in which  
22 the parties stipulate that good cause exists for the termination of the franchise of the protestant, and  
23 the order provides for a conditional or unconditional termination of the franchise of the protestant,  
24 paragraph (2) of subdivision (a) of Section 3060 and paragraph (2) of subdivision (a) of Section  
25 3070, which require a hearing to determine whether good cause exists for termination of the  
26 franchise, is inapplicable to the proceedings.” Other than Section 3060 of the California Vehicle  
27 Code, no other statutory authority exists for the Board to hold a hearing to determine good cause  
28 for termination. [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

As noted above, Section 3050.7 provides that where the parties “stipulate that good cause exists for the termination of the franchise,” a hearing to determine whether good cause exists to terminate the franchise is inapplicable. Despite the absence of any statutory authority to conduct (and, in fact, the statutory mandate against conducting) such a hearing, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] The weighing of such factors and issues was entirely inapplicable to this case. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Section 3050.7 further provides that “[i]f the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of a party to comply with specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the conditions have not been met.” [REDACTED]

[REDACTED]  
[REDACTED]



[REDACTED]

21. Although there is no case law interpreting Section 3050.7, the body of law surrounding California Code of Civil Procedure section 664.6 is analogous and helpful to interpreting Section 3050.7. Similarly, Code of Civil Procedure section 664.6 states, in relevant part, “If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.” [REDACTED]

[REDACTED]. “A settlement stipulation may also include [REDACTED]; however, such a provision does ‘not preclude an appeal to determine whether or not the judgment was authorized by the stipulation.’” (Boychuk v. Ingersoll (Cal. Ct. App. Feb. 28, 2006) No. D045820, 2006 WL 465349, at \*4, citing Rooney v. Vermont Investment Corp. (1973) 10 Cal.3d 351, 359.) [REDACTED]

[REDACTED]. Therefore, this writ is appropriate, based on strongly analogous law, for seeking judicial review of the Determination to decide whether or not it

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was authorized.

[REDACTED]

[REDACTED]

[REDACTED] Simply put, the ALJ's (and the Board's) jurisdiction is limited by Vehicle Code Sections 3050 and 3050.7, meaning that the ALJ can only determine what terms the parties agreed to and whether Courtesy satisfied them. [REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] (i) invalidate clauses, [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED] eviscerate a settlement that was negotiated  
8 between fully represented, sophisticated parties— [REDACTED]  
9 [REDACTED]

10 26. SOA also is seeking consideration of the ALJ's disposition and handling of Courtesy's  
11 improper communication with her while the proceeding was pending. SOA asserts that it was a  
12 denial of its due process right to a fair hearing. The communication was forwarded ex parte by the  
13 Chief Counsel of the Board and introduced off-record allegations and requested relief clearly falling  
14 outside the Board's jurisdiction. It was made after the close of evidence and while the decision was  
15 still pending. Its contents were highly prejudicial to SOA and made in violation of Government  
16 Code section 11430.10 where SOA was not provided the opportunity to participate in the  
17 communication before it was communicated and already under consideration by the ALJ. No  
18 measures are in place at the Board to prevent this from occurring. In fact, it is a practice by the  
19 Board to automatically forward all party communications to the ALJ at any time, even after the  
20 close of evidence and while a decision is pending. The communication and the subsequent hearing  
21 are contained within the administrative record provided.

22 27. In addition to all of the above, the public policy issue laid asunder by the  
23 Determination cannot be underestimated. Section 3050.7's purpose is to encourage settlement and  
24 avoid the costly, prolonged adjudication of proceedings before the Board. Given the significant  
25 statutory protection afforded motor vehicle dealers under Section 11713.3(g)(1)(C) of the California  
26 Vehicle Code, a stipulated order of the Board (see subparagraphs (3)(A) and (B) above) is  
27 effectively the sole means that a motor vehicle manufacturer has to make an enforceable settlement  
28 agreement providing for a conditional termination of a dealer's franchise. This is not only an issue

1 of importance to SOA but is critical to all licensees relying on the certainty and finality that Section  
2 3050.7 is supposed to provide. It also goes to the integrity of the Board itself—in particular, that a  
3 stipulated decision so adopted as an order of the Board will be enforced by its terms by the Board.

4 28. Thus, the Determination was made in excess of the ALJ's and the Board's jurisdiction,  
5 and the issuance of an administrative mandate is appropriate. (See *Mazda*, supra, 110 Cal .App.4th  
6 at p. 1462 ["Phillips petitioned the Board to consider a dealer-distributor dispute that was not within  
7 its jurisdiction. The trial court therefore properly issued a writ ordering the Board to dismiss the  
8 petition and to decline to entertain the claims raised in it"]; see also, *BMW*, supra, 162 Cal.App.3d  
9 at p. 995 ["A writ of administrative mandate will lie to correct acts in excess of jurisdiction . . . [W]e  
10 conclude that as a matter of law the Board acted in excess of its jurisdiction in allowing the Watkins  
11 protest. We therefore reverse the judgment and remand to the trial court with directions to issue a  
12 writ of mandate"].)

13 29. Similarly, the Determination, as a matter of law, must be deemed to have been in  
14 excess of the Board's jurisdiction, reversed [REDACTED]  
15 [REDACTED] and this writ granted.

## 16 **II. PARTIES**

17 30. Petitioner SOA is a corporation duly organized and existing under the laws of the  
18 State of New Jersey; is licensed by the California Department of Motor Vehicles ("DMV") as a  
19 "distributor" of Subaru brand motor vehicles, genuine parts, and accessories; and is a distributor of  
20 Subaru products across the United States. SOA's principal place of business is located at One  
21 Subaru Drive, Camden, New Jersey 08103. SOA is considered a "franchisor" under Section 331.2  
22 and SOA's Dealer Agreement ("Dealer Agreement") is considered a "franchise" under Section 331.

23 31. Respondent Board is an administrative agency of the State of California and, among  
24 other things, has limited jurisdiction to conduct hearings, take evidence, and adjudicate certain types  
25 of disputes between "franchisors" and "franchisees" under the Vehicle Code sections 3000 to  
26 3085.10.

27 32. Courtesy is a corporation organized under the laws of the State of California. Courtesy  
28 is licensed as a new motor vehicle dealer, and is authorized to sell and service Subaru vehicles,

1 parts, and accessories pursuant to a Subaru Dealer Agreement. As such Courtesy is a “franchisee”  
2 under Section 331.1 of the Vehicle Code. Courtesy’s general offices, parts facility, and service  
3 facility are located at 2520 Cohasset Road, Chico, California 95973, and its sales facility is located  
4 at 896 East Avenue, Chico, California 95973.

5 **III. JURISDICTION AND VENUE**

6 33. This Court has jurisdiction to hear this Petition pursuant to Code of Civil Procedure  
7 section 1094.5. Petitioner SOA has performed all conditions precedent to filing this Petition,  
8 including, but not limited to, exhausting all administrative remedies, or otherwise being excused  
9 from such requirement.

10 [REDACTED]  
11 [REDACTED]  
12 However, as even the ALJ has acknowledged, authority regarding California Code of Civil  
13 Procedure section 664.6 (“Section 664.6”) is applicable to its sister statute, Section 3050.7. Under  
14 cases applying Section 664.6, it is well-established that [REDACTED] does “not preclude an  
15 appeal to determine whether or not the judgment [or decision in this case] was authorized by the  
16 stipulation. [Citation.]” (Rooney v. Vermont Investment Corp. (1973) 10 Cal.3d 351, 359; see also  
17 Boychuk v. Ingersoll (Cal. Ct. App. Feb. 28, 2006) No. D045820, 2006 WL 465349, at \*4 [“To the  
18 extent the trial court created new provisions that went beyond the terms agreed to by the parties, the  
19 motion to dismiss must be denied and that portion of the December Order may be set aside.”].) [REDACTED]

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED] Venue is proper in this Court pursuant to California Code of Civil Procedure section  
23 393(b) because SOA has its San Francisco Zone office (where many of the witnesses work and  
24 reside) in Pleasanton, California, in the County of Alameda. In addition, the cause of action arose  
25 in this county because the Determination curtails the ability of SOA, through its Zone office in  
26 Pleasanton, to enforce the Stipulated Decision [REDACTED]

27 **IV. LEGAL STANDARD**

28 36. The Court’s review of the Decision “shall extend to the questions whether the



1 respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and  
2 whether there was any prejudicial abuse of discretion.” (Code Civ. Proc. § 1094.5, subd. (b).)  
3 “Abuse of discretion is established if the respondent has not proceeded in the manner required by  
4 law, the order or decision is not supported by the findings, or the findings are not supported by the  
5 evidence.” (Ibid.)

6 37. “Where it is claimed that the findings are not supported by the evidence . . . abuse of  
7 discretion is established if the court determines that the findings are not supported by substantial  
8 evidence in the light of the whole record.” (Code Civ. Proc. § 1094.5, subd. (c).) “In reviewing the  
9 agency’s decision, the trial court examines the whole record and considers all relevant evidence,  
10 including evidence that detracts from the decision.” (McAllister v. California Coastal Com. (2008)  
11 169 Cal.App.4th 912, 921.) “Substantial evidence” requires evidence of “ponderable legal  
12 significance,” not “any” evidence. (Newman v. State Pers. Bd. (1992) 10 Cal.App.4th 41, 46-47.)  
13 The “evidence considered must be reasonable, credible, and of solid value.” (Ibid.) The trial court  
14 must reverse the decision if “based on the evidence before it, a reasonable person could not have  
15 reached the conclusion reached by” the agency. (McAllister, supra, 169 Cal.App.4th at p. 921.)

16 38. “In the context of review for abuse of discretion, an agency’s use of an erroneous legal  
17 standard constitutes a failure to proceed in a manner required by law.” (City of Marina v. Bd. of  
18 Trustees of the California State Univ. (2006) 39 Cal.4th 341, 355, quotation omitted.) The trial court  
19 “exercises independent judgment on pure questions of law, including the interpretation of statutes  
20 and judicial precedent.” (McAllister, supra, 169 Cal.App.4th at pp. 921-922.) In addition, the  
21 interpretation of a contract is a question of law subject to de novo review. (Automotive Funding  
22 Group, Inc. v. Garamendi (2003) 114 Cal.App.4th 846, 851.)

23 39. Likewise, de novo review of a judgment entered pursuant to California Code of Civil  
24 Procedure section 664.6 is appropriate where the issue on review is a legal one. (Timney v. Lin  
25 (2003) 106 Cal.App.4th 1121, 1126.) For example, where the issue is whether the parties met the  
26 statutory conditions of Section 664.6, de novo review is appropriate since review involved the  
27 interpretation of the statute. (Murphy v. Padilla (1996) 42 Cal .App.4th 707, 711.) Or where the  
28 issue is whether a particular provision of the settlement agreement is illegal, the court likewise

1 reviews the matter de novo since the question of whether a contract is illegal is a question of law.  
2 (Timney, supra, 106 Cal.App.4th at p. 1126.)

3 40. The standards set forth in the case law analyzing California Code of Civil Procedure  
4 section 664.6 are equally applicable to Section 3050.7 because courts “do not construe statutes in  
5 isolation, but instead read every statute ‘with reference to the entire scheme of law of which it is  
6 part so that the whole may be harmonized and retain effectiveness.’ ” (People v. Pieters (1991) 52  
7 Cal.3d 894, 899.) “To understand the intended meaning of a statutory phrase, [courts] may consider  
8 use of the same or similar language in other statutes, because similar words or phrases in statutes in  
9 pari materia [ (that is, dealing with the same subject matter) ] ordinarily will be given the same  
10 interpretation.” (In re Bittaker (1997) 55 Cal.App.4th 1004, 1009.) “When legislation has been  
11 judicially construed and a subsequent statute on a similar subject uses identical or substantially  
12 similar language, the usual presumption is that the Legislature intended the same construction,  
13 unless a contrary intent clearly appears.” (People v. Lopez (2003) 31 Cal.4th 1051, 1060.)

14 41. Sections 3050.7 and 664.6 contain similar language. Section 3050.7 states in relevant  
15 part that “[i]f the stipulated decision and order provides for the termination of the franchise,  
16 conditioned upon the failure of a party to comply with specified conditions, the franchise may be  
17 terminated upon a determination, according to the terms of the stipulated decision and order, that  
18 the conditions have not been met.” And Section 664.6 states, in relevant part, “[i]f parties to pending  
19 litigation stipulate, in a writing signed by the parties outside the presence of the court or orally  
20 before the court, for settlement of the case, or part thereof, the court, upon motion, may enter  
21 judgment pursuant to the terms of the settlement.” Further, Section 3050.7 was drafted by the  
22 Legislature after the development of the relevant body of law regarding Section 664.6.

## 23 **V. BACKGROUND**

### 24 **A. The Stipulated Decision.**

25 [REDACTED] For nearly seven years, since May of 2015, Courtesy—an authorized Subaru motor  
26 vehicle dealer in Chico, California—has failed to provide adequate, contractually required facilities  
27 to sell and service Subaru motor vehicles pursuant to its Dealer Agreement with SOA. [REDACTED]  
28 [REDACTED]

[REDACTED]

43. Later that month, litigation commenced in multiple venues, with Courtesy filing an administrative protest under California Vehicle Code section 3060 with the Board in response to SOA's notice that it would seek to terminate the parties' Dealer Agreement and SOA filing an action against Courtesy in federal court.

[REDACTED] On or about March 20, 2019, SOA and Courtesy settled both matters by entering a Confidential Agreement and Stipulated Decision and Order (collectively, the "Stipulated Decision") pursuant to Sections 3050.7, 3060, 3061, 3066, and 3067 of the California Vehicle Code that was adopted by the Board. A true and correct copy of the Stipulated Decision is attached hereto as

**Exhibit 1.** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[illegible]

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1 [REDACTED]

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7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 **VI. GROUND FOR WRIT PETITION**

19 [REDACTED]

20 [REDACTED]

21 68. Again, the Board is a “quasi-judicial agency of limited jurisdiction.” (Mazda Motor  
22 of Am., Inc. v. New Motor Vehicle Bd. (2003) 110 Cal.App.4th 1451,1457, citing Hardin Oldsmobile  
23 v. New Motor Vehicle Bd. (1997) 52 Cal.App.4th 585, 590-591.) “The Board’s jurisdiction to  
24 preside over claims is limited by its statutory authorization.” (Mazda Motor, supra, 110 Cal .App.4th  
25 at p. 1457.) Further, as discussed above, Section 3050.7 governs the Board’s jurisdiction in this  
26 action.

27 69. Section 3050.7 states in relevant part: “If the stipulated decision and order provides  
28 for the termination of the franchise, conditioned upon the failure of a party to comply with specified  
conditions, the franchise may be terminated upon a determination, according to the terms of the

1 stipulated decision and order, that the conditions have not been met.”

2 70. Thus, the ALJ merely had the power to rely on the Stipulated Decision’s terms to  
3 make a “determination” whether or not “the conditions” for termination in the Stipulated Decision  
4 have been met.

5 [REDACTED] Applying similar language in Code of Civil Procedure section 664.6, courts have  
6 consistently held that courts are without jurisdiction to write different material terms into a  
7 settlement agreement: “Although a judge hearing a motion to exercise its statutorily retained  
8 jurisdiction to enforce the terms of a settlement agreement may receive evidence, determine  
9 disputed facts, and enter the terms of a settlement agreement as a judgment, **nothing in the statute**  
10 **authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms**  
11 **the parties themselves have previously agreed upon.**” (Hernandez v. Bd. of Educ. (2004) 126 Cal.  
12 App. 4th 1161, 1176, emphasis added.) It is error if a court does not merely interpret the terms of  
13 settlement agreement but instead impermissibly imposes “different terms than those contained in  
14 [the] settlement agreement.” (Ibid.) [REDACTED]

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 72. There is a strong public policy favoring the settlement of disputes, and a settlement  
23 agreement is therefore “considered presumptively valid.” (Village Northridge Homeowners Assn.  
24 v. State Farm Fire & Casualty Co. (2010) 50 Cal.4th 913, 930.) Settlement agreements are contracts  
25 and are subject to the same general principles governing all contracts, including the principle that  
26 courts seek to interpret them as lawful and operative without violating the parties’ intent. (Kaufman  
27 v. Goldman (2011) 195 Cal.App.4th 734, 746.) “‘The question whether a contract violates public  
28 policy necessarily involves a degree of subjectivity. Therefore, “... courts have been cautious in

1 blithely applying public policy reasons to nullify otherwise enforceable contracts.” ’ ’ (Dunkin v.  
2 Boskey (2000) 82 Cal.App.4th 171, 183–184.) Accordingly, “ ‘ “unless it is **entirely plain that a**  
3 **contract is violative of sound public policy**, a court will never so declare. ‘The power of the courts  
4 to declare a contract void for being in contravention of sound public policy is a very delicate and  
5 undefined power, and ... should be exercised only in cases free from doubt.’ ” ’ [Citation.]” (City of  
6 Santa Barbara v. Superior Court (2007) 41 Cal.4th 747, 777, fn. 53, emphasis added.)

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
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20 [REDACTED]  
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22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

27 75. Further, forfeitures are not per se unenforceable. If they were, no Stipulated Decision  
28 under Section 3050.7 would ever be enforceable. While California law disfavors forfeitures, “[a]



1 forfeiture stipulated in a contract will be enforced if the rights of the parties cannot otherwise be  
2 preserved.” (McPherson v. Empire Gas & Fuel Co. (1932) 122 Cal.App. 466, 473, citing 6  
3 California Jurisprudence, 362; see also Div. of Labor Standards Enforcement v. Dick Bullis, Inc.  
4 (1977) 72 Cal.App.3d Supp. 52, 58 [“where intent is clear and the terms of a contract are  
5 unambiguous, the forfeiture will be upheld.”].)

6 76. Rather, forfeitures are only illegal when they are without regard to the actual damage  
7 suffered. (Ridgley v. Topa Thrift and Loan Assn. (1998) 17 Cal.4th 970, 977-978.) Here, Courtesy  
8 risks having its Dealer Agreement, which authorizes it to sell and service new Subaru vehicles,  
9 terminated. A termination will not force it to lose its building, which could be used as a dealership  
10 by one of its other car brands. Further, Section 3050.7 expressly contemplates parties agreeing to  
11 conditions for a settlement that, if they are not satisfied, will require termination of a dealer’s  
12 franchise agreement. [REDACTED]  
13 [REDACTED]

14 77. In California, motor vehicle manufacturers are generally prohibited from enforcing  
15 agreements, waivers or releases against motor vehicle dealers that require a dealer to terminate.  
16 Under Vehicle Code section 11713.3(g)(3)(A) and (B), however, there are very particular instances  
17 that are excepted from this general rule and which allow a motor vehicle manufacturer to enforce  
18 an agreement to terminate a dealer agreement and to settle upon completely unrestricted and  
19 unlimited terms and conditions. One of the instances relates specifically to what can be achieved  
20 by the means of a stipulated order of the Board.

21 78. Thus, Vehicle Code section 11713.3(g)(3)(B) expressly provides that, by the means  
22 of a stipulated order of the Board, an agreement to terminate a franchise is lawful. [REDACTED]  
23 [REDACTED]

24 [REDACTED] Vehicle Code section 11713.3(g)(3)(A) also  
25 allows parties the unfettered freedom to negotiate terms and provisions in order to settle and resolve  
26 protests.

27 [REDACTED] Moreover, an agreement to terminate a dealer agreement (or a forfeiture) is expressly  
28 recognized by law when it is part of a stipulated order of the Board. [REDACTED]

[REDACTED]

80. Unlike the eight-day delay in delivering an airplane pursuant to a general contract that was at issue in *Magic Carpet*, supra, other courts applying California law have dealt with far more factually relevant scenarios and consistently favored enforcement of the relevant settlement agreements. In *Chevron U.S.A. Inc. v. Sheikhpour*, the Ninth Circuit applied California law and upheld a trial court's enforcement of a stipulated settlement agreement that gave Chevron the right to purchase the defendant's Manhattan Beach property (effectively terminating the defendant's franchise) as the defendant "failed to complete the project by the agreed upon deadline." (9th Cir. 2012) 469 F.Appx 593, 596.<sup>1</sup>) The Ninth Circuit reasoned that this was not a forfeiture as "the rights of the parties cannot be preserved without enforcing the parties' agreement. The Settlement Agreement evidences the rational relationship of its remedy." (Ibid.)

81. The fact that the enforcement of the express terms of a settlement agreement does not lead to an illegal forfeiture was plainly stated in another Ninth Circuit case applying California law: "[Plaintiff] suffered no unconscionable forfeiture, but rather **experienced the contemplated result of the settlement agreement.**" (*Omni Investment Corp. v. Cordon International Corp.* (9th Cir. 1974) 603 F.2d 81, 84-85 [holding that enforcing the parties' settlement agreement did not work an inequitable forfeiture, despite plaintiff's asserted arguments of impossibility of performance and the failure of a condition precedent], emphasis added.)

[REDACTED]

<sup>1</sup> Under California law "federal decisions on questions of state law can be persuasive authority." (*Shuts v. Covenant Holdco LLC* (2012) 208 Cal.App.4th 609, 619, citing 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 507, pp. 571-572.)

[REDACTED]

[REDACTED]

Specifically, there is authority supporting a general rule that, in context of a California administrative proceeding, “where there is no specific provision for a hearing, a hearing requirement is to be implied, absent a contrary intent expressed in the provisions creating the right of appeal.” (Chavez v. Civil Service Commission (1978) 86 Cal.App.3d 324, 331–32.) Conversely, in an unpublished decision—Shields W., LLC v. City of Fresno (Cal. Ct. App. Dec. 1, 2009) No. F055298, 2009 WL 4268396, at \*9—a court held that the “implied” hearing requirement in Chavez was unique to the underlying rules of the Civil Service Commission and that there is generally no evidentiary hearing “requirement” unless a statute explicitly calls for one. Here, Section 3050.7 actually dictates that such a hearing is inapplicable where the parties have stipulated to good cause.

[REDACTED]

1           **D.     The ALJ's Determination Is Not Supported by the Evidence.**

2           [REDACTED] In addition to the issues described above, the ALJ made a number of findings which  
3 were not supported by substantial evidence in light of the whole record, [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12           **E.     The Determination is Not Supported by the ALJ's Findings**

13           89. For all of the above reasons, the ALJ's Determination was based on erroneous and  
14 unsupported findings, incorrect conclusions of law, and as set forth below, potentially tainted by  
15 off-record communications. As a result, the Determination is not supported by the findings as  
16 required by Code of Civil Procedure section 1094.5(b).

17           **F.     SOA Was Denied a Fair Hearing.**

18           90. The hearing was not only unauthorized but was also seriously compromised by events  
19 that transpired after the evidence had closed and while the Determination was pending. The ALJ  
20 considered and ruled on the materiality of the off-record, unsworn statements of Courtesy's counsel  
21 which were forwarded to the ALJ by the Chief Counsel of the Board.

22           91. The ALJ took under consideration a communication from counsel for Courtesy after  
23 the record was closed and while she was in the midst of drafting her ruling. The ALJ's improper  
24 review and consideration of Courtesy's communication by e-mail on March 10, 2022 provided no  
25 opportunity for SOA's counsel to participate in the communication prior to it being taken under  
26 consideration. As such it was made in violation of the California Government Code resulting in  
27 significant and irreversible prejudice to SOA in this matter.

28           92. One-hundred thirty-three days after the submission of the case and while the decision

1 remained pending, Courtesy's counsel wrote an email to the Chief Counsel for the Board seeking  
2 to introduce new evidence (none of which was under oath), requesting an extrajudicial order,  
3 making baseless arguments, and presenting inaccurate and inflammatory accusations. To be  
4 perfectly clear, this was **not** a communication concerning a matter of procedure or practice. This  
5 was a communication with the sole unadulterated purpose of asking ALJ Matteucci to accept all of  
6 Courtesy's off the record statements as true and to order SOA to rescind an action that ALJ  
7 Matteucci had absolutely no authority over, which she, herself, later acknowledged.

8 93. Four minutes after Courtesy's email to the Chief Counsel, after what had to have been  
9 a very cursory review of the email and without presenting any opportunity for SOA to participate  
10 in this communication, the Chief Counsel (who is also an administrative law judge) forwarded it ex  
11 parte to ALJ Matteucci, who was still in the midst of writing a final decision. The Chief Counsel  
12 then informed the parties what she had done, again, without inviting any participation from SOA  
13 whatsoever.

14 94. After discovering partially what had transpired (while in the midst of conducting a  
15 deposition preparation of another client), SOA's counsel was eventually able to scramble together,  
16 first, a brief email, then a more detailed email informing all involved that the communication was  
17 improper and wholly lacking jurisdiction. SOA's counsel's initial email was sent without full  
18 appreciation of the fact that over thirty minutes had passed since the time the Chief Counsel had  
19 already forwarded Courtesy's communication to ALJ Matteucci.

20 95. In the aftermath of all three communications being trickled to ALJ Matteucci, the ALJ  
21 decided to consider their substance in their entirety and, then first determined she was without  
22 jurisdiction, but later issued an order that the unsworn testimony contained in the ex parte  
23 communication would be entered into the proceedings as evidence.

24 96. At yet another and separate hearing, and only after SOA filed its written objections to  
25 the "ex parte" hearing, the ALJ revised the order, reversing her prior order to enter the ex parte  
26 communication into the record as evidence and issued additional findings. These additional findings  
27 held that the substance of the improper communication did indeed contain reference to issues  
28 material to the proceedings. And, in particular, they were material to the ALJ's findings on

1 adequacy of damages.

2 97. In *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals*  
3 *Bd.* (2006) 40 Cal.4th 1, the licensees challenged the Department's practice of having a Department  
4 prosecutor prepare a report of the hearing, including a recommended outcome, and forwarding it to  
5 the ultimate decisionmaker while a final Department decision was still pending. (*Id.* at pp. 5-6.) In  
6 concluding the practice violated the APA, our Supreme Court stated: "Procedural fairness does not  
7 mandate the dissolution of unitary agencies, but it does require some internal separation between  
8 advocates and decision makers to preserve neutrality." (*Id.* at pp. 10-11.) It further explained: "One  
9 fairness principle directs that in adjudicative matters, one adversary should not be permitted to bend  
10 the ear of the ultimate decision maker or the decision maker's advisers in private. Another directs  
11 that the functions of prosecution and adjudication be kept separate, carried out by distinct  
12 individuals." (*Id.* at p. 5.)

13 98. Here, at the subsequent hearing held about the *ex parte* communication with the ALJ,  
14 it was revealed that not only are Board measures non-existent to ensure that communications of a  
15 party are not shown to the ALJ after the time of evidence closure, but it is actually the Board's  
16 practice to always and automatically forward any party communications directly to the assigned  
17 ALJ no matter when they occur. As a result, the Board has no manner of separation between an  
18 advocate and the decision maker while the decision is still pending.

19 99. The finding by the ALJ that the substance of the unfair communication was material  
20 to her ultimate ruling, despite her lacking any jurisdiction over its substance, was improper and  
21 procedurally unfair.

22 100. In order to preserve the confidentiality of both the Stipulated Decision and the  
23 Determination, MAI has filed this unredacted version of the Petition and supporting documents  
24 under seal, and will also file a redacted version of the Petition. Concurrently with this Petition, MAI  
25 will be filing a Motion to Seal to protect the confidentiality of the pleadings, documents, orders and  
26 hearing transcripts in this matter. In addition, MAI will provide a complete administrative record,  
27 including all pleadings and documents submitted to the Board in the underlying matter and hearing  
28 transcripts, in accordance with Code of Civil Procedure section 1094.5(a).



1 **VII. CONCLUSION**

2 101. In issuing the Determination, the ALJ and the Board by extension exceeded their  
3 jurisdictional authority and committed numerous prejudicial abuses of discretion as described  
4 above.

5 102. A true and correct copy of the administrative record will be lodged with the Court  
6 before the hearing on the writ of administrative mandate.

7 103. Petitioner SOA does not have a plain, speedy or adequate remedy in the ordinary  
8 course of law.

9 WHEREFORE, Petitioner SOA hereby prays for judgment as follows:

10 1. For and order reversing the Determination of the ALJ;

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 3. For an order finding that SOA is the prevailing party in this matter; and

15 4. For such other and further relief as the Court deems just and proper.

16 Dated: May 5, 2022

Respectfully submitted,

17 **NELSON MULLINS RILEY & SCARBOROUGH**  
18 **LLP**

19 By:



20 Lisa M. Gibson  
21 Amy Toboco  
22 Crispin L. Collins

23 Attorneys for Petitioner  
24 SUBARU OF AMERICA, INC.  
25  
26  
27  
28

## **Exhibit 1 -**

# **REDACTED Confidential Agreement and Stipulated Decision and Order**

## **Exhibit 2 -**

**REDACTED Confidential  
Decision Resolving Stipulated  
Decision and Order Dispute**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Nelson Mullins Riley & Scarborough LLP and my business address is 19191 S. Vermont Avenue, Suite 900, Torrance, CA 90502.

**[REDACTED] PETITION FOR WRIT OF ADMINISTRATIVE  
MANDATE [C.C.P. § 1094.5]**

☒ [by **ELECTRONIC SUBMISSION**] - I served the above listed document(s) described on the designated recipients via electronic which electronic service was agreed upon.

Executed May 5, 2022 at Torrance, California.

  
Crispin L. Collins

**SERVICE LIST**

NEW MOTOR VEHICLE BOARD

1507 – 21st Street, Suite 330

Sacramento, CA 95811

Email: [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov)

[Robin.Parker@nmvb.ca.gov](mailto:Robin.Parker@nmvb.ca.gov)

LAW OFFICES OF GAVIN M. HUGHES

Gavin M. Hughes

Robert A. Mayville

3436 American River Drive, Suite 10

Sacramento, CA 95864

Telephone: (916) 900-8022

Email: [gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)

[mayville@hughesdealerlaw.com](mailto:mayville@hughesdealerlaw.com)

Attorneys for Real Party in Interest

COURTESY AUTOMOTIVE GROUP, INC.

dba COURTESY SUBARU OF CHICO

# **EXHIBIT 2**



**Service of Process Transmittal Summary**

**TO:** Suzanne Ostrofsky  
Subaru Of America, Inc.  
1 SUBARU DR  
CAMDEN, NJ 08103-2204

**RE:** Process Served in California

**FOR:** Subaru of America, Inc. (Domestic State: NJ)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO vs. SUBARU OF AMERICA, INC.

**CASE #:** 22CV00702

**PROCESS SERVED ON:** C T Corporation System, GLENDALE, CA

**DATE/METHOD OF SERVICE:** By Process Server on 05/10/2022 at 01:26

**JURISDICTION SERVED:** California

**ACTION ITEMS:** CT will retain the current log  
Image SOP  
Email Notification, Andrea Chiacchio achiac@subaru.com  
Email Notification, Beth Bennett ebenne@subaru.com  
Email Notification, Suzanne Ostrofsky sostro@subaru.com

**REGISTERED AGENT CONTACT:** C T Corporation System  
330 N BRAND BLVD  
STE 700  
GLENDALE, CA 91203  
866-401-8252  
EastTeam2@wolterskluwer.com

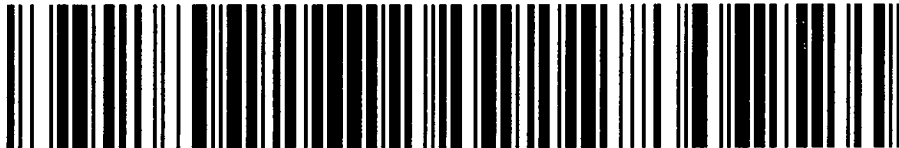
The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

## PROCESS SERVER DELIVERY DETAILS

**Date:** Tue, May 10, 2022  
**Server Name:** Victor Mendez

Entity Served	SUBARU OF AMERICA, INC.
Case Number	22CV00702
Jurisdiction	CA

Inserts		



# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Subaru of America, Inc., and Does 1 through 50, inclusive

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)	
Superior Court of California	
County of Butte	
4/6/2022	
By	Sharif Elmallah, Clerk <i>D. Hattup</i> Deputy
Electronically FILED	

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): North Butte County Courthouse  
1775 Concord Avenue  
Chico, CA 95928

CASE NUMBER: (Número del Caso):

22CV00702

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

LAW OFFICES OF GAVIN M. HUGHES, 3436 American River Drive, Suite 10, Sacramento, CA 95864 (916) 900-8022

DATE: 4/6/2022  
(Fecha)

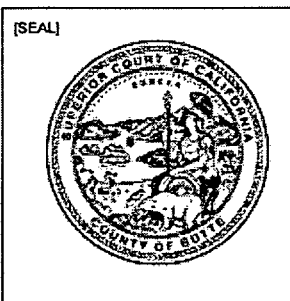
Sharif Elmallah

Clerk, by  
(Secretario)

*D. Hattup*, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

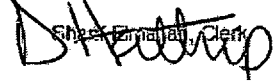
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



### NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): Subaru of America, Inc.  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
- ☐ by personal delivery on (date):

LAW OFFICES OF GAVIN M. HUGHES  
GAVIN M. HUGHES State Bar #242119  
ROBERT A. MAYVILLE, JR. State Bar #311069  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
Telephone: (916) 900-8022  
E-mail: gavin@hughesdealerlaw.com

F Superior Court of California F  
I County of Butte I  
L 4/6/2022 L  
E E  
D By  Deputy  
Electronically FILED

ATTORNEYS FOR PLAINTIFF  
Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
**COUNTY OF BUTTE**

COURTESY AUTOMOTIVE GROUP, INC.,  
dba COURTESY SUBARU OF CHICO,

Plaintiff,

v.

SUBARU OF AMERICA, INC. and  
DOES 1 through 50, inclusive,

Defendants.

**CASE NO: 22CV00702**

**COMPLAINT FOR:**

- 1. BREACH OF CONTRACT**
- 2. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**
- 3. ACCOUNT STATED**
- 4. BREACH OF CONTRACT (LOC)**
- 5. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING (LOC)**
- 6. VIOLATION OF UNFAIR COMPETITION LAW**
- 7. INTENTIONAL MISREPRESENTATION**
- 8. NEGLIGENT MISREPRESENTATION**
- 9. UNJUST ENRICHMENT**

1 Plaintiff Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico ("Courtesy"), through  
2 its attorneys, sues Defendants Subaru of America, Inc. ("SOA"), and Does 1 through 50, inclusive, and  
3 hereby alleges the following:

4 **NATURE OF THE ACTION**

5 1. Plaintiff seeks attorneys' fees and costs pursuant to the March 20, 2019, Exhibit 1 to  
6 Confidential Agreement to Stipulated Decision and Order of the Board, Filed Under Seal ("Confidential  
7 Stipulated Agreement") accompanying the March 20, 2019, [Proposed] Stipulated Decision and Order  
8 of the Board Resolving Protest and Lawsuit and April 9, 2019, Order Adopting "[Proposed] Stipulated  
9 Decision and Order of the Board Resolving Protest and Lawsuit" (collectively "Board Order Adopting  
10 Stipulated Decision and Order"). Plaintiff invoked the Board's jurisdiction pursuant to the Confidential  
11 Stipulated Agreement and prevailed in the underlying confidential action. Plaintiff is the prevailing  
12 party in the underlying confidential action and is entitled to recover its attorneys' fees and costs pursuant  
13 to California Civil Code section 1717.

14 2. Additionally, Plaintiff seeks payment of Letter of Credit ("LOC") funds totaling  
15 \$750,000.00 which were called by Defendant SOA. SOA called the LOC in breach of the Confidential  
16 Stipulated Agreement, in breach of the covenant of good faith and fair dealing implied in the contract,  
17 and in violation of unfair competition laws. Upon information and belief, SOA's communications with  
18 BMO Harris Bank N.A. calling the LOC were also fraudulent and negligent misrepresentations.  
19 Moreover, SOA's efforts to retain the LOC funds would result in an unjust enrichment and the  
20 application of the LOC sections of the Confidential Stipulated Agreement as an unenforceable penalty  
21 provision. Plaintiff is separately entitled to recover its attorneys' fees and costs concerning the LOC  
22 causes of action based on California Civil Code section 1717 and the Confidential Stipulated  
23 Agreement.

24 **PARTIES**

25 3. Plaintiff, Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico ("Courtesy"),  
26 operates as a new motor vehicle dealer, as defined by California Vehicle Code section 426, selling new  
27 Subaru vehicles and parts, is duly licensed as a vehicle dealer by the State of California, and is located  
28 at 2520 Cohasset Rd., Chico, CA 95973.

1           4. Defendant, Subaru of America, Inc. ("SOA"), is a new motor vehicle distributor and  
2 manufacturer doing business with Subaru dealers in the State of California and throughout the United  
3 States, and is the franchisor of Plaintiff. SOA is licensed as a vehicle distributor and manufacturer in  
4 the State of California.

5           5. Plaintiff does not know the true names and capacities, whether corporate, partnership,  
6 associate, individual, or otherwise of Defendants sued herein as Does 1 through 50, inclusive, pursuant  
7 to California Code of Civil Procedure section 474. Defendants Does 1 through 50, inclusive, are in  
8 some manner responsible for the acts, occurrences, and transactions set forth herein, and are legally  
9 liable to Plaintiffs. Plaintiff will seek leave to amend this Complaint to set forth the true names and  
10 capacities of the fictitiously-named Defendants together with appropriate charging allegations when  
11 ascertained. Reference herein to Defendant SOA shall be interpreted as including Does 1 through 50,  
12 inclusive.

#### 13                                   **JURISDICTION AND VENUE**

14           6. Pursuant to the California Constitution, Article VI, section 10, this Court has jurisdiction  
15 over the issues herein raised.

16           7. Venue is proper in this County pursuant to California Code of Civil Procedure section  
17 395.

18           8. This Court has jurisdiction over Defendants because SOA is a corporation authorized to  
19 and conducting substantial business in the State of California, County of Butte.

#### 20                                   **GENERAL ALLEGATIONS**

21           9. Courtesy and SOA (collectively the "Parties") sought to resolve Protest No. PR-2570-18  
22 filed pursuant to California Vehicle Code section 3060 before the California New Motor Vehicle Board  
23 ("Board") and a lawsuit in the Eastern District of California, Case No. 2-18-cv-02778-KJM-KJN, by  
24 entering into a stipulated decision and order pursuant to California Vehicle Code section 3050.7.

25           10. On March 20, 2019, the Parties executed the [Proposed] Stipulated Decision and Order  
26 of the Board Resolving Protest and Lawsuit and Exhibit 1 to Confidential Agreement to Stipulated  
27 Decision and Order of the Board, Filed Under Seal ("Confidential Stipulated Agreement"). A true and  
28 correct copy of the [Proposed] Stipulated Decision and Order of the Board Resolving Protest and



1 Lawsuit is attached hereto as Exhibit 1.

2 11. The Confidential Stipulated Agreement is confidential and is maintained outside public  
3 record pursuant to the [Proposed] Stipulated Decision and Order of the Board Resolving Protest and  
4 Lawsuit. As a result, Courtesy does not attach hereto a copy of the Confidential Stipulated Agreement  
5 to maintain the document as confidential. SOA is in possession of the Confidential Stipulated  
6 Agreement and is aware of each of its terms and conditions. As necessary, Courtesy will seek to have  
7 the Confidential Stipulated Agreement filed under seal in this action to protect its confidential nature.

8 12. On April 9, 2019, pursuant to Vehicle Code section 3050.7, the Board issued its Order  
9 Adopting “[Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit.” A  
10 true and correct copy of the Board’s April 9, 2019, Order is attached hereto as Exhibit 2. Courtesy  
11 refers to the [Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit and  
12 Order Adopting “[Proposed] Stipulated Decision and Order of the Board Resolving Protest and  
13 Lawsuit” collectively as the “Board Order Adopting Stipulated Decision and Order.”

14 13. The Parties further entered into a Subaru Dealer Agreement and Standard Provision with  
15 a Facility Addendum dated October 17, 2019. The Facility Addendum provided that “[a]ll terms,  
16 conditions, and provisions of this Addendum and of the Stipulated Decision and Order of the Board  
17 Resolving Protest and Lawsuit dated March 20, 2019 (and the Confidential Agreement attached as  
18 Exhibit 1 thereto) held under confidential seal by the California New Motor Vehicle Board in Protest  
19 No. PR-2570-18, shall be incorporated by reference into the [Dealer] Agreement pursuant to Paragraph  
20 20.10 of the [Dealer] Agreement.”<sup>1</sup> A true and correct copy of the October 17, 2019, Facility Addendum  
21 is attached hereto as Exhibit 3.

22 14. On May 21, 2020, the Parties entered into an Amendment to Existing Facility Addendum  
23 to Confidential Subaru Dealer Agreement (“Amended Facility Addendum”). A true and correct copy  
24 of the Amended Facility Addendum is attached hereto as Exhibit 4.

25  
26  
27 <sup>1</sup> The Facility Addendum incorporated the Confidential Stipulated Agreement into the Subaru Dealer  
28 Agreement by reference. All allegations herein alleging breach of the Confidential Stipulated  
Agreement by SOA shall also be read to include breach of the Facility Addendum, Amended Facility  
Addendum, and Dealer Agreement.

1           15. The Confidential Stipulated Agreement required Courtesy provide SOA a \$750,000.00  
2 Letter of Credit ("LOC") or performance bond. In conformity with the Confidential Stipulated  
3 Agreement, Courtesy obtained the LOC from BMO Harris Bank N.A. (Standby Letter of Credit No.  
4 HACH621044OS) with SOA as the beneficiary. The LOC was designed to insure Courtesy's  
5 performance on its commitment to a new ground-up facility in Chico, California. A true and correct  
6 copy of the LOC is attached hereto as Exhibit 5.

7           16. As the LOC provides, "[It was] issued to support the obligations of Courtesy Automotive  
8 Group, Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement. We [BMO Harris  
9 Bank N.A.] are informed that Courtesy Automotive Group, Inc. has committed to a Separate Touch  
10 Points Subaru dealership facility at Parcel numbers: APN 006-400-061, APN 006-400-063, APN 006-  
11 400-064, APN 006-400-65 and APN 006-400-066 Chico, CA meeting all Subaru minimum standards,  
12 as approved by Beneficiary [SOA], by January 31, 2022." (See Exhibit 5 at page 3.)

13           17. The LOC further provides: "This Credit is available against your draft drawn at sight on  
14 us accompanied by the following document(s): 1. Beneficiary's Certificate, on its letterhead, completed,  
15 dated and purportedly signed by an authorized individual stating: 'Courtesy Automotive Group, Inc.  
16 has failed to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement  
17 between Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico and Subaru of America, Inc.  
18 – Western Region. Therefore, we are drawing for USD...., under Letter of Credit No. HACH621044OS.  
19 Please wire proceeds to Subaru of America, Inc.... (Instructions will be given at the time of the  
20 drawing).' 2. The original of this Credit and subsequent amendment(s), if any." (See Exhibit 5 at page  
21 2.)

22           18. The LOC was amended by "Amendment no. 1" on July 7, 2020. The amended terms  
23 included changing the expiry date of the LOC to July 31, 2022. No other amendments were made to  
24 the LOC. Exhibit 5 attached hereto includes the Amendment no. 1.

25           19. The Board Order Adopting Stipulated Decision and Order and Confidential Stipulated  
26 Agreement provided the Board with continuing jurisdiction "solely to enforce its Order in the future if  
27 requested by either party." (See, e.g., Exhibit 1 [hereto] at ¶ 18.)

28 ///

1           20. The Confidential Stipulated Agreement contained a provision entitling the prevailing  
2 Party in a legal proceeding to enforce or interpret the terms of the Confidential Stipulated Agreement  
3 to its reasonable attorneys' fees and costs in the action. The provision entitles a prevailing party to  
4 attorneys' fees and costs pursuant to California Civil Code section 1717.

5           21. Pursuant to confidential provisions of the Confidential Stipulated Agreement, on or about  
6 September 3, 2020, Courtesy invoked the Board's continuing jurisdiction to enforce its Stipulated  
7 Decision and Order based on the Board Order Adopting Stipulated Decision and Order and the  
8 Confidential Stipulated Agreement.

9           22. After Courtesy invoked the Board's jurisdiction, the Board held a confidential proceeding  
10 before Administrative Law Judge Evelyn I. Matteucci ("ALJ Matteucci") pursuant to the terms of the  
11 Confidential Stipulated Agreement between Courtesy and SOA.

12           23. On or about March 8, 2022, BMO Harris Bank N.A. informed Courtesy that SOA was  
13 calling the LOC. Courtesy communicated with SOA in February and March 2022 requesting SOA  
14 refrain from its efforts to collect the funds secured by the LOC. Among other reasons, Courtesy  
15 communicated there was a pending decision by the Board and ALJ Matteucci concerning matters  
16 relevant to the LOC.

17           24. Courtesy requested SOA provide a copy of SOA's demand to BMO Harris Bank N.A.  
18 calling the LOC. SOA refused. As a result, upon information and belief, Courtesy alleges SOA  
19 demanded payment of the LOC based on the language contained in the LOC, in relevant part: "Courtesy  
20 Automotive Group, Inc. has failed to fulfill its obligations pursuant to the Facility Addendum to the  
21 Subaru Dealer Agreement between Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico  
22 and Subaru of America, Inc – Western Region." Courtesy expressly reserves the right to amend this  
23 Complaint upon discovering the actual demand SOA provided BMO Harris Bank N.A.

24           25. SOA did not call the LOC "to support the obligations of Courtesy Automotive Group,  
25 Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement." Courtesy has existing bank  
26 funding in place to complete construction of the permanent facility required by the Facility Addendum,  
27 through BMO Harris Bank N.A. Construction of the permanent facility is ongoing and has been  
28 ongoing since approximately June 2021.

1           26. Based on information and belief, SOA's calling of the LOC was fraudulent and a  
2 negligent misrepresentation. SOA was aware of Courtesy's ongoing facility construction without the  
3 need for further funding.

4           27. Based upon information and belief, on or about March 21, 2022, BMO Harris Bank N.A.  
5 released the LOC funds to SOA. Courtesy has incurred a \$750,000.00 liability to BMO Harris Bank  
6 N.A. as a result of SOA calling the LOC.

7           28. On March 24, 2022, as the final determination in the Board's confidential proceeding,  
8 ALJ Matteucci issued a Confidential Decision Resolving Stipulated Decision and Order Dispute  
9 ("Confidential Decision"). The Confidential Decision is binding and non-appealable.

10          29. The Confidential Decision was in Courtesy's favor. Based on the Confidential Decision,  
11 Courtesy was the prevailing party in the confidential proceeding before the Board and ALJ Matteucci.  
12 The litigation was a proceeding to enforce or interpret the terms of the Confidential Stipulated  
13 Agreement as articulated by the Confidential Stipulated Agreement. As the prevailing party, Courtesy  
14 is entitled to recover its attorneys' fees and costs from SOA pursuant to California Civil Code section  
15 1717.

16          30. Similar to the Confidential Stipulated Agreement, the Confidential Decision is  
17 confidential and is maintained outside public record pursuant to the [Proposed] Stipulated Decision and  
18 Order of the Board Resolving Protest and Lawsuit. As a result, Courtesy does not attach hereto a copy  
19 of the Confidential Decision to maintain the document as confidential. SOA is in possession of the  
20 Confidential Decision and is aware of ALJ Matteucci's Decision. As necessary, Courtesy will seek to  
21 have the Confidential Decision filed under seal in this action to protect its confidential nature.

22          31. Following the Confidential Decision, on March 28, 2022, Courtesy sent SOA a demand  
23 letter requesting attorneys' fees and costs, pursuant to the attorneys' fees and costs provision of the  
24 Confidential Stipulated Agreement, as well as the return of the LOC funds in the amount of  
25 \$750,000.00.

26          32. SOA responded to Courtesy's demand letter on the same day and refused to provide  
27 attorneys' fees and costs as required under the Confidential Stipulated Agreement or return the LOC  
28 funds.

1           33.     Courtesy brings this action to obtain its attorneys' fees and costs incurred in the Board  
2 action because the Board possesses narrow jurisdictional limits. The Board is not authorized to award  
3 damages or attorneys' fees and costs. (Cal. Veh. Code § 3050; *see also Hardin Oldsmobile v. New*  
4 *Motor Vehicle Bd.* (1997) 52 Cal.App.4th 585, 597 ("While the Vehicle Code gives the Board statutory  
5 authority to hear specific protests by franchisees and also gives general authority to resolve honest  
6 differences of opinion between licensees and members of the public, it does not replace the judiciary  
7 with the Board as the forum for litigating other statutory and common law causes of action. While some  
8 of the language giving the Board authority appears broad, such as 'consider any matter,' the context of  
9 the language, especially the absence of statutory authority to award general compensatory and punitive  
10 damages, makes it evident the authority of the Board over traditional litigation involving its licensees  
11 is not plenary and, indeed, has not been broadly authorized by the Legislature.")) As a result, Courtesy  
12 is authorized to bring this action in a court having "jurisdiction over all common law and statutory  
13 claims originally cognizable in the courts" to recover its damages, attorneys' fees, and costs. (Cal. Veh.  
14 Code § 3050, subd. (e).)

15           34.     In addition, Collateral Estoppel, also known as "Issue Preclusion," is an aspect of res  
16 judicata which precludes the relitigation of an issue which has been decided in a previous hearing.  
17 "Collateral estoppel applies when (1) the party against whom the plea is raised was a party or was in  
18 privity with a party to the prior adjudication, (2) there was a final judgment on the merits in the prior  
19 action and (3) the issue necessarily decided in the prior adjudication is identical to the one that is sought  
20 to be relitigated." (*Smith v. ExxonMobil Oil Corp.* (2007) 153 Cal.App.4th 1407, 1414 (quoting *Roos*  
21 *v. Red* (2005) 130 Cal.App.4th 870, 879).)

22           35.     "Thus, res judicata does not merely bar relitigation of identical claims or causes of action.  
23 Instead, in its collateral estoppel aspect, the doctrine may also preclude a party to prior litigation from  
24 redispensing issues therein decided against him, even when those issues bear on different claims raised  
25 in a later case." (*Smith, supra*, 153 Cal.App.4th at p. 1414.)

26           36.     "It has long been recognized that collateral estoppel not only prevents relitigation of court  
27 findings, but also may be applied to the decision of an administrative agency when that agency is acting  
28 in a judicial or quasi-judicial capacity." (*Basurto v. Imperial Irrigation Dist.* (2012) 211 Cal.App.4th

1 866, 878 (citing *People v. Sims* (1982) 32 Cal.3d 468, 479; *Castillo v. City of Los Angeles* (2001) 92  
2 Cal.App.4th 477, 481; *Knickerbocker v. City of Stockton* (1988) 199 Cal.App.3d 235, 242).) ““Indicia  
3 of [administrative] proceedings undertaken in a judicial capacity include a hearing before an impartial  
4 decision maker; testimony given under oath or affirmation; a party’s ability to subpoena, call, examine,  
5 and cross-examine witnesses, to introduce documentary evidence, and to make oral and written  
6 argument; the taking of a record of the proceeding; and a written statement of reasons for the decision.””  
7 (*Basurto, supra*, 211 Cal.App.4th at pp. 878-879 (quoting *Pacific Lumber Co. v. State Water Resources*  
8 *Control Bd.* (2006) 37 Cal.4th 921, 944).)

9 37. Collateral Estoppel is applicable because ALJ Matteuci’s March 24, 2022, Confidential  
10 Decision was produced pursuant to an administrative proceeding which was judicial in nature.

11 38. Collateral Estoppel precludes SOA from relitigating issues determined in the Confidential  
12 Decision, including but not limited to those issues relevant to each of Courtesy’s Causes of Action  
13 below.

14 39. Any delay in Courtesy constructing the permanent facility is excused based on Courtesy’s  
15 commercially reasonable best efforts as well as the force majeure event of the COVID-19 Pandemic.  
16 Courtesy did not materially fail to comply with the Confidential Stipulated Agreement.

17 **FIRST CAUSE OF ACTION**

18 **(BREACH OF CONTRACT — FAILURE TO PAY ATTORNEYS’ FEES AND COSTS —**  
19 **AGAINST DEFENDANT SOA)**

20 40. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint  
21 as if fully set forth herein.

22 41. Courtesy and SOA entered into the Confidential Stipulated Agreement on March 20,  
23 2019. The Confidential Stipulated Agreement is a contract between Courtesy and SOA.

24 42. Courtesy properly invoked the Board’s jurisdiction pursuant to the confidential terms of  
25 the Confidential Stipulated Agreement. SOA participated in the proceeding before the Board as  
26 described by the Confidential Stipulated Agreement.

27 43. Courtesy prevailed in the Board proceeding and was the prevailing party in ALJ  
28 Matteucci’s Confidential Decision. The Confidential Decision is binding and non-appealable.



44. The Confidential Stipulated Agreement provided the prevailing party would be entitled to recover its reasonable attorneys' fees and costs incurred in an action for the purpose of enforcing or interpreting the terms of the Confidential Stipulated Agreement. Pursuant to California Civil Code section 1717, the Confidential Stipulated Agreement is a contract that specifically provides that attorneys' fees and costs be awarded to the prevailing party on the contract.

45. On March 28, 2022, Courtesy sent a demand letter to SOA seeking its reasonable attorneys' fees and costs. The demand letter listed \$189,806.50 in attorneys' fees and \$23,896.84 in costs as of March 28, 2022, incurred in the Board proceeding.

46. SOA refused to provide Courtesy its reasonable attorneys' fees and costs incurred in the Board action for enforcing and interpreting the terms of the Confidential Stipulated Agreement before ALJ Matteucci.

47. SOA breached the Confidential Stipulated Agreement by refusing to provide Courtesy its reasonable attorneys' fees and costs as required by the Confidential Stipulated Agreement.

48. As a result of SOA's breach, SOA is obligated to pay Courtesy its reasonable attorneys' fees and costs. Courtesy's reasonable attorneys' fees and costs totaled \$213,703.34 as of March 28, 2022. Courtesy is also entitled to its reasonable attorneys' fees and costs in this action in seeking to enforce the terms of the Confidential Stipulated Agreement.

49. SOA is liable for Courtesy's reasonable attorneys' fees and costs incurred in the Board action as well as this action concerning the recovery of Courtesy's attorneys' fees and costs. SOA is also liable for pre-judgment and post-judgment interest.

## SECOND CAUSE OF ACTION

**(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING -- FAILURE TO PAY**

**ATTORNEYS' FEES AND COSTS -- AGAINST DEFENDANT SOA)**

50. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

51. Courtesy and SOA entered into the Confidential Stipulated Agreement on March 20, 2019. The Confidential Stipulated Agreement is a contract between Courtesy and SOA.

///

1           52.    Courtesy properly invoked the Board’s jurisdiction pursuant to the confidential terms of  
2 the Confidential Stipulated Agreement. SOA participated in the proceeding before the Board as  
3 described by the Confidential Stipulated Agreement.

4           53.    Courtesy prevailed in the Board proceeding and was the prevailing party in ALJ  
5 Matteucci’s Confidential Decision. The Confidential Decision is binding and non-appealable.

6           54.    The Confidential Stipulated Agreement provided the prevailing party would be entitled  
7 to recover its reasonable attorneys’ fees and costs incurred in an action for the purpose of enforcing or  
8 interpreting the terms of the Confidential Stipulated Agreement. Pursuant to California Civil Code  
9 section 1717, the Confidential Stipulated Agreement is a contract that specifically provides that  
10 attorneys’ fees and costs be awarded to the prevailing party on the contract.

11          55.    On March 28, 2022, Courtesy sent a demand letter to SOA seeking its reasonable  
12 attorneys’ fees and costs.

13          56.    SOA refused to provide Courtesy its reasonable attorneys’ fees and costs incurred in the  
14 action for enforcing and interpreting the terms of the Confidential Stipulated Agreement before the  
15 Board and ALJ Matteucci.

16          57.    The law implies in every contract a covenant of good faith and fair dealing. (*See Wilson*  
17 *v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720 (recognizing the covenant in the insurance context);  
18 *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 683 (recognizing the covenant in the employment  
19 law context); *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th  
20 342, 371 (recognizing the covenant in the commercial lease context); Rest.2d Contracts § 205 (stating  
21 “Every contract imposes upon each party a duty of good faith and fair dealing in its performance and  
22 its enforcement”).)

23          58.    As the Restatement describes, “Subterfuges and evasions violate the obligation of good  
24 faith in the performance even though the actor believes his conduct to be justified. But the obligation  
25 goes further: bad faith may be overt or may consist of inaction, and fair dealing may require more than  
26 honesty. A complete catalogue of types of bad faith is impossible, but the following types are among  
27 those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of  
28 diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify

1 terms, and interference with or failure to cooperate in the other party's performance." (Rest.2d  
2 Contracts § 205, Comment (d).)

3 59. SOA failed to comply with the covenant of good faith and fair dealing implied in the  
4 Confidential Stipulated Agreement.

5 60. SOA willfully rendered imperfect performance by failing to provide Courtesy its  
6 reasonable attorneys' fees and costs.

7 61. As a result of SOA's breach of the covenant of good faith and fair dealing implied in the  
8 Confidential Stipulated Agreement, Courtesy has been denied its reasonable attorneys' fees and costs  
9 which it is due.

10 62. As a result of SOA's breach, SOA is obligated to pay Courtesy its reasonable attorneys'  
11 fees and costs. Courtesy's reasonable attorneys' fees and costs totaled \$213,703.34 as of March 28,  
12 2022. Courtesy is also entitled to its reasonable attorneys' fees and costs in this action in seeking to  
13 enforce the terms of the Confidential Stipulated Agreement.

14 63. SOA is liable for Courtesy's reasonable attorneys' fees and costs incurred in the Board  
15 action as well as this action concerning the recovery of Courtesy's attorneys' fees and costs. SOA is  
16 also liable for pre-judgment and post-judgment interest.

17 **THIRD CAUSE OF ACTION**

18 **(ACCOUNT STATED – AGAINST DEFENDANT SOA)**

19 64. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint  
20 as if fully set forth herein.

21 65. "An account stated is an agreement, based on prior transactions between the parties, that  
22 the items of an account are true and that the balance struck is due and owing." (*Maggio, Inc. v. Neal*  
23 (1987) 196 Cal.App.3d 745, 752 (see *Gleason v. Klamer* (1980) 103 Cal.App.3d 782, 786).) "To be an  
24 account stated, 'it must appear that at the time of the statement an indebtedness from one party to the  
25 other existed, that a balance was then struck and agreed to be the correct sum owing from the debtor to  
26 the creditor, and that the debtor expressly or impliedly promised to pay to the creditor the amount thus  
27 determined to be owing.'" (*Maggio, supra*, 196 Cal.App.3d at pp. 752-753 (quoting *H. Russell Taylor's*  
28 *Fire Prevention Service, Inc. v. Coca Cola Bottling Corp.*, (1979) 99 Cal.App.3d 711, 726).)

1           66. The Confidential Stipulated Agreement provided the prevailing party would be entitled  
2 to recover its reasonable attorneys' fees and costs incurred in an action for the purpose of enforcing or  
3 interpreting the terms of the Confidential Stipulated Agreement. Pursuant to California Civil Code  
4 section 1717, the Confidential Stipulated Agreement is a contract that specifically provides that  
5 attorneys' fees and costs be awarded to the prevailing party on the contract.

6           67. On March 28, 2022, Courtesy sent a demand letter to SOA seeking its reasonable  
7 attorneys' fees and costs. The demand letter listed \$189,806.50 in attorneys' fees and \$23,896.84 in  
8 costs totaling \$213,703.34 as of March 28, 2022, incurred in the Board proceeding.

9           68. SOA refused to provide Courtesy its reasonable attorneys' fees and costs incurred in the  
10 action for enforcing and interpreting the terms of the Confidential Stipulated Agreement before the  
11 Board and ALJ Matteucci.

12           69. In the Confidential Stipulated Agreement, Courtesy and SOA agreed the prevailing party  
13 is entitled to attorneys' fees and costs. As a result, SOA impliedly agreed it would pay Courtesy's  
14 attorneys' fees and costs in the event it was the prevailing party in the Board proceeding.

15           70. As a result, SOA is liable for Courtesy's reasonable attorneys' fees and costs. Courtesy's  
16 reasonable attorneys' fees and costs totaled \$213,703.34 as of March 28, 2022. Courtesy is also entitled  
17 to its reasonable attorneys' fees and costs in this action in seeking to enforce the terms of the  
18 Confidential Stipulated Agreement.

19           71. SOA is liable for Courtesy's reasonable attorneys' fees and costs incurred in the Board  
20 action as well as this action concerning the recovery of Courtesy's attorneys' fees and costs. SOA is  
21 also liable for pre-judgment and post-judgment interest.

22                           **FOURTH CAUSE OF ACTION**

23                   **(BREACH OF CONTRACT --- CALLING ON THE LETTER OF CREDIT ---**

24                           **AGAINST DEFENDANT SOA)**

25           72. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint  
26 as if fully set forth herein.

27           73. Courtesy and SOA entered into the Confidential Stipulated Agreement on March 20,  
28 2019, which was adopted by the Board on April 9, 2019. The Confidential Stipulated Agreement is a

1 contract between Courtesy and SOA.

2 74. The Confidential Stipulated Agreement required Courtesy to provide SOA the LOC to  
3 insure Courtesy's performance of its commitment to the Permanent Facility.

4 75. Courtesy and SOA executed the Facility Addendum on October 17, 2019.

5 76. The Facility Addendum was amended on May 21, 2020.

6 77. Courtesy obtained and provided SOA the LOC on June 22, 2020, in conformity with the  
7 Confidential Stipulated Agreement and the Facility Addendum amended on May 21, 2020.

8 78. The LOC was issued "to support the obligations of Courtesy Automotive Group, Inc. as  
9 outlined in the Facility Addendum to the Subaru Dealer Agreement."

10 79. The LOC funds only become available to SOA if SOA provided documents to BMO  
11 Harris Bank N.A. stating "Courtesy Automotive Group, Inc. has failed to fulfill its obligations pursuant  
12 to the Facility Addendum to the Subaru Dealer Agreement."

13 80. On March 8, 2022, Courtesy first learned SOA made demands to BMO Harris Bank N.A.  
14 in order to obtain the LOC funds totaling \$750,000.00. SOA refused to provide a copy of these demands  
15 to Courtesy.

16 81. Upon information and belief, SOA's demands were based on Courtesy allegedly failing  
17 to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement between  
18 Courtesy and SOA.

19 82. At the time SOA called the LOC, it was aware Courtesy was in the process of constructing  
20 the permanent facility described in the Facility Addendum as of the ground-breaking in approximately  
21 June 2021.

22 83. Upon information and belief, the LOC funds were released to SOA by BMO Harris Bank  
23 N.A. on or about March 21, 2022.

24 84. "If its presentation is honored, the beneficiary warrants: (1) to the issuer, any other person  
25 to whom the presentation is made, and the applicant that there is no fraud or forgery of the kind described  
26 in subdivision (a) of Section 5109; and (2) to the applicant that the drawing does not violate any  
27 agreement between the applicant and beneficiary or any other agreement intended by them to be  
28 augmented by the letter of credit." (Cal. Com. Code § 5110.)

1           85. The express terms which would allow SOA to call upon the LOC funds have not been  
2 met because Courtesy has not materially failed to fulfill its obligations under the Facility Addendum  
3 Amendment. The COVID-19 Pandemic represented a *force majeure* event precluding Courtesy's  
4 timely obligations under the Facility Addendum. Courtesy exercised commercially reasonable best  
5 efforts in having the permanent facility constructed. SOA is precluded based on the doctrine of  
6 Collateral Estoppel from arguing Courtesy did not exercise commercially reasonable best efforts, that  
7 the COVID-19 Pandemic was not a *force majeure* event precluding Courtesy's timely obligations under  
8 the Facility Addendum, or that Courtesy materially failed to comply with the Facility Addendum  
9 Amendment or the Stipulated Confidential Agreement.

10           86. The LOC was issued to insure Courtesy did not materially fail to comply with the  
11 conditions stated in the Facility Addendum Amendment,<sup>2</sup> however, construction of the permanent  
12 facility is ongoing and the project is fully funded. SOA's calling on the LOC was in breach of the  
13 Stipulated Confidential Agreement and the LOC funds called by SOA in no way supports Courtesy's  
14 obligations as described in the LOC.

15           87. As a result of SOA's breach of contract, Courtesy has been damaged in the amount of the  
16 LOC – \$750,000.00.

17           88. SOA is liable for the breach of contract in the amount of \$750,000.00.

18           89. In addition, the Confidential Stipulated Agreement provided the prevailing party would  
19 be entitled to recover its reasonable attorneys' fees and costs incurred in an action for the purpose of  
20 enforcing or interpreting the terms of the Confidential Stipulated Agreement. Pursuant to California  
21 Civil Code section 1717, the Confidential Stipulated Agreement is a contract that specifically provides  
22 that attorneys' fees and costs be awarded to the prevailing party on the contract.

23           90. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated  
24 Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery  
25 of the LOC funds.

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27 <sup>2</sup> The Facility Addendum incorporated the Stipulated Confidential Agreement by reference and the  
28 Stipulated Confidential Agreement provided for the determination of whether Courtesy materially  
failed to comply with conditions therein stated.



1 91. SOA is liable for Courtesy's damages in the amount of \$750,000.00 and Courtesy's  
2 reasonable attorneys' fees and costs in this action concerning the LOC. SOA is also liable for pre-  
3 judgment and post-judgment interest.

4 **FIFTH CAUSE OF ACTION**

5 **(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING — CALLING ON**  
6 **THE LETTER OF CREDIT — AGAINST DEFENDANT SOA)**

7 92. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint  
8 as if fully set forth herein.

9 93. Courtesy and SOA entered into the Confidential Stipulated Agreement on March 20,  
10 2019, which was adopted by the Board on April 9, 2019. The Confidential Stipulated Agreement is a  
11 contract between Courtesy and SOA.

12 94. The Confidential Stipulated Agreement required Courtesy to provide SOA the LOC to  
13 insure Courtesy's performance of its commitment to the Permanent Facility.

14 95. Courtesy and SOA executed the Facility Addendum on October 17, 2019.

15 96. The Facility Addendum was amended on May 21, 2020.

16 97. Courtesy obtained and provided SOA the LOC on June 22, 2020, in conformity with the  
17 Confidential Stipulated Agreement and the Facility Addendum amended on May 21, 2020.

18 98. The LOC was issued "to support the obligations of Courtesy Automotive Group, Inc. as  
19 outlined in the Facility Addendum to the Subaru Dealer Agreement."

20 99. Pursuant to the LOC, the LOC funds only become available to SOA if SOA provided  
21 documents to BMO Harris Bank N.A. stating "Courtesy Automotive Group, Inc. has failed to fulfill its  
22 obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement...."

23 100. On March 8, 2022, Courtesy first learned SOA made demands to BMO Harris Bank N.A.  
24 in order to obtain the LOC funds totaling \$750,000.00. SOA refused to provide a copy of these demands  
25 to Courtesy.

26 101. Upon information and belief, SOA's demands were based on Courtesy allegedly failing  
27 to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement between  
28 Courtesy and SOA.

1           102. At the time SOA called the LOC, it was aware Courtesy was in the process of constructing  
2 the permanent facility described in the Facility Addendum as of the ground-breaking in approximately  
3 June 2021.

4           103. Upon information and belief, the LOC funds were released to SOA by BMO Harris Bank  
5 N.A. on or about March 21, 2022.

6           104. "If its presentation is honored, the beneficiary warrants: (1) to the issuer, any other person  
7 to whom the presentation is made, and the applicant that there is no fraud or forgery of the kind described  
8 in subdivision (a) of Section 5109; and (2) to the applicant that the drawing does not violate any  
9 agreement between the applicant and beneficiary or any other agreement intended by them to be  
10 augmented by the letter of credit." (Cal. Com. Code § 5110.)

11           105. The express terms which would allow SOA to call upon the LOC funds have not been  
12 met because Courtesy has not materially failed to fulfill its obligations under the Facility Addendum  
13 Amendment. The COVID-19 Pandemic represented a *force majeure* event precluding Courtesy's  
14 timely obligations under the Facility Addendum. Courtesy exercised commercially reasonable best  
15 efforts in the timely construction of the permanent facility. SOA is precluded based on the doctrine of  
16 Collateral Estoppel from arguing Courtesy did not exercise commercially reasonable best efforts, that  
17 the COVID-19 Pandemic was not a *force majeure* event precluding Courtesy's timely obligations under  
18 the Facility Addendum, or that Courtesy materially failed to comply with the Facility Addendum  
19 Amendment or the Stipulated Confidential Agreement.

20           106. The LOC was issued to insure Courtesy did not materially fail to comply with the  
21 conditions stated in the Facility Addendum Amendment, however, construction of the permanent  
22 facility is ongoing and the project is fully funded. SOA's calling on the LOC was in breach of the  
23 Stipulated Confidential Agreement and the LOC funds are not going toward supporting Courtesy's  
24 obligations as described in the LOC.

25           107. The law implies in every contract a covenant of good faith and fair dealing. (*See Wilson*  
26 *v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720 (recognizing the covenant in the insurance context);  
27 *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 683 (recognizing the covenant in the employment  
28 law context); *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th

1 342, 371 (recognizing the covenant in the commercial lease context); Rest.2d Contracts § 205 (stating  
2 "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and  
3 its enforcement").)

4 108. As the Restatement describes, "Subterfuges and evasions violate the obligation of good  
5 faith in the performance even though the actor believes his conduct to be justified. But the obligation  
6 goes further: bad faith may be overt or may consist of inaction, and fair dealing may require more than  
7 honesty. A complete catalogue of types of bad faith is impossible, but the following types are among  
8 those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of  
9 diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify  
10 terms, and interference with or failure to cooperate in the other party's performance." (Rest.2d  
11 Contracts § 205, Comment (d).)

12 109. SOA unreasonably and without justification called upon the LOC before a determination  
13 of whether Courtesy had materially failed to comply with its obligations had been reached.

14 110. SOA violated the covenant of good faith and fair dealing in the Confidential Stipulated  
15 Agreement by calling upon the LOC.

16 111. SOA refused to return the LOC funds following ALJ Matteuci's Confidential Decision.

17 112. SOA's calling of the LOC was in breach of the covenant of good faith and fair dealing.

18 113. As a result of SOA's breach, Courtesy has been damaged in the amount of the LOC –  
19 \$750,000.00.

20 114. SOA is liable for the breach of the implied covenant in the amount of \$750,000.00.

21 115. In addition, the Confidential Stipulated Agreement provided the prevailing party would  
22 be entitled to recover its reasonable attorneys' fees and costs incurred in an action for the purpose of  
23 enforcing or interpreting the terms of the Confidential Stipulated Agreement. Pursuant to California  
24 Civil Code section 1717, the Confidential Stipulated Agreement is a contract that specifically provides  
25 that attorneys' fees and costs be awarded to the prevailing party on the contract.

26 116. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated  
27 Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery  
28 of the LOC funds.

1 117. SOA is liable for Courtesy's damages in the amount of \$750,000.00 and Courtesy's  
2 reasonable attorneys' fees and costs in this action concerning the LOC. SOA is also liable for pre-  
3 judgment and post-judgment interest.

4 **SIXTH CAUSE OF ACTION**

5 **(VIOLATION OF UNFAIR COMPETITION LAW – Business and Professions Code section**

6 **17200 et seq. --- AGAINST DEFENDANT SOA)**

7 118. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint  
8 as if fully set forth herein.

9 119. Courtesy and SOA entered into the Confidential Stipulated Agreement on March 20,  
10 2019, which was adopted by the Board on April 9, 2019. The Confidential Stipulated Agreement is a  
11 contract between Courtesy and SOA.

12 120. The Confidential Stipulated Agreement required Courtesy to provide SOA the LOC to  
13 insure Courtesy's performance of its commitment to the Permanent Facility.

14 121. Courtesy and SOA executed the Facility Addendum on October 17, 2019.

15 122. The Facility Addendum was amended on May 21, 2020.

16 123. Courtesy obtained and provided SOA the LOC on June 22, 2020, in conformity with the  
17 Confidential Stipulated Agreement and the Facility Addendum amended on May 21, 2020.

18 124. The LOC was issued "to support the obligations of Courtesy Automotive Group, Inc. as  
19 outlined in the Facility Addendum to the Subaru Dealer Agreement."

20 125. The LOC funds only become available to SOA if SOA offered documents to BMO Harris  
21 Bank N.A. stating "Courtesy Automotive Group, Inc. has failed to fulfill its obligations pursuant to the  
22 Facility Addendum to the Subaru Dealer Agreement...."

23 126. On March 8, 2022, Courtesy first learned SOA made demands to BMO Harris Bank N.A.  
24 in order to obtain the LOC funds totaling \$750,000.00. SOA refused to provide a copy of these demands  
25 to Courtesy.

26 127. Upon information and belief, SOA's demands were based on Courtesy allegedly failing  
27 to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement between  
28 Courtesy and SOA.

1           128. At the time SOA called the LOC, it was aware Courtesy was in the process of constructing  
2 the permanent facility described in the Facility Addendum as of the ground-breaking in approximately  
3 June 2021.

4           129. Upon information and belief, the LOC funds were released to SOA by BMO Harris Bank  
5 N.A. on or about March 21, 2022.

6           130. "If its presentation is honored, the beneficiary warrants: (1) to the issuer, any other person  
7 to whom the presentation is made, and the applicant that there is no fraud or forgery of the kind described  
8 in subdivision (a) of Section 5109; and (2) to the applicant that the drawing does not violate any  
9 agreement between the applicant and beneficiary or any other agreement intended by them to be  
10 augmented by the letter of credit." (Cal. Com. Code § 5110.)

11           131. The express terms which would allow SOA to call upon the LOC funds have not been  
12 met because Courtesy has not materially failed to fulfill its obligations under the Facility Addendum  
13 Amendment. The COVID-19 Pandemic represented a *force majeure* event precluding Courtesy's  
14 timely obligations under the Facility Addendum. Courtesy exercised commercially reasonable best  
15 efforts in having the permanent facility constructed. SOA is precluded based on the doctrine of  
16 Collateral Estoppel from arguing Courtesy did not exercise commercially reasonable best efforts, that  
17 the COVID-19 Pandemic was not a *force majeure* event precluding Courtesy's timely obligations under  
18 the Facility Addendum, or that Courtesy materially failed to comply with the Facility Addendum  
19 Amendment or the Stipulated Confidential Agreement.

20           132. The LOC was issued to insure Courtesy did not materially fail to comply with the  
21 conditions stated in the Facility Addendum Amendment, however, construction of the permanent  
22 facility is ongoing and the project is fully funded. SOA's calling on the LOC was in breach of the  
23 Stipulated Confidential Agreement and the LOC funds are not going toward supporting Courtesy's  
24 obligations as described in the LOC.

25           133. Business and Professions Code section 17200 provides unfair competition "shall mean  
26 and include any unlawful, unfair or fraudulent business act or practice." (Cal. Bus. & Prof. Code §  
27 17200.)

28 ///

1           134. “Notwithstanding Section 3369 of the Civil Code, specific or preventive relief may be  
2 granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.” (Bus. & Prof.  
3 Code § 17202.) “Actions for relief pursuant to this chapter shall be prosecuted exclusively in a court of  
4 competent jurisdiction ... by a person who has suffered injury in fact and has lost money or property as  
5 a result of the unfair competition.” (Bus. & Prof. Code § 17204.)

6           135. Upon information and belief, SOA communicated with BMO Harris Bank N.A. regarding  
7 Courtesy’s alleged failure to fulfill obligations required by the Facility Addendum and Dealer  
8 Agreement. These communications are unfair and fraudulent.

9           136. Courtesy is building the permanent Subaru facility, has obtained all necessary funding,  
10 and any untimely performance was excused pursuant to the Facility Addendum, Dealer Agreement, and  
11 Stipulated Confidential Agreement. Courtesy exercised commercially reasonable best efforts to timely  
12 construct the permanent facility, and the COVID-19 Pandemic represented a force majeure event  
13 precluding Courtesy’s timely obligations under the Facility Addendum. Courtesy did not materially  
14 fail to comply with the Facility Addendum Amendment. SOA is precluded based on the doctrine of  
15 Collateral Estoppel from arguing Courtesy did not exercise commercially reasonable best efforts, that  
16 the COVID-19 Pandemic was not a *force majeure* event precluding Courtesy’s timely obligations under  
17 the Facility Addendum, or that Courtesy materially failed to comply with the Facility Addendum  
18 Amendment or the Stipulated Confidential Agreement.

19           137. SOA’s actions of calling upon the LOC are unlawful, unfair, and fraudulent business acts  
20 or practices.

21           138. SOA is liable to Plaintiff for the harm caused by SOA’s unlawful, unfair, and fraudulent  
22 communications in an amount equal to the LOC funds – \$750,000.00.

23           139. In addition, the Confidential Stipulated Agreement provided the prevailing party would  
24 be entitled to recover its reasonable attorneys’ fees and costs incurred in an action for the purpose of  
25 enforcing or interpreting the terms of the Confidential Stipulated Agreement. Pursuant to California  
26 Civil Code section 1717, the Confidential Stipulated Agreement is a contract that specifically provides  
27 that attorneys’ fees and costs be awarded to the prevailing party on the contract.

28 ///



1           140. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated  
2 Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery  
3 of the LOC funds.

4           141. SOA is liable for Courtesy's damages in the amount of \$750,000.00 and Courtesy's  
5 reasonable attorneys' fees and costs in this action concerning the LOC. SOA is also liable for pre-  
6 judgment and post-judgment interest.

7                                   **SEVENTH CAUSE OF ACTION**

8                   **(INTENTIONAL MISREPRESENTATION — AGAINST DEFENDANT SOA)**

9           142. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint  
10 as if fully set forth herein.

11           143. Pursuant to Civil Code section 1572, actual fraud includes any of the following acts  
12 committed by a party to the contract, or with his connivance, with intent to deceive another party thereto,  
13 or to induce him to enter into a contract:

14                   a)     The suggestion, as a fact, of that which is not true, by one who does not believe it  
15 to be true;

16                   b)     The positive assertion, in a manner not warranted by the information of the person  
17 making it, of that which is not true, though he believes it to be true;

18                   c)     The suppression of that which is true, by one having knowledge or belief of the  
19 fact;

20                   d)     A promise made without any intention of performing it; or,

21                   e)     Any other act fitted to deceive.

22           144. Here, SOA intentionally misled BMO Harris Bank N.A. by calling upon the LOC when  
23 Courtesy had not materially failed to comply with its obligations pursuant to the Facility Addendum to  
24 the Subaru Dealer Agreement or the Stipulated Confidential Agreement. SOA intended for BMO Harris  
25 Bank N.A. to rely on the representation of Courtesy's alleged failure in SOA's communication calling  
26 on the LOC.

27           145. SOA refused to provide Courtesy a copy of its demand for the LOC to BMO Harris Bank  
28 N.A., however, the LOC required a demand be made by SOA sending a beneficiary's certificate stating

1 Courtesy had failed to meet its obligations pursuant to the Facility Addendum to the Subaru Dealer  
2 Agreement.

3 146. In order to obtain the LOC funds, SOA was required to send such a document representing  
4 Courtesy had failed to meet its obligations.

5 147. "If its presentation is honored, the beneficiary warrants: (1) to the issuer, any other person  
6 to whom the presentation is made, and the applicant that there is no fraud or forgery of the kind described  
7 in subdivision (a) of Section 5109; and (2) to the applicant that the drawing does not violate any  
8 agreement between the applicant and beneficiary or any other agreement intended by them to be  
9 augmented by the letter of credit." (Cal. Com. Code § 5110.)

10 148. Based on information and belief, SOA intentionally and willfully presented BMO Harris  
11 Bank N.A. with the document described in the LOC fraudulently stating Courtesy failed to meet its  
12 obligations.

13 149. BMO Harris Bank N.A. reasonably relied on SOA's certified document in releasing the  
14 LOC funds to SOA on or about March 21, 2022.

15 150. SOA's actions constitute an intentional misrepresentation, deceit, or concealment of a  
16 material fact known to SOA with the intention on the part of SOA to obtain the LOC funds without the  
17 condition of Courtesy having materially failed its obligations to construct the permanent facility as  
18 provided for in the Facility Addendum, the Dealer Agreement, and the Stipulated Confidential  
19 Agreement.

20 151. SOA's fraudulent misrepresentation harmed Courtesy in the amount of the LOC –  
21 \$750,000.00.

22 152. In addition, the Confidential Stipulated Agreement provided the prevailing party would  
23 be entitled to recover its reasonable attorneys' fees and costs incurred in an action for the purpose of  
24 enforcing or interpreting the terms of the Confidential Stipulated Agreement. Pursuant to California  
25 Civil Code section 1717, the Confidential Stipulated Agreement is a contract that specifically provides  
26 that attorneys' fees and costs be awarded to the prevailing party on the contract.

27 153. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated  
28 Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery

1 of the LOC funds.

2 154. SOA is liable for Courtesy's damages in the amount of \$750,000.00 and Courtesy's  
3 reasonable attorneys' fees and costs in this action concerning the LOC. SOA is also liable for pre-  
4 judgment and post-judgment interest.

5 155. Moreover, SOA's actions and communications constitute oppression, fraud, or malice  
6 within the meaning of California Civil Code section 3294.

7 156. Under California Civil Code section 3294, "Fraud" is defined as "an intentional  
8 misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention  
9 on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing  
10 injury." Pursuant to California Civil Code section 3294, Courtesy is entitled to recover punitive  
11 damages due to SOA's commission of fraud as described herein. SOA is liable for punitive damages  
12 up to nine (9) times Courtesy's actual damages.

13 **EIGHTH CAUSE OF ACTION**

14 **(NEGLIGENT MISREPRESENTATION)**

15 157. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint  
16 as if fully set forth herein.

17 158. Upon information and belief, SOA issued its demand for the LOC by sending a  
18 Beneficiary's Certificate to BMO Harris Bank N.A.

19 159. Upon information and belief, in its demand, SOA represented to BMO Harris Bank N.A.  
20 that Courtesy had materially failed to meet its obligations pursuant to the Facility Addendum and was  
21 therefore entitled to the LOC funds.

22 160. Thereafter, on or about March 21, 2022, BMO Harris Bank N.A. released the LOC funds  
23 to SOA.

24 161. SOA represented Courtesy allegedly failed to comply with its Courtesy under the Facility  
25 Addendum. SOA had no reasonable grounds for believing its representation was true when made.

26 162. SOA intended for BMO Harris Bank N.A. to rely on its representation.

27 163. BMO Harris Bank N.A. reasonably relied on SOA's representation.

28 ///

1 164. SOA's actions constituted a negligent misrepresentation. SOA negligently misled BMO  
2 Harris Bank N.A. by calling upon the LOC when Courtesy had not materially failed to comply with its  
3 obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement or the Stipulated  
4 Confidential Agreement. SOA knew or should have known Courtesy was complying with the Facility  
5 Addendum and any delays were excused pursuant to the terms of the Stipulated Confidential  
6 Agreement.

7 165. SOA's negligent misrepresentation harmed Courtesy in the amount of the LOC –  
8 \$750,000.00.

9 166. In addition, the Confidential Stipulated Agreement provided the prevailing party would  
10 be entitled to recover its reasonable attorneys' fees and costs incurred in an action for the purpose of  
11 enforcing or interpreting the terms of the Confidential Stipulated Agreement. Pursuant to California  
12 Civil Code section 1717, the Confidential Stipulated Agreement is a contract that specifically provides  
13 that attorneys' fees and costs be awarded to the prevailing party on the contract.

14 167. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated  
15 Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery  
16 of the LOC funds.

17 168. SOA is liable for Courtesy's damages in the amount of \$750,000.00 and Courtesy's  
18 reasonable attorneys' fees and costs in this action concerning the LOC. SOA is also liable for pre-  
19 judgment and post-judgment interest.

20 **NINTH CAUSE OF ACTION**

21 **(UNJUST ENRICHMENT — AGAINST DEFENDANT SOA)**

22 169. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint  
23 as if fully set forth herein.

24 170. "We begin with the law of restitution. An individual is required to make restitution if he  
25 or she is unjustly enriched at the expense of another." (*First Nationwide Savings v. Perry* (1992) 11  
26 Cal.App.4th 1657, 1662 (see Rest., Restitution, § 1; *California Federal Bank v. Matreyek* (1992) 8  
27 Cal.App.4th 125, 131).) "A person is enriched if the person receives a benefit at another's expense."  
28 (*First Nationwide Savings, supra*, 11 Cal.App.4th at p. 1662 (see Rest., Restitution, *supra*, § 1, com.

1 a.)

2 171. The LOC required its funds be issued "to support the obligations of Courtesy Automotive  
3 Group, Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement."

4 172. SOA called the LOC funds from BMO Harris Bank N.A. and has thereafter refused to  
5 use the funds to support the obligations of Courtesy. The terms of the LOC required the funds be used  
6 to support Courtesy's obligations.

7 173. By calling the LOC, SOA is treating the LOC as if it constituted an alleged liquidated  
8 damages provision. California Civil Code section 1671 concerns whether a liquidated damages clause  
9 is enforceable.

10 174. "A liquidated damages clause will generally be considered unreasonable, and hence  
11 unenforceable under section 1671(b), if it bears no reasonable relationship to the range of actual  
12 damages that the parties could have anticipated would flow from a breach. The amount set as liquidated  
13 damages must represent the result of a reasonable endeavor by the parties to estimate a fair average  
14 compensation for any loss that may be sustained. In the absence of such relationship, a contractual  
15 clause purporting to predetermine damages must be construed as a penalty. A penalty provision  
16 operates to compel performance of an act and usually becomes effective only in the event of default  
17 upon which a forfeiture is compelled without regard to the damages sustained by the party aggrieved  
18 by the breach. The characteristic feature of a penalty is its lack of proportional relation to the damages  
19 which may actually flow from failure to perform under a contract." (*Ridgley v. Topa Thrift & Loan*  
20 *Assn.* (1998) 17 Cal.4th 970, 977 (internal citations omitted) ("*Ridgley*").)

21 175. Here, SOA's treatment of the LOC as a liquidated damages provision violates California  
22 Civil Code section 1671 because it is being used as an unenforceable penalty provision. The  
23 \$750,000.00 amount of the LOC lacks any proportional relationship to any of SOA's actual damages.  
24 SOA has not suffered any actual damages as a result of any delays in the permanent facility's  
25 construction. Courtesy continues to sell as many Subaru vehicles as SOA is capable of providing.  
26 Courtesy could not have sold any more new Subaru vehicles than it sold from 2020 through present  
27 because SOA was unable to provide additional vehicle inventory as a result of ongoing supply  
28 constraints.

1 176. SOA's receipt of the LOC funds is an unjust enrichment. SOA's use of the LOC  
2 provision as a penalty should be considered void pursuant to California Civil Code section 1671. In  
3 addition, SOA is retaining the LOC funds instead of using the funds to support the obligations of  
4 Courtesy as outlined in the Facility Addendum to the Subaru Dealer Agreement.

5 177. Courtesy is entitled to receive restitution from SOA in the amount of the LOC funds SOA  
6 received in the amount of \$750,000.00.

7 178. In addition, the Confidential Stipulated Agreement provided the prevailing party would  
8 be entitled to recover its reasonable attorneys' fees and costs incurred in an action for the purpose of  
9 enforcing or interpreting the terms of the Confidential Stipulated Agreement. Pursuant to California  
10 Civil Code section 1717, the Confidential Stipulated Agreement is a contract that specifically provides  
11 that attorneys' fees and costs be awarded to the prevailing party on the contract.

12 179. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated  
13 Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery  
14 of the LOC funds.

15 180. SOA is liable to Courtesy in the amount of \$750,000.00. SOA is also liable for Courtesy's  
16 reasonable attorneys' fees and costs in this action concerning the LOC. SOA is further liable for pre-  
17 judgment and post-judgment interest.

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22 [intentionally left blank]  
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff respectfully prays for judgment as follows and as requested for each  
3 cause of action:

- 4 A. For an award of Courtesy's attorneys' fees and costs incurred in the underlying Board  
5 proceeding in the amount of \$213,703.34 as of March 28, 2022.
- 6 B. For an award of Courtesy's further attorneys' fees and costs incurred in seeking the  
7 award of its attorneys' fees and costs incurred in the underlying Board proceeding in  
8 an amount to be determined at the time of the award.
- 9 C. For an award of Courtesy's damages as a result of SOA calling the LOC in the amount  
10 of \$750,000.00.
- 11 D. For an award of Courtesy's attorneys' fees and costs incurred in seeking recovery of  
12 the LOC fund in an amount to be determined at the time of the award.
- 13 E. For an award of punitive damages up in an amount equal to nine (9) times Courtesy's  
14 actual damages.
- 15 F. For an award of pre-judgment interest at the legal rate.
- 16 G. For an award of post-judgment interest at the legal rate.
- 17 H. For such and other further relief as this Court deems just and proper.

18  
19  
20 Dated: April 6, 2022

LAW OFFICES OF  
GAVIN M. HUGHES

21  
22  
23 By Gavin Hughes  
24 Gavin M. Hughes  
25 Robert A. Mayville, Jr.  
26 Attorneys for Plaintiffs  
27  
28

# EXHIBIT 1

1 Lisa M. Gibson, Bar No. 194841  
2 Crispin L. Collins Bar No. 311755  
3 NELSON MULLINS RILEY & SCARBOROUGH  
4 19191 South Vermont Ave., Suite 900  
5 Torrance, California 90502  
6 Telephone: 424.221.7403  
7 Facsimile: 424.221.7405  
8 Email: lisa.gibson@nelsonmullins.com  
9 crispin.collins@nelsonmullins.com

6 Attorneys for Respondent  
7 Subaru of America, Inc.

8 STATE OF CALIFORNIA  
9  
10 NEW MOTOR VEHICLE BOARD

11 In The Matter Of The Protest Of:

Protest No. PR-2570-18

12 COURTESY AUTOMOTIVE GROUP,  
13 INC., dba COURTESY SUBARU OF  
14 CHICO,

Protestant,

**[PROPOSED] STIPULATED  
DECISION AND ORDER OF THE  
BOARD RESOLVING PROTEST AND  
LAWSUIT**

15 v.

16 SUBARU OF AMERICA, INC.,  
17 Respondent.

18 Pursuant to Sections 3050.7, 3060, 3061, 3066, and 3067 of the California Vehicle Code,  
19 Respondent Subaru of America, Inc. ("SOA" or "Respondent"), on the one hand, and Protestant  
20 Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico ("Chico" or "Protestant"), on the  
21 other hand, hereby enter into the following agreement (the "Stipulated Decision") resolving the  
22 above-captioned Protest. This Stipulated Decision is dated March 20, 2019.

23 SOA and Chico (the "Parties") hereby request that the California New Motor Vehicle Board  
24 (the "Board") issue an order approving the Stipulated Decision as a Stipulated Decision and Order  
25 of the Board, and that the Board reserve jurisdiction solely to enforce its Order if requested by  
26 either party hereto.  
27  
28

1 I.

2 **THE PARTIES**

3 1. Protestant Chico is a new motor vehicle dealer licensed by the California  
4 Department of Motor Vehicles. Chico is a corporation organized and existing under the laws of  
5 California, with its principal place of business at 2520 Cohasset Road, Chico, California 95973. Its  
6 principal place of place is the location of its BMW, Buick, Cadillac and GMC dealerships. Chico  
7 operates as a SOA dealership pursuant to a Subaru Dealer Agreement, executed on or about May  
8 5, 2015 and as amended on December 1, 2017, December 21, 2017 and May 8, 2018 (the "Dealer  
9 Agreement"). Chico is represented in this matter by Gavin M. Hughes, Law Offices of Gavin M.  
10 Hughes, 3436 American River Dr., Ste. 10 Sacramento, CA 95864.

11 2. Respondent SOA is a distributor of new motor vehicles, and holds an occupational  
12 license issued by the California Department of Motor Vehicles. It distributes new SOA vehicles to  
13 dealers located in California, as well as in other states. SOA is a corporation organized and existing  
14 under the laws of New Jersey, with its principal place of business at One Subaru Drive, Camden,  
15 New Jersey 08103 and is authorized to do business in the State of California. SOA is represented  
16 in this matter by Lisa M. Gibson and Crispin L. Collins of Nelson, Mullins, Riley & Scarborough,  
17 19191 South Vermont Ave., Suite 900, Torrance, California 90502.

18 II.

19 **FACTUAL AND PROCEDURAL BACKGROUND**

20 3. The Dealer Agreement authorized, among other things, Chico to sell Subaru vehicles  
21 and other authorized products ("Subaru Products") at 2562 Cohasset Road, Chico, California 95973  
22 ("Sales Premises") and to service Subaru Products and maintain its parts and general office  
23 operations at 2520 Cohasset Road, Chico, California 95973 ("Service Premises", collectively "the  
24 Dealership Premises"). Section 11 of the Dealer Agreement identifies the Dealership Premises as  
25 the only authorized locations and also identifies the specific use of each facility as either the Sales  
26 Premises or the Service Premises.

27 4. On April 30, 2015, Chico entered into a Subaru Dealership Sign Lease Agreement  
28 ("Sign Lease Agreement") with Subaru Leasing Corp ("SLC") a wholly-owned entity of SOA.

1 Pursuant to the Sign Lease Agreement, Chico leases two signs from SLC. SLC owns and continues  
2 to own these signs to this date. Chico agreed pursuant to protect the signs from "damage, defacing  
3 or marring." Chico also agreed that it would not allow any "banners, signs, lights or materials of  
4 any kind whatsoever" to be affixed to the signs owned by SLC.

5 5. On or about August 7, 2018, in a face-to-face meeting at the Dealership Premises,  
6 Chico informed Mr. Scott Farabee, Zone Director of the San Francisco Zone for SOA, and SOA  
7 learned for the first time of Chico's pending intent to relocate its Subaru sales operations from the  
8 Sales Premises to an authorized location.

9 6. During that meeting and by letter dated August 9, 2018, Chico was notified that the  
10 relocation of the Sales Premises was unauthorized, without SOA's consent, and would constitute a  
11 material breach of the Dealer Agreement. In the August 9<sup>th</sup> letter, SOA made a formal demand that  
12 the Subaru operations remain at the Sales Premises or SOA would be forced to seek any remedies  
13 available to it under the terms of the Dealer Agreement and relevant California law, up to and  
14 including termination of the Dealer Agreement.

15 7. On or about August 11, 2018, Chico vacated the Sales Premises and moved all  
16 Subaru sales operations to 2522 Cohasset Road, Chico, California 95763 (the "Unauthorized  
17 Premises".)

18 8. Upon information and belief, during 2016 the property for the Sales Premises was  
19 sold to another entity directly or indirectly owned or controlled by Mr. Brian Bowen, the principal  
20 operating the competing Nissan and Hyundai dealerships. Sometime after this sale, Chico's lease  
21 for the Sales Premises was on a month-to-month basis having expired long before the August 7,  
22 2018 meeting with SOA representatives informing them that Chico was relocating to the  
23 Unauthorized Premises.

24 9. Chico had the obligation to maintain a lease for the Sales Premises and the failure  
25 to do so constituted a material breach under Section 17.1.8 of the Dealer Agreement.

26 10. The Sales Premises are currently occupied by a Hyundai dealer and are under  
27 renovation for the purposes of operating a Hyundai dealership. The Subaru constellation logo and  
28 name have been removed from the fascia of the Sales Premises. They have been replaced with the

Hyundai designation. The Subaru pylon sign in front of the Sales Premises has been obliterated and covered with a banner or "shroud" bearing the Hyundai trademarks over the Subaru name and logo.

11. The Dealer Agreement, among other things, authorized Chico to use any trademark, service mark, collective mark, certification mark, logo, insignia, product designation, slogan, fictitious name, or trade name now or at any time adopted, used or claimed by SOA ("Marks") and anything similar which is likely to be confused with or contains a significant part of element of any such Mark.

12. Under Section 13(c) of the Dealer Agreement, it provides that the consent of SOA is required for the relocation of Chico's Subaru operations to any location other than the Dealership Premises.

13. SOA's written decision to withhold consent was promptly communicated by SOA to Chico in the August 9, 2018 letter.

14. On or about August 13, 2018, SOA provided Chico with notice of SOA's intent to terminate the Dealer Agreement (the "NOT") for its unauthorized relocation of the dealership facilities to the Unauthorized Location;

15. In response to the NOT on or about August 22, 2018 and pursuant to section 3060 of the California Vehicle Code, Chico filed a protest with the New Motor Vehicle Board of the State of California ("Board"), No. PR- 2570-18 (the "Protest");

16. In addition, SOA filed a lawsuit in the Eastern District of California, Case No. 2-18-cv-02778-KJM-KJN, (the "Lawsuit");

17. SOA and Chico have negotiated the issues between them and desire to resolve the Protest and Lawsuit without the need for further litigation.

### III.

#### STIPULATION

The Parties have entered into a confidential agreement (the "Confidential Agreement") to resolve the above-captioned Protest and Lawsuit. A true and correct copy of the Confidential Agreement is attached hereto as Exhibit 1.



1           18. The Parties hereby request that the Board issue an order approving the  
2 Confidential Agreement and its terms as a Stipulated Decision and Order of the Board, and that  
3 the Board reserve jurisdiction solely to enforce its Order in the future if requested by either party  
4 hereto.

5           19. The Parties further request that the Board issue an order maintaining the  
6 Confidential Agreement and its terms and conditions under confidential seal, so that they are not  
7 disclosed or made available to any third parties, including but not limited to, members of the  
8 public, dealer members of the Board or the motor vehicle industry. This request for  
9 confidentiality of compromise and settlement documents promotes the public policy of  
10 encouraging early, efficient settlement of disputes, and helps to conserve judicial and  
11 administrative resources. This request for confidentiality is also consistent with the provisions of  
12 Sections 6254.5 (e) and 6276.28 of the Government Code.

13           **IN WITNESS WHEREOF, the Parties have entered into this Stipulated Decision and**  
14 **Order as of the date last signed below.**

15           DATED: 3/19/19, 2019

COURTESY AUTOMOTIVE GROUP, INC. DBA  
COURTESY SUBARU OF CHICO

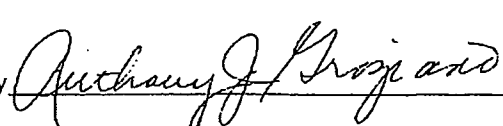
17  
18 By 

19 Print Name: Shahram Mihampajouh

20 Title: President

21  
22           DATED: March 20, 2019

SUBARU OF AMERICA, INC.

24 By 

25 Print Name: Anthony J. Graziano

26 Title: Vice President, Western Region  
27  
28

1 APPROVED AS TO FORM AND SUBSTANCE:

2  
3 DATED: March 20, 2019

NELSON, MULLINS, RILEY & SCARBOROUGH

4 By 

5 Lisa M. Gibson  
6 Crispin L. Collins  
7 Attorneys for Subaru of America, Inc.

8 DATED: March 19, 2019

LAW OFFICES OF GAVIN M. HUGHES

9  
10 By 

11 Gavin M. Hughes, Esq.  
12 Attorneys for Courtesy Automotive Group,  
13 Inc. dba Courtesy Subaru of Chico  
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# EXHIBIT 2

1 NEW MOTOR VEHICLE BOARD  
1507 - 21<sup>ST</sup> Street, Suite 330  
2 Sacramento, California 95811  
Telephone: (916) 445-1888

**CERTIFIED MAIL**

3  
4  
5  
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7  
8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD

10  
11 In the Matter of the Protest of

12 COURTESY AUTOMOTIVE GROUP, Inc., dba  
13 COURTESY SUBARU OF CHICO,

Protestant,

14 v.

15 SUBARU OF AMERICA, INC.,

16 Respondent.

**Protest No. PR-2570-18**

**ORDER ADOPTING "[PROPOSED]  
STIPULATED DECISION AND  
ORDER OF THE BOARD RESOLVING  
PROTEST AND LAWSUIT"**

17  
18 To: Gavin M. Hughes, Esq.  
Robert A. Mayville, Jr., Esq.  
19 Attorneys for Protestant  
LAW OFFICES OF GAVIN M. HUGHES  
20 3436 American River Drive, Suite 10  
Sacramento, California 95864

21 Lisa M. Gibson, Esq.  
22 Crispin L. Collins, Esq.  
Attorneys for Respondent  
23 NELSON MULLINS RILEY & SCARBOROUGH  
19191 South Vermont Avenue, Suite 900  
24 Torrance, California 90502

25 ///

26 ///

27 ///

28 ///

1 Pursuant to the provisions of Vehicle Code section 3050.7, the "[Proposed] Stipulated Decision  
2 and Order of the Board Resolving Protest and Lawsuit," relating to the above-entitled matter, is hereby  
3 adopted by the New Motor Vehicle Board.

4 SO ORDERED.

5  
6 DATED: April 9, 2019

NEW MOTOR VEHICLE BOARD

7  
8 By   
9 TIMOTHY M. CORCORAN  
Executive Director

# EXHIBIT 3



## **FACILITY ADDENDUM TO CONDITIONAL SUBARU DEALER AGREEMENT FUTURE ADDRESS**

This Addendum is made between Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico ("Dealer") and Subaru of America, Inc./Western Region ("Distributor").

WHEREAS, Dealer has submitted to Distributor an application for a Subaru Dealer Agreement and Standard Provisions ("Agreement") in order to operate as an authorized Subaru dealer; and

WHEREAS, Dealer and Distributor have agreed to allow Dealer to conduct its Subaru operations at a temporary location at 896 East Avenue, Chico, CA 95926 ("Temporary Facility") until Dealer relocates to its permanent facility as detailed below; and

WHEREAS, Dealer's facilities at the Temporary Facility fail to meet the Subaru Minimum Standards incorporated by reference into the Agreement with respect to exclusive Subaru Signature Facility with Image requirements (details below); and

WHEREAS, Dealer desires to commence operations as an authorized Subaru dealer as soon as possible and even before meeting all applicable Subaru Minimum Standards; and

WHEREAS, Dealer has committed to complete specific facility improvements at the Temporary Facility and construction of a new Subaru dealership at the permanent facility located on the following parcels: APN: 006-400-061 APN: 006-400-063, 006-400-064, 006-400-065 and 006-400-066, ("Permanent Facility") and Distributor has relied upon Dealer's commitment as a condition of approving Dealer's application for a Subaru franchise.

NOW THEREFORE in consideration of these premises, Dealer and Distributor agree as follows:

1. Dealer acknowledges that the facility at the Temporary Facility is only a temporary location for Dealer's Subaru operations until Dealer's Permanent Facility is complete.
2. Dealer acknowledges that the Temporary Facility fails to meet Subaru Minimum Standards and Operating Guidelines and that Dealer will be unable to meet said Minimum Standards and Operating Guidelines at the Temporary Facility and said deficiencies would permit Distributor to refuse to approve Dealer's application to become an authorized Subaru dealer.
3. Distributor has agreed to allow Dealer to conduct Subaru operations at the Temporary Facility, provided Dealer meets the following conditions:
  - a. Dealer provides (i) a fully executed copy of the Lease for a period of time that will cover (by way of the Lease or an option to lease) the completion of the Permanent Facility and, (ii) provides written evidence to Distributor that Dealer has obtained the right to occupy the Temporary Property.
  - b. Dealer provides a \$750,000 letter of credit or performance bond by July 14, 2019 to insure Dealer's performance on its commitment to construct the Permanent Facility.
  - c. An initial visual inspection of the Temporary Facility is performed by the San Francisco Zone, any corrections and modifications stated by the San Francisco Zone are completed and the Temporary Facility has Distributor's final approval before Dealer commences operations. Dealer agrees to modify the Temporary Facility as follows: the building's interior paint, furniture, ceiling

**FACILITY ADDENDUM TO CONDITIONAL SUBARU DEALER AGREEMENT  
FUTURE ADDRESS**

Page 2

- d. tiles (if applicable), floor tiles, customer lounge amenities, etc. comply with the Subaru Finish Schedule and brand standards. The Temporary Facility has a Subaru customer waiting lounge that is not walled off, at least 3 large graphic lifestyle murals displayed in showroom, fixtures and space for customer refreshments and display mounting of lifestyle accessories, i.e., kayak and bike carrier from ceiling. The Temporary Facility also has all approved Subaru signage. No other line makes occupy or utilize the Temporary Facility at any time that Subaru occupies that location. The San Francisco Zone's final inspection occurs and concludes that the required improvements are complete no later than July 18, 2019.
  - e. Dealer occupies and commences operations at the Temporary Facility upon completion of the remodelling, no later than Fifteen (15) days following completion of the remodeling of the Temporary Facility.
  - f. The Temporary Facility satisfies Distributor's requirements and is approved in writing as satisfactory to Distributor at the time that remodelling is completed and prior to Dealer's occupancy and commencement of any dealership operations thereat.
4. Dealer agrees to construct a new Subaru dealership at the Permanent Facility and agrees to meet the following timelines and conditions:
- a. Dealer submits completed construction drawings and site plans to Distributor for its prior written approval, pursuant to which the Permanent Facility complies with Subaru's projected Signature Image Facility Standards for a dealership facility, and such plans are approved in writing by Distributor in advance of construction.
  - b. Dealer obtains necessary zoning, permits and necessary governmental approvals to provide for the construction of the Permanent Facility on or before December 1, 2019.
  - c. Dealer commences construction of the Permanent Facility on or before January 31, 2020.
  - d. Dealer completes construction of the Permanent Facility and obtains all necessary licenses and permits as to the Subaru sales facility at the Permanent Facility by no later than January 31, 2021.
  - e. Dealer obtains a Final Review Verification letter from Feltus Hawkins for compliance upon completion of the remodelling, which Verification shall be provided by Feltus Hawkins by March 1, 2021.

**FACILITY ADDENDUM TO CONDITIONAL SUBARU DEALER AGREEMENT  
FUTURE ADDRESS**

Page 3

5. Dealer agrees that its failure to complete one or more of the facility improvements set forth in paragraphs 3 and 4 of this Addendum within the aforementioned prescribed time periods shall constitute a material breach of the Agreement.
6. This Addendum is not intended to confer any right, benefit or claim upon any person or entity other than Dealer or Distributor.
7. All terms, conditions and provisions of this Addendum and of the Stipulated Decision and Order of the Board Resolving Protest and Lawsuit dated March 20, 2019 (and the Confidential Agreement attached as Exhibit 1 thereto), held under confidential seal by the California New Motor Vehicle Board in Protest No. PR-2570-18, shall be incorporated by reference into the Agreement pursuant to Paragraph 20.10 of the Agreement.
8. Except as modified by this Addendum, all terms, conditions and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties have hereunto set their signatures on the date first hereinabove written.

**-Electronically signed-**

**Dealer Number: 401763**

[illegible]

# EXHIBIT 4



**Subaru of America, Inc.**

**Western Region**  
Galleria North Tower  
720 S. Colorado Blvd., 3<sup>rd</sup> Floor, Ste 300-N  
Glendale, CO 80246  
720-514-4200  
[www.subaru.com](http://www.subaru.com)

May 21, 2020

Mr. Shahram Mihanpajouh  
Courtesy Automotive Group, Inc.  
d/b/a Courtesy Subaru of Chico  
896 East Avenue  
Chico, CA 95973

**Re: Amendment to Existing Facility Addendum to Conditional Subaru Dealer Agreement  
Future Address**

Dear Mr. Mihanpajouh,

Courtesy Subaru of Chico did not perform under the original Facility Addendum to your Agreement dated May 5, 2015. The following benchmarks were missed on that Facility Addendum:

- Lease Property by 05/05/2016
- Purchase property by 05/05/2016
- Complete Design Intent with SOA approved architectural firm by 08/05/2016
- Submit facility drawings (interior, exterior, elevation) to SOA and SOA approved architectural firm by 11/05/2016
- Obtain permits for facility project by 02/5/2017
- Break ground on facility project by 05/05/2017
- All facility deficiencies must be resolved by 12/05/2017

Two Dealer Agreement extensions were issued on December 1, 2017 and May 10, 2018. Both of these extensions were issued so a settlement agreement could be reached and executed on March 20, 2019.

Courtesy Subaru of Chico has also not performed under the current Facility Addendum to your Agreement dated October 17, 2019. Specifically, the missed milestones were:

- Dealer obtains necessary zoning, permits and necessary government approvals for the construction of the Permanent Facility on or before December 1, 2019
- Dealer commences construction of the Permanent Facility on or before January 31, 2020

Please be advised that Subaru of America, Inc./Western Region ("SOA") hereby agrees to amend your Subaru Dealer Agreement and Standard Provisions ("Agreement") dated and executed October 17, 2019. This is the final amendment of the facility benchmarks that SOA will issue. If subsequent benchmarks are missed, SOA reserves the right to exercise all remedies available under the Subaru Dealer Agreement, Facility Addendum and/or the Stipulated Decision dated March 20, 2019, including termination of your Subaru Dealer Agreement. Additionally, should the facility not be completed by the agreed upon date, SOA will execute the Letter of Credit or Performance Bond that secures this amendment.

Your Agreement is amended as follows:

The entries in Paragraph 2 of the Agreement will now read:

- 2.1 Addendum - Facility Cond Future Address
- 2.2 Amendment to Facility Cond Future Address dated May 21, 2020



The Facility Addendum to Conditional Subaru Dealer Agreement Future Address will also be amended as follows:

The entries in Paragraph 4 will now read:

- Dealer obtains necessary zoning, permits and necessary government approvals for the construction of the Permanent Facility on or before July 31, 2020
- Dealer commences vertical construction of the Permanent Facility on or before September 30, 2020
- Dealer completes construction of the Permanent Facility, obtains all necessary licenses and permits no later than December 31, 2021
- Dealer obtains a Final Review Verification letter from Feltus Hawkins for compliance upon completion of the remodeling, which Verification shall be provided by Feltus Hawkins by January 31, 2022

All other terms and conditions of the Agreement and Addenda shall remain in full force and effect. Please acknowledge your agreement with the terms of this amendment with your signatures.

<electronically signed>

**Dealer Number: 401763**

[illegible]

# EXHIBIT 5

**STANDBY LETTERS OF CREDIT**

C/O Bank of Montreal  
250 Yonge Street, 11th Floor  
Toronto, Ontario M5B 2L7  
Tel: 1-877-801-0414  
Fax: 1-877-801-7787  
SWIFT: HATRUS44

**DOCUMENTARY COLLECTIONS**

C/O Bank of Montreal  
250 Yonge Street, 11th Floor  
Toronto, Ontario M5B 2L7  
Tel: 1-888-258-6378  
Fax: 1-888-258-6385  
SWIFT: HATRUS44

**Irrevocable  
Standby Letter of Credit  
No. HACH621044OS**

**Amendment no. 1**  
**Dated July 07, 2020**

**Beneficiary:**  
SUBARU OF NORTH AMERICA, INC.  
WESTERN REGION  
720 S. COLORADO BLVD., #300N  
DENVER, CO 80246 United States

**Applicant:**  
COURTESY AUTOMOTIVE GROUP, INC.  
2520 COHASSET RD.  
CHICO, CA 95973 United States

**We amend our Standby Letter of Credit subject to the following terms and conditions. This amendment forms an integral part of the original instrument. All other terms and conditions remain unchanged.**

**Amended Terms:**

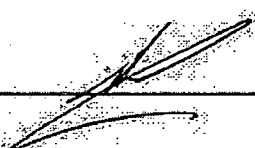
Expiry date has been amended to July 31, 2022

This Letter of Credit is still subject to the automatic extension clause.

Unless otherwise instructed herein, all correspondence and inquiries regarding this transaction should be directed to our Customer Service Center at the above address, telephone as indicated. Please indicate our reference number in all your correspondence or telephone inquiries.

Regards,

\_\_\_\_\_  
Authorized Signature(s)

  
ANAND ASOKAKUMAR

**STANDBY LETTERS OF CREDIT**

C/O Bank of Montreal  
250 Yonge Street, 11th Floor  
Toronto, Ontario M5B 2L7  
Tel: 1-877-801-0414  
Fax: 1-877-801-7787  
SWIFT: HATRUS44

**DOCUMENTARY COLLECTIONS**

C/O Bank of Montreal  
250 Yonge Street, 11th Floor  
Toronto, Ontario, M5B 2L7  
Tel: 1-888-258-6378  
Fax: 1-888-258-6380  
SWIFT: HATRUS44

**Irrevocable**

**Standby Letter of Credit No.: HACH621044OS**

Issuance Date: June 22, 2020

**Beneficiary:**

Subaru of America, Inc.  
Western Region  
720 S. Colorado Blvd., #300N  
Denver, CO 80246

**Applicant:**

Courtesy Automotive Group, Inc.  
2520 Cohasset Rd.  
Chico, CA 95973

Amount: Seven Hundred Fifty Thousand and 00/100's United States Dollars (USD750,000.00)

At the request of and for the account of Courtesy Automotive Group, Inc., we, BMO Harris Bank N.A., hereby establish in your favor our Irrevocable Standby Letter of Credit No. HACH621044OS (the "Credit") for a sum not exceeding Seven Hundred Fifty Thousand and 00/100's United States Dollars (USD750,000.00).

This Credit is available against your draft drawn at sight on us accompanied by the following document(s):

1. Beneficiary's Certificate, on its letterhead, completed, dated and purportedly signed by an authorized individual stating:

Courtesy Automotive Group, Inc. has failed to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement between Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico and Subaru of America, Inc. - Western Region. Therefore, we are drawing for USD ... under Letter of Credit No. HACH621044OS. Please wire proceeds to: Subaru of America, Inc. ... (Instructions will be given at time of drawing).

2. The original of this Credit and subsequent amendment(s), if any.

This Credit will expire at our counters on December 16, 2021, subject to the following condition:

This Credit will be automatically extended without amendment for a period of one year upon the Expiration Date hereof or any future Expiration Date unless at least sixty (60) days prior to any such Expiration Date, we

notify the Beneficiary in writing by courier at the above address of our election not to extend this Credit for an additional year. Upon receipt of such notice, the Beneficiary may draw for an amount not exceeding the then available amount by the presentment of the required documents.

All drafts must be marked 'Drawn under BMO Harris Bank N.A., Letter of Credit No. HACH621044OS'

Presentation and payment of your drawing(s) under this Credit are restricted to us. We agree with you to honor your drawing(s) presented in compliance with the terms of this Credit when received at BMO Harris Bank N.A., c/o Bank of Montreal, Global Trade Operations, 250 Yonge Street, 11th Floor, Toronto, Ontario, Canada M5B 2L7, prior to 4:00 PM, Eastern Standard Time, Monday through Friday, on or before the then current Expiration Date, upon which date this Credit expires, even if this original Credit and Amendment(s), if any, are not returned to us for cancellation.

This Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amplified, or limited by reference to any document, instrument or agreement referred to in this Credit, except only the ISP98, referred to herein, and any such reference shall not be deemed to incorporate herein any reference to a document, instrument or agreement.

This Letter of Credit is issued to support the obligations of Courtesy Automotive Group, Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement. We are informed that Courtesy Automotive Group, Inc. has committed to a Separate Touch Points Subaru dealership facility at Parcel numbers: APN 006-400-061, APN 006-400-063, APN 006-400-064, APN 006-400-65 and APN 006-400-066 Chico, CA meeting all Subaru minimum standards, as approved by Beneficiary, by January 31, 2022.

The issuing bank will have no obligation to make any payment under this Standby Letter of Credit to any person or entity with whom the issuing bank is prohibited from engaging in transactions under applicable laws, including international trade sanctions and anti-money laundering regulations.

If you return this original Credit and Amendment(s) prior to the then current Expiration Date with your intent to terminate same, it must be accompanied by your original, signed letter, addressed and sent directly to us indicating you no longer require this Credit and release BMO Harris Bank N.A. of any obligation hereunder.

This Credit is subject to International Standby Practices (1998), International Chamber of Commerce Publication No. 590 ('ISP98').

BMO Harris Bank N.A.

  
Authorized Signing Officer  
**VIVEK VISWANATHAN**



# **EXHIBIT 3**

1507 – 21st Street, Suite 330  
Sacramento, California 95811  
Telephone: (916) 445-1888  
Contact Person: Eugene Ohta  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a Special meeting on October 10, 2019, in The William G. Brennan Hearing Room, at the Board's offices.

Kathryn Doi, President and Public Member, called the meeting of the Board to order at 10:31 a.m.

**2. ROLL CALL**

Board Members Present: Kathryn Ellen Doi  
Ardashes "Ardy" Kassakhian  
Nanxi Liu  
Bismarck Obando

Board Members Absent: Glenn E. Stevens

Board Staff Present: Timothy M. Corcoran, Executive Director  
Robin P. Parker, Senior Staff Counsel  
Danielle R. Phomsopha, Staff Counsel  
Dawn Kindel, Chief of Staff  
Makalla Turner, Legal Office Assistant

**3. PLEDGE OF ALLEGIANCE**

Mr. Obando led the members and staff in the Pledge of Allegiance.

**4. CONSIDERATION OF PETITION REQUESTING THAT THE BOARD DIRECT DMV TO CONDUCT AN INVESTIGATION OF THE MATTERS CONTAINED THEREIN OR ORDER DMV TO EXERCISE ITS AUTHORITY AND POWER TO INITIATE DISCIPLINARY PROCEEDINGS AGAINST RESPONDENT'S OCCUPATIONAL LICENSE PURSUANT TO VEHICLE CODE SECTION 3050(c)(1) AND (3)**

MITSUBISHI MOTORS NORTH AMERICA, INC., a California Corporation v. NEXTMOTORS CORPORATION, a California Corporation dba Oakland Mitsubishi  
Petition No. P-461-19

Consideration of Petition requesting that the Board direct DMV to conduct an investigation of the matters contained therein or order DMV to exercise its authority and power to initiate proceedings against Oakland Mitsubishi to revoke its license under Section 11705, by the Public Members of the Board.

Oral arguments were presented before the Public Members of the Board. Lisa M. Gibson, Esq. of Nelson Mullins Riley & Scarborough LLP represented Petitioner. Ms. Gibson appeared telephonically due to a problem with her flight. Christian J. Scali, Esq. and Jade F. Jurdi, Esq. of Scali Rasmussen represented Respondent. Also present on behalf of Respondent was Chris Kwei, President of NextMotors Corporation and the dealer principal.

Lengthy presentations were presented by counsel for the parties along with comments from Chris Kwei. Ms. Doi commented that one of her concerns was that the petition and answer were not verified so it was all hearsay because nothing was under oath. Mr. Obando and Mr. Kassakhian echoed her concerns.

The Public Members of the Board deliberated in Open Session. Mr. Obando moved to dismiss the petition. Mr. Kassakhian seconded the motion. Ms. Doi asked for additional comment from the members and suggested the dismissal be without prejudice. The motion was amended. The motion carried unanimously.

5. **PUBLIC COMMENT.** (Gov. Code § 11125.7)

No additional public comment was presented.

6. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 11:49 a.m.

Submitted by



TIMOTHY M. CORCORAN  
Executive Director

APPROVED:



Kathryn E. Doi  
President  
New Motor Vehicle Board

# **EXHIBIT 4**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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COURTESY AUTOMOTIVE GROUP, INC.,  
dba COURTESY SUBURU OF CHICO,

Plaintiff,

v.

SUBARU OF AMERICA, INC. and DOES  
1-50, inclusive,

Defendants.

No. 2:22-cv-00997 WBS DMC

ORDER

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Plaintiff Courtesy Automotive Group ("Courtesy") brought this action in California Superior Court, County of Butte. (Notice of Removal (Docket No. 1).) Courtesy seeks enforcement of its asserted entitlement to attorneys' fees and costs following a decision in its favor by an Administrative Law Judge ("ALJ") selected by the California New Motor Vehicle Board in an underlying contract dispute. (See id.) Defendant Subaru of America ("Subaru") removed to this court based on diversity of citizenship. (Id.)

Following the ALJ's decision, however, Subaru also filed a Petition for Writ of Administrative Mandate in California Superior Court, County of Alameda, pursuant to California Code of Civil Procedure § 1094.5, seeking reversal of that decision. (See Mot. at 15 (Docket No. 6); Req. for Jud. Notice, Ex. 1, Prayer (Docket No. 6-3 at 35).)<sup>1</sup> That petition is currently pending in the matter of Subaru of America, Inc. v. California New Motor Vehicle Board, No. 22CV010968. (See Mot. at 15; Decl. of Lisa Gibson at ¶¶ 2-3 (Docket No. 6-1).)

Because it appears that issues which are the subject of the state court petition bear on Courtesy's claims currently pending before this court, and that this case would thus be simplified by resolution of that petition, and because Courtesy has not suggested that it will suffer any hardship or economic harm if its claims are not immediately adjudicated, (see Opp. (Docket No. 12)), the court will stay this action until the pending state court petition has been resolved. See Lockyer v. Mirant Corp., 398 F.3d 1098, 1110 (9th Cir. 2005) (when determining whether to grant a stay pending parallel proceedings, courts consider: (1) "the possible damage which may result from the granting of a stay"; (2) "the hardship or inequity which a

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<sup>1</sup> Subaru's request for judicial notice (Docket No. 6-2), to the extent that it requests the court take notice of the existence of its petition pending in state court and of the relief sought therein, is granted. That request in all other respects, and the parties' other requests for judicial notice, (Docket Nos. 12-1, 13-1), are denied without prejudice as unnecessary to the court's decision in this Order.

Likewise, given the limited scope of this Order, the parties' requests to file documents under seal, (Docket Nos. 12-2, 13-3), are also denied without prejudice.



1 party may suffer in being required to go forward"; and (3) "the  
2 orderly course of justice measured in terms of the simplifying or  
3 complicating of issues, proof, and questions of law which could  
4 be expected to result from a stay") (citations omitted).

5 IT IS THEREFORE ORDERED that defendants' Motion to  
6 Dismiss (Docket No. 6) be, and the same hereby is, DENIED without  
7 prejudice.

8 IT IS FURTHER ORDERED that defendants' alternative  
9 Motion to Stay Action (Docket No. 6) be, and the same hereby is,  
10 GRANTED. Within five days of a final decision by the Superior  
11 Court on Subaru's pending petition, the parties shall file a  
12 joint status report advising the court of the outcome of such  
13 decision, of how they intend to proceed in this action, and of  
14 whether any reasons exist for the stay to remain in place, such  
15 as the existence of additional planned or pending proceedings in  
16 state court.

17 Dated: July 20, 2022



18 **WILLIAM B. SHUBB**  
19 **UNITED STATES DISTRICT JUDGE**  
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27  
28

**PROOF OF SERVICE  
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Nelson Mullins Riley & Scarborough LLP and my business address is 19191 South Vermont Avenue, Suite 900, Torrance, CA 90502.

On July 20, 2022 I served the foregoing document entitled

**RESPONDENT SUBARU OF AMERICA, INC.'S REQUEST FOR OFFICIAL  
NOTICE IN SUPPORT OF VERIFIED RESPONSE TO PETITION**

on all the appearing and/or interested parties in this action by placing a true copy thereof as follows:

**LAW OFFICES OF GAVIN M. HUGHES**

Gavin M. Hughes  
Robert A. Mayville, Jr.  
3436 American River Drive, Suite 10  
Sacramento, CA 95864  
T: (916) 900-8022  
E-mail: [gavin@hughesdealerlaw.com](mailto:gavin@hughesdealerlaw.com)  
[mayville@hughesdealerlaw.com](mailto:mayville@hughesdealerlaw.com)

***Counsel for Petitioner***

**NEW MOTOR VEHICLE BOARD**

1507 21st Street, Suite 330  
Sacramento, CA 95811  
Email: [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov)  
[robin.parker@nmvp.ca.gov](mailto:robin.parker@nmvp.ca.gov)  
[danielle.phomsopha@nmvp.ca.gov](mailto:danielle.phomsopha@nmvp.ca.gov)

**[X] BY ELECTRONIC TRANSMISSION:** I transmitted a PDF version of this document by electronic mail to the party(s) identified above and/or on the attached service list using the email address(es) indicated.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on July 20, 2022 at Torrance, California.

  
Jenny Prado