VIA EMAIL

CALIFORNIA STATE TRANSPORTATION AGENCY GAVIN NEWSOM, *Governor*

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New Motor Vehicle Board

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REPORT OF INVESTIGATION
CONFIDENTIAL

DATE: **02/22/2024**
CASE #: 23N1L17078

SUBJECT:

Subaru of America LLC

CONFIDENTIAL

REPORT PREPARED BY: Carlos Cabrera, Investigator #560

SYNOPSIS

On January 25, 2023, the New Motor Vehicle Board (NMVB) referred Petition No. P-463-22 Courtesy Automotive Group Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc to the Department of Motor Vehicles (DMV) to investigate and determine whether **Subaru of America (**here in referred to as **SOA)** violated applicable laws. This investigation included the following: a review of the record before the NMVB, interviews with **Courtesy Subaru of Chico (**here in referred to as **Courtesy Subaru)**, Subaru of America, Butte County Superior Court Civil documents, and review of the stipulated agreement from the Administrative Law Judge (ALJ).

According to the 02/13/2023 petition filed with the New Motor Vehicle Board (NMVB); **Courtesy Subaru** alleged that **SOA** violated the following violations **(Evidence #1):**

CVC 3060 (a)(1)(b)(i):

Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, no franchisor shall modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligation or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of the notice, satisfying the requirement of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, a franchisee may file a protest with the board and the modification or replacement does not become effective until there is a finding by the board that there is good cause for modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

CVC 11713.3(d)(1):

Except as provided in subdivision (t), to prevent or require, or attempt to prevent or require, by contract or otherwise, a dealer, or an officer, partner, or stockholder of a dealership, the sale or transfer of a part of the interest of any of them to another person. A dealer, officer, partner, or stockholder shall not, however, have the right to sell, transfer, or assign the franchise, or a right thereunder, without the consent of the manufacturer or distributor except that the consent shall not be unreasonably withheld.

CVC 11713.3 (*l*) :

To modify, replace, enter into, relocate, terminate, or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) or Article 5 (commencing with Section 3070) of Chapter 6 of Division 2.

During the course of the investigation, we investigated the following:

1: Whether SOA violated VC 11713.3(l) by treating Courtesy's dealer agreement as terminated or modified in violation of VC 3060.

2: Whether SOA violated VC 11713.3 (d)(1) by seeking to directly or indirectly require Courtesy to sell its franchise by refusing to authorize a name change or provide a sign specification.

INVESTIGATION:

Upon receipt of the referral from the NMVB, DMV Investigations confirmed the following occupational licenses were issued:

The DMV Occupational Licensing database showed OL # 18593 was issued to Subaru of America Inc (A DMV licensed Auto-Commercial Manufacturer), at 720 S Colorado Blvd STE 300N Glendale, CO 80246 **(Evidence #2).**

The DMV Occupational Licensing database showed OL # 87811 was issued to Courtesy Automotive Group Inc DBA Courtesy Automotive Center (Courtesy Subaru of Chico) (A DMV Licensed Dealer), at 2520 Cohasset Road, Chico CA 95973 **(Evidence #3).**

On 05/10/2023, I Investigator Carlos Cabrera was assigned to the case. During the course of the investigation, I reviewed numerous documents from the NMVB that consisted of numerous court documents and correspondences from the case of **Courtesy Subaru of Chico v. Subaru of America Inc**.

On August 15, 2023, Sergeant Brian Rasmussen and I traveled to **Courtesy Subaru** located at 2520 Cohasset Road in Chico, CA and met with owners **Jerry Pajouh** (Dealer Principal), **Diane Pajouh** (Vice President) and Attorney **Gavin Hughes** who provided the following in summary. The interview was recorded digitally (**Evidence #4**):

I asked if there was a dealer agreement established between **SOA** and **Courtesy Subaru**, and **J. Pajouh** stated yes. **J. Pajouh** stated the dealer agreement was in place since 05/01/2015 and they are still currently selling Subaru products at the dealership. I asked if there were any issues with obtaining inventory from **SOA** and **J. Pajouh** stated their allocation was reduced by 35%. **J. Pajouh** stated they were having problems obtaining service loaners and they only received approximately a dozen vehicles in the past year instead of the 7 to 10 a month.

I asked if there were any changes or modifications to the dealer agreement from the day of establishment and **J. Pajouh** stated only in the area of responsibility. **J. Pajouh** stated **SOA** decreased their area of responsibility around January of 2022 and it was based on the census of 2020 / 2021.

I asked where the primary sales location was for their dealership and **J. Pajouh** stated they have been at 896 East Ave in Chico since 2017, which is currently their temporary location. I asked **J. Pajouh** where the service department was located, and he stated it was at 2520

Cohasset Ave in Chico. Prior to 2017, **Courtesy Subaru** was located at 2522 Cohasset Road in Chico.

I asked what the process was for a change of location and **J. Pajouh** explained the reason for **Courtesy Subaru's** relocation. **J. Pajouh** stated they had a landlord that owned a Nissan franchise and wanted to take the facility over because **Courtesy Subaru's** lease was expired. **J. Pajouh** stated notification was given to **SOA** in 2016. During this time, **Courtesy Subaru** also contacted the DMV in order to get the authorization for the change of location. **Hughes** stated the stipulated decision that occurred on 03/20/2019 provided for the new location and **SOA** also provided Occupational Licensing (OL) 124 -Certificate of Proposed Franchise. I asked if there were any issues with the new location of 896 East Ave in Chico and **J. Pajouh** said **SOA** did not want them to move. **J. Pajouh** said he informed **SOA** their lease was up and had no other choice but to relocate.

Sgt. Rasmussen asked if there was any communication where **SOA** signed off at the temporary location and **J. Pajouh** stated **SOA** was able to sign off on the temporary location. **Hughes** stated that according to the 2019 stipulated decision, it authorized the temporary location along with new timelines. I then showed an OL 21 Application for Modification dated 10/29/2019 obtained from DMV's OL records that indicated the addition of the branch location of 896 East Ave in Chico. I asked **J. Pajouh** if he signed the document, and he stated yes **(Evidence #5). Hughes** said **SOA** would not approve the OL 124 until the stipulated agreement was in place. **Hughes** stated **SOA** was attempting to terminate **Courtesy Subaru** and then **Courtesy Subaru** filed the protest, which was resolved by the stipulated decision. **Hughes** said **SOA** was going to appeal the Administrative Law Judge (ALJ) non-appealable decision because the facility should not have been built, signage was not approved, and the location was not approved. I then showed an OL 124 dated 06/24/2019 obtained from DMV's OL records and **J. Pajouh** acknowledged **SOA's** approval of location 896 East Ave in Chico **(Evidence #6)**. J. Pajouh then stated the new location was being built on Garner Lane and Highway 99 located at 13330 Garner Lane, Chico CA**.**

J. Pajouh stated **SOA** initially informed them to have minimal design at the temporary location as it was not going to be the permanent facility. Later on, **J. Pajouh** stated **SOA** changed their mind and **Courtesy Subaru** followed **SOA's** dealer specification with the overall look of the temporary location. As a result, there were delays to construction of the location due to **SOA** having **Courtesy Subaru** make improvements to the facility.

J. Pajouh stated that **Courtesy Subaru's** landlord owned the Hyundai dealership and had deadlines in order to develop / separate the dealership from Nissan. This resulted in **Courtesy Subaru's** move to the temporary location. **J. Pajouh** stated **SOA** representatives visited the location and were not pleased with the move. **Hughes** stated **Courtesy Subaru** did not move immediately and had to get approval from **SOA,** which resulted in the delay until the stipulated decision. I asked if **SOA** communicated with them verbally or in writing and **J. Pajouh** stated it was verbal. **Sgt. Rasmussen** asked if **SOA** attempted to cancel their original dealer agreement as a result of the change of locations

and **Hughes** stated no, but they had to obtain the stipulated agreement before the move was authorized.

J. Pajouh stated an issue that arose prior to the Hyundai owner taking over the location was the signage. **J. Pajouh** said **SOA** contacted the sign company in order cancel the removal of the dealership signs. As a result, the Hyundai owner had to cover the signs with plastic.

I asked **J. Pajouh** if he started the application process for the new location. **J. Pajouh** said they started the relocation package on 05/13/2023. **J. Pajouh** stated **SOA** needed twelve (12) items to be completed and all of the documents were submitted to **SOA** for approval. I asked **J. Pajouh** if the new location was almost completed, and he stated they requested the sign package (specifications for signage), and **SOA** informed him they were not going to provide them. **J. Pajouh** stated after multiple communications, he was informed that information was already provided to him previously and his request was denied. **Hughes** stated what necessitated the petition was the sign package refusal, since the build could not be completed. **Hughes** stated the contractor needed the specifications on how the signage needed to be affixed and **SOA** informed **Courtesy Subaru** they were not going to provide it to them **(Evidence #7).**

Hughes said in November of 2022, the NMVB informed **SOA** they were to provide **Courtesy Subaru** with the signage; however, **SOA** told them everything was provided. **Hughes** stated they obtained a declaration from the contractor informing them of what was needed, which resulted in the NMVB granting the petition. **Hughes** presented one (1) email correspondence from exhibit #6 of the unredacted confidential agreement. The email correspondence dated 05/25/2022 from **L. Gibson** to **Hughes**, which was a response to the 05/11/2022 email correspondence from **Hughes**. This document stated that while litigation was still pending, **SOA** would not provide the sign package for a facility that should not have been built by **Courtesy Subaru**. **L. Gibson** stated **SOA** informed **Courtesy Subaru** of the following: cease and desist with the building, terminate, or sell the franchise and allow **SOA** to appoint a retailer that would be able to complete the obligations. **L. Gibson** stated that if **Courtesy Subaru** wanted to sell the franchise, **Courtesy Subaru** should contact her directly **(Evidence #8)**. **Hughes** said since the petition was granted by the NMVB, **SOA** started working in good faith with **Courtesy Subaru**.

Hughes stated there was pending litigation in Butte County Superior Court (case number 22CV00702) for a letter of credit that was required by **SOA** in order to secure the project. **Hughes** said **SOA** "called" (cashed out) the letter of credit during the middle of the construction over whether the timelines for the project was excused due to Covid. **Hughes** stated prior to the stipulated decision, **SOA** "called" the letter of credit and took approximately $750,000, which resulted in **Courtesy Subaru** suing **SOA**.

J. Pajouh stated he submitted a letter of credit to Bank of Montreal (BMO) in good faith to show the project would be completed, which was required by **SOA.** I then showed a copy of the letter of credit from exhibit #5 obtained from the Butte County Superior Court online database case number 22CV00702 that was submitted by **Courtesy Subaru**

(Evidence #9 - 22CV00702). Prior to the final decision, **SOA** cashed the letter of credit. This letter of credit was used to secure the project. **Hughes** stated their concern was that **SOA** would fall back to their position in the prior petition until the litigation was settled and would not approve the OL 124 document.

I asked where the building project stands, and **J. Pajouh** stated the building was complete; however, they did not get the information requested for the sign package. **J. Pajouh** stated they eventually received the sign packages; however, they incurred additional expenses due to the delay. **J. Pajouh** stated **SOA** received the sign package from the sign company, called Philadelphia Sign, however, **SOA** would not allow Philadelphia to provide the information to **Courtesy Subaru.**

Review of the court case that was filed in Butte County Superior Court indicated multiple extensions were given to **Courtesy Subaru** that expanded from 2019 to 2022. **Sgt. Rasmussen** asked if there were any extensions provided by **SOA** and **Hughes** stated no. **Hughes** said **SOA** did not provide new timelines because they were holding to, and litigating based on the previous timelines. **Courtesy Subaru's** petition was granted, and **SOA** filed a writ challenging the NMVB's decision. **Hughes** stated the court informed **SOA** they did not have a right to file a writ because the decision was stipulated and therefore, final, binding, and non-appealable; so, the writ was dismissed **(Evidence # 9–22CV00702).**

J. Pajouh stated in the midst of Covid there were delays and **SOA** informed **Courtesy Subaru** they were going to extend their timelines if **Courtesy Subaru** provided new dates. If **Courtesy Subaru** did not provide **SOA** with the timelines, **Courtesy Subaru** would have their franchise license revoked. **J. Pajouh** stated they informed **SOA** of the shortage of supplies / materials, and they would attempt to meet the deadlines but could not guarantee it. **Hughes** said **SOA** still held them accountable to the timelines.

Sgt. Rasmussen asked about the official notification of the cancellation of the agreement. **Hughes** stated they had the stipulated decision on 03/20/2019, and **SOA** attempted to terminate **Courtesy Subaru** sometime before 03/24/2022 when they received the Administrative Law Judge's decision. **Hughes** stated that between March 2019 – March 2022, **SOA** informed **Courtesy Subaru** they did not meet the deadlines pursuant to the stipulated decision; therefore, **SOA** wanted to terminate them. **Hughes** stated they informed **SOA** of the series of events that occurred in the city of Chico that included the 2018 Paradise Camp Fire along with the issues involving the city and the county, which caused delays. **Hughes** said all of this information was relayed to **SOA**.

Hughes then provided me with the copy of the unredacted confidential agreement. This court document contained information that detailed the Administrative Law Judge's decision between **SOA** and **Courtesy Subaru**. **Hughes** stated both **Courtesy Subaru** and **SOA** agreed to the decision. **Sgt. Rasmussen** asked since the stipulated decision, was there anything that **Courtesy Subaru** did not complete. **Hughes** stated the stipulated decision included timelines for achieving milestones on the facility project. **Hughes** stated **SOA's** basis for the termination was because **Courtesy Subaru** did not meet the timelines

that were written into the stipulated agreement. **Hughes** said they notified **SOA** of the issues with not meeting the deadlines due to the city of Chico being closed, the fires, and with the applications / permits. **Hughes** stated the NMVB informed **Courtesy Subaru** their timelines were excused because **Courtesy Subaru** acted diligently and reasonably in trying to perform. **Hughes** stated **SOA** did not accept the stipulated decision although the decision was final, binding, and non-appealable; therefore, **SOA** could not appeal the decision. **Hughes** stated they provided **SOA** with timelines in the middle of Covid and were uncertain if they were going to be met because of the pandemic. **Hughes** stated that once **SOA** signed the stipulated decision, **SOA** had it in mind that if the timelines were not met, **Courtesy Subaru** would automatically be terminated even though it was not stated in the decision. This would result in a material breach of the stipulated decision **(Evidence #10).**

Sgt. Rasmussen asked about the verbiage for meeting the timelines, and **Hughes** said it was called "material non-compliance / material failure of the terms." **Hughes** stated SOA had to prove this in the NMVB hearing to which they were not able to prove. As a result, **Courtesy Subaru** subsequently filed the petition with the NMVB.

Hughes said **SOA** was not terminating the temporary location, but they were not going to approve the new location. **Hughes** said **SOA** attempted to coerce **Courtesy Subaru** to sell per CVC 11713.3 (d)(1) and the NMVB informed both **Courtesy Subaru** and **SOA** that the stipulated agreement was approved; therefore, they were to perform under the agreement by building the facility and relocating **Courtesy Subaru** to the new location.

Sgt. Rasmussen asked about the civil suit. **Hughes** said it was currently pending. **SOA** filed a writ with the Alameda County Superior Court and claimed the NMVB did not have jurisdiction to issue the decision. **Hughes** stated the Alameda County Superior Court informed **SOA** they did not have the right to challenge the NMVB's decision because they stipulated to it, and this resulted in their pending civil suit in Butte County.

The pending civil suit was regarding the $750,000 line of credit that was pulled by **SOA** so that **Courtesy Subaru,** would not be able to complete their project. **Hughes** provided an email stating **SOA** made a demand for the $750,000 on 03/08/2022, through the Bank of Montreal (BMO) **(Evidence #11). Hughes** stated **J. Pajouh** received a call from the bank inquiring about the loan and asked if they were still building and **J. Pajouh** said they were. **Hughes** stated prior to the 03/24/2022 Administrative Law Judge's decision, **SOA** cashed the letter of credit due to **Courtesy Subaru** missing their timelines. As a result of **SOA** cashing the line of credit, **Courtesy Subaru** had to pay back what was owed to the bank before obtaining a new loan.

D. Pajouh stated they had issues with requesting a DBA (fictitious business) name change from "Courtesy Subaru of Chico" to "Subaru of Chico." **D. Pajouh** said **SOA** would not grant them the approval. **J. Pajouh** stated an email was sent to **SOA** requesting the DBA name change, but **SOA** would not approve it. The reason for the name change was because there are several dealerships across the United States that utilize the name of Courtesy. As a result, **Courtesy Subaru** wanted to separate themselves from other dealerships and to

also modernize their name (**Evidence #12**). **Hughes** then provided additional documentation and emails with **SOA (Evidence #13)**. End of interview.

On September 15, 2023, **Sgt. Rasmussen** and I conducted an interview via Webex with **Subaru of America Inc** representatives Attorney **Lisa Gibson** and **Scott Farabee** (Zone Director) who provided the following in summary. The interview was recorded digitally **(Evidence #14):**

I informed the **SOA** representatives that DMV received a referral from the NMVB requesting an investigation involving **Courtesy Automotive Group. Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc**. **Farabee** stated in 2018 he met with **J. Pajouh** at his office regarding the relocation of his dealership. **Farabee** stated **Courtesy Subaru** was previously located at 2522 Cohasset Road where they had their lease, and the property was owned by a Nissan / Hyundai franchisee. **Farabee** said **J. Pajouh** was on a month-to-month lease and was asked to leave the location because the owner needed the building in order to meet Hyundai's facility requirements. **Farabee** said he was informed by **J. Pajouh** they were losing the building which resulted in the move of **Courtesy Subaru's** sales department, service building and **J. Pajouh's** other dealerships. **Farabee** said **SOA** sent **J. Pajouh** a notice of termination because of the unauthorized relocation. **Sgt. Rasmussen** asked if **Farabee** was the point of contact representative and **Farabee** said he was the **SOA** Zone Director at the time. **Sgt. Rasmussen** asked if **Courtesy Subaru** made anyone aware of what was going on and **Farabee** stated no one at **SOA** had been informed of the lease termination and prospective relocation and this was the first time he became aware.

Sgt. Rasmussen asked about the procedure when a franchise loses their lease. **Farabee** stated he never had anyone notify them they were being relocated on a 3-day notice. **Farabee** stated when someone is in a lease, they are aware of the timelines of when it ends, and they have to plan to renew or to relocate. **Farabee** stated it could be a long process depending on what the end process was going to be.

I asked how the notice of termination was communicated to **Courtesy Subaru** and **Farabee** said a letter was sent to **J. Pajouh**. **L. Gibson** said the letter was sent based on the notice requirements of CVC 3060. I asked if during the relocation, were there any changes or amendments to the dealer agreement, and **Farabee** stated according to the stipulated agreement, they changed the address to the temporary location of **896 Cohasset Ave** in Chico. **Farabee** stated the temporary location was agreed upon knowing it was going to be temporary and **Courtesy Subaru** made the facility suitable. I asked if there were any issues for **Courtesy Subaru** in obtaining inventory or changes to their daily operations and **Farabee** stated they were treated no different from any other retailer.

Sgt. Rasmussen asked if there were any other notice of terminations since the stipulated agreement. **Farabee** said the notice of termination was given because **Courtesy Subaru** did not fulfill any of their obligations that were included in the stipulated agreement. **Farabee** stated **J. Pajouh, Hughes, L. Gibson** and **Farabee's** supervisors all agreed upon the written stipulated agreement which the NMVB had approved. **L. Gibson** said the notice given to **Courtesy Subaru** was called a "Notice of Non-Compliance" which was

allowed under the stipulated decision. If there was a failure to comply with the deadlines, the dealer or retailer would have to file a request with the NMVB in order to appoint an Administrative Law Judge to make decisions about the reasonableness of the delays. In the event the dealer or retailer failed to file their request timely to the Administrative Law Judge, they would be terminated automatically by the Notice of Non-Compliance (**reference paragraph # 28 from Evidence #10 Protest No: PR-2570-18**).

Sgt. Rasmussen asked if **Courtesy Subaru** communicated with **SOA** regarding any delays. **Farabee** stated the cause or reasons for the delays by **Courtesy Subaru** were due to "acts of God" and the inability to obtain materials. **Sgt. Rasmussen** asked if there were any written communications from **Courtesy Subaru** per the stipulated agreement regarding the city annexation of the property during 2018, to 2019 due to the Campfires and issues with **Courtesy Subaru** obtaining permits. **Farabee** stated there was communication, but he could not recall the specific communications. **L. Gibson** said **Courtesy Subaru** was supposed to have the building done by 2021, but the permits were supposed to be obtained in 2019. **Farabee** said there were six (6) benchmarks that **Courtesy Subaru** was to complete per the stipulated agreement; however, only one (1) of the benchmarks, the building planning process was completed on time. **Farabee** said the remaining five (5) benchmarks were not met. **L. Gibson** said the stipulated agreement was signed in March of 2019 which was six (6) months after the fires and the agreement had occurred a year prior to Covid **(reference paragraph # 16 from Evidence #10 Protest No: PR-2570-18).**

Sgt. Rasmussen asked if there were more than one (1) Notice of Non-Compliance letters sent to **Courtesy Subaru** and **L. Gibson** said a supplemental Notice of Non-Compliance was sent in early February of 2021. **Sgt. Rasmussen** asked once the notice was given, what was the process for the termination. **Farabee** stated it needed to be approved by the NMVB because they approved the stipulated agreement. If **Courtesy Subaru** did not meet the guidelines, they could either sell or **SOA** could terminate them.

Sgt. Rasmussen asked for a current update and **Farabee** stated **Courtesy Subaru** was building their facility and it would be done by the end of the year. **Farabee** said they have the relocation package (application process for the new location), signs were ordered, and they will move forward once the facility was completed. **Sgt. Rasmussen** asked if there were any delays with the sign package and **Farabee** stated **J. Pajouh** had the signage details since 2017.

I asked if the DBA (fictitious business) name change was approved for **Courtesy Subaru** and **Farabee** said he was not sure if it was processed. **Sgt. Rasmussen** asked if a DBA name change would change the sign package and **Farabee** said if **Courtesy Subaru** wanted to change the name, **SOA** would have to approve it and it would not affect the signage package. I asked if any inspections have been performed at the new facility and **Farabee** said he has only seen photos from his representatives.

I asked **L. Gibson** for clarification on the letter dated 05/25/2022 that was sent to **Hughes**. **L. Gibson** said this letter was a settlement discussion between herself and **Hughes . L.**

Gibson said they wanted to resolve this because it was in the stipulated decision that **Courtesy Subaru** could sell or have the franchise terminated. **L. Gibson** said there were discussions about compensation to the retailer if they were honoring the proposal to sell. **L. Gibson** stated the letter was sent out after the discussion with **Hughes (Evidence #15).**

Sgt. Rasmussen asked about programs for expanding facilities and whether **Courtesy Subaru** would qualify. **Farabee** said their programs were annual and could change from year to year. **Farabee** stated **J. Pajouh** would have not qualified for the funding program because it required exclusive facilities. **Farabee** said **J. Pajouh** has three (3) buildings that were split in half in order to house six (6) separate showrooms along with one (1) building that would service vehicles. This would not meet the exclusive facility requirement. **Farabee** said Raymond Smit (Zone Retailer Development Manager) and himself met with **J. Pajouh** and showed him how to make the facility exclusive that would have allowed him to qualify for the funding program; but **J. Pajouh** did not want to make the needed changes.

Sgt. Rasmussen asked about any programs that **Courtesy Subaru** would qualify for. **Farabee** said the program was called "Marketing Assistance" and it was based on brand dedication. **Farabee** said this program required separate touch points (separation of facilities service lounge, service drive and service advisors) and the new facility would qualify. **Farabee** said **J. Pajouh** did not previously qualify because the service department was being shared with the other dealership brands.

I asked **L. Gibson** if there would be any changes to the dealer agreement at the new location and she said **SOA** started a relocation package. **L. Gibson** said an important change to the dealer agreement would be the dealer address which would amend the dealer agreement based on the existing agreement. **L. Gibson** said **SOA** is waiting for the building to be completed and a new agreement would be made in order to recognize the new address.

Sgt. Rasmussen asked about the $750,000 letter of credit from Bank of Montreal which **SOA** cashed. **Farabee** stated they still have it in their possession and **L. Gibson** said it was part of their civil litigation because **Courtesy Subaru** was suing **SOA** for the exercise of the letter of credit. The letter of credit was tied to the amended facility addendum that was dated May of 2020 (facility addendum) and the building was to be completed by 01/31/2022. **L. Gibson** said this was the letter of credit and **SOA** cashed it in March because it was going to expire in June. **L. Gibson** said it was cashed in three (3) months after the deadline was missed, and (3) months before the letter of credit expired.

Sgt. Rasmussen asked if the letter of credit was an insurance policy for **SOA** regarding **Courtesy Subaru's** project, and **L. Gibson** said it was and was based on the terms of the specific commitments with the construction. **L. Gibson** said the beneficiary receives the amount that is secured under the letter of credit per the Administrative Law Judge's confidential decision and was deemed as **SOA's** ability to collect or remedy for the failure of **Courtesy Subaru's** duty to comply with the construction deadlines that were agreed upon.

Sgt. Rasmussen asked if there was a suit contesting the Administrative Law Judge's decision regarding the stipulated agreement and **L. Gibson** said they lost the appeal because they were bound by the Administrative Law Judge's decision. Additional correspondence was requested from **SOA,** it was agreed these documents would be provided at a later date. End of interview.

On 10/06/2023, **SOA** provided documentation regarding the communications between **SOA** and **Courtesy Subaru** in regard to delays and timelines pursuant to the stipulated decision **(Evidence #16).**

On 12/05/2023, I contacted the DMV's Occupational Licensing (OL) Unit and spoke to Inspector Gary Galvadon. Galvadon confirmed OL # 87811 (**Courtesy Subaru**) was approved for their dealership name change of "**Courtesy Subaru of Chico**" to "**Subaru of Chico**" and the new location address of **13340 Garner Lane, Chico CA** was approved on 11/09/2023. Galvadon also provided me with a photo of Subaru of Chico's temporary Subaru signage that was posted on the interior door of the building. A review of the website for **Courtesy Subaru** also indicated they have changed the dealership name to "Subaru of Chico." I then accessed the DMV database and was able to retrieve OL document, OL 21, dated 10/31/2023, Application for Modification to an Occupational License, and OL 124, dated 09/15/2023, Certificate of Proposed Franchise that indicated the permanent location for Subaru of Chico at 13340 Garner Lane, Chico CA 95973 **(Evidence #17).**

On 12/07/2023 Investigator Heather Crippen and I traveled to 13340 Garner Lane in Chico and observed the "Subaru" brand logos and emblem affixed to the exterior of the building. Photos were taken of the exterior signage (**Evidence #18**).

On 01/05/2024, Sgt. Rasmussen contacted **Hughes** via email and requested additional information regarding **Courtesy Subaru's** delay notifications per exhibit 1 to "Confidential Agreement to Stipulated Decision and Order of the Board, Filed Under Seal" paragraphs 18-21.

On 01/10/2024, I received an email from Robert Mayville (Law Offices of Gavin Hughes) regarding **Courtesy Subaru's** delay notifications request from Sgt. Rasmussen **(Evidence #19).** In the email from Mayville, he indicated the Administrative Law Judge held there was no evidence that **Courtesy Subaru** notified **SOA** in writing of any government delays, nor did they obtain weekly extensions and did not provide written notices on a weekly basis as required to **SOA**. As a result, **Courtesy Subaru** did not establish an excuse for the non-compliance per paragraphs 18 and 19 of the Stipulated Decision and did not need to.

Mayville then stated the Administrative Law Judge held **Courtesy Subaru's** timely performance was excused under paragraph 21 of the Stipulated Decision because it was based on the *force majeure* provisions. Mayville said the Administrative Law Judge said **Courtesy Subaru** notified **SOA** of the issues related to the Covid pandemic. Mayville stated that in March of 2020, **Courtesy Subaru's** sales operation was shutdown by the City of Chico code enforcement, **J. Pajouh** communicated this information to Raymond Smit of **SOA**.

Mayville then provided several email correspondences between **Courtesy Subaru** and **SOA** and a court deposition from **J. Pajouh:**

- Review of the email chain dated 01/02/2020 through 01/19/2020 contained communications between **J. Pajouh** and Ray Smit regarding **Courtesy Subaru's** efforts in obtaining permits for the facility **(Evidence #20).**

- Review of the email chain dated 07/01/2020, 07/03/2020, 04/08/2022, and 06/19/2022 between **J. Pajouh** and Ray Smit was in regard to the City of Chico's plan check responses for the permitting process **(Evidence #21).**

- Review of the email dated 04/29/2020 between **J. Pajouh** and Ray Smit was in regard to the revised benchmarks due to the shutdown of City and County offices in the City of Chico because of the Covid pandemic **(Evidence #22).**

- Review of the **J. Pajouh** Deposition transcript dated 04/19/2021 indicated that on pages 123-125 out of 172, **J. Pajouh** provided bi-weekly phone calls with Ray Smit regarding delays with the permit process **(Evidence #23).**

- Review of the email dated 03/27/2020 between **J. Pajouh** and Ray Smit indicated notifications were provided due to the Covid Pandemic and California's shelter in place order **(Evidence #24).**

None of the provided correspondences noted specific timeline delays or requests for extensions as written in the stipulated decision.

EVIDENCE

#1: Copy of referral from the New Motor Vehicle Board dated 02/13/2023.
#2: Photocopy of OL printout for OL# 18593 (Subaru of America Inc).
#3: Photocopy of OL printout for OL # 87811 (Courtesy Automotive Group).
#4: CD recording of interview with Courtesy Subaru representatives.
#5. OL 21 application dated 10/29/2019 (addition of a branch location 896 East Ave).
#6: OL 124 application dated 06/24/2019.
#7: Email communications regarding signage provided by Hughes.
#8: Photocopy of letter from L. Gibson to Hughes.
#9: Photocopy of Butte County Superior Court case # 22CV00702.
#10: Photocopy of the unredacted confidential decision provided by Hughes.
#11: Email provided from Hughes regarding the line of credit from BMO.
#12: Emails detailing DBA name change request from Courtesy Subaru.
#13: Additional documents and correspondences provided by Hughes.
#14: CD recording of interview with Subaru of America representatives.
#15: Photocopy of letter from L. Gibson to Hughes.
#16: Correspondences provided by SOA.

#17: Photocopies of Occupational Licensing documents OL 21 dated 10/31/2023 and OL 124 dated 09/15/2023, screenshot of Subaru of Chico's website and a photo provided by Inspector Galvadon.
#18: Photos of the exterior signage of the "Subaru" dealership.
#19: Email correspondence dated 01/10/2024 from Robert Mayville.
#20: Photocopy of email chain dated 01/02/2020 through 01/19/2020 provided by Mayville.
#21: Photocopy of email chain dated 07/01/2020, 07/03/2020, 04/08/2022, and 06/19/2022 provided by Mayville.
#22: Photocopy of email dated 04/29/2020 provided by Mayville.
#23: Photocopy of J. Pajouh deposition provided by Mayville.
#24: Photocopy of email dated 03/27/2020 provided by Mayville.

DISPOSITION:

Based on my investigation having reviewed the documentary evidence and witness interviews with **Courtesy Subaru** and **Subaru of America Inc**, I was unable to establish violations of CVC 11713.3(d)(1), CVC 3060 and CVC 11713.3 (l).

RECOMMENDATIONS:

Forward a copy of this report to the New Motor Vehicle Board to receive and file.

Carlos Cabrera — Badge #560 — Investigator — 2/22/24 — Date

Brian Rasmussen — Badge #570 — Supervising Investigator I — 2-22-24 — Date

Integrity... Trust... Respect... Quality...

23N1L17078
Subaru of America Inc.

EVIDENCE 1

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

STATE OF CALIFORNIA

MEMO

To: **STEVEN GORDON**
Director
Department of Motor Vehicles

Date: February 13, 2023

From: **TIMOTHY M. CORCORAN**
Executive Director
New Motor Vehicle Board
(916) 445-1888

Subject: **FORMAL REQUEST**

At the January 25, 2023, General Meeting, the Public Members of the New Motor Vehicle Board ("Board") unanimously decided to refer Petition No. P-463-22 *Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico* v. *Subaru of America, Inc.* to the Department of Motor Vehicles ("Department") to conduct an investigation pursuant to subdivision (b)(1) of Vehicle Code section 3050[1] concerning whether Subaru of America, Inc. violated Vehicle Code sections 3060, 11713.3(d)(1), and 11713.3(l). Petitioner is a licensed vehicle dealer and franchised Subaru dealer. Respondent is a licensed distributor and the franchisor of Courtesy.

The Board respectfully requests this matter be investigated. A written report on the results of the Department's investigation should be provided to the Board within 180 days of the Board's January 26, 2023 "Order Granting Petitioner's Request for Relief Pursuant to Vehicle Code Section 3050(b)(1)" or within a reasonable time as requested by the

[1] Section 3050 provides in pertinent part as follows:

The board shall do all of the following:

. . .

(b) Consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. . . . After that consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the board within the time specified by the board.

. . .

Department. (See Attached Order)[2]

A certified electronic copy of the administrative record is available. Once this matter has been assigned, the Board's legal staff will make arrangements to provide the record. Of note, there are confidential documents that have been sealed by the Board. The January 25, 2023, Board Meeting transcript has been requested and will be forwarded upon receipt.

If you have any questions or require additional information, please do not hesitate to call me at (916) 244-6774 or Robin Parker, Chief Counsel at (916) 244-6776.

Attachment: as stated

cc: Public Member Doi
Public Member Kassakhian
Public Member Obando
Public Member Stevens

John T. McGlothlin, Deputy Attorney General

Gavin M. Hughes, Esq.
Robert A. Mayville, Jr., Esq.
Law Offices of Gavin M. Hughes
Attorneys for Petitioner

Lisa M. Gibson, Esq.
Amy M. Toboco, Esq.
Nelson Mullins Riley & Scarborough LLP
Attorneys for Respondent

[2] On February 3, 2023, Subaru filed a motion for reconsideration of the Board's Order. By notice dated February 10, 2023, this motion was rejected for filing. The documents pertaining to this are included in the administrative record.

23N1L17078
Subaru of America Inc.

EVIDENCE 2

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

LI199933CZCA118593

DATE: 12/08/23 TIME: 04:23

FIRM#:18593 DIB:19920608 DT OUT OF BUSINESS:19980601 PHONE:9099231412
CORP:SUBARU OF AMERICA INC OWNER:PERNAS JAMES F B/D:1964-05-25
EFFDT:19920608 FIRM#:18593 DIB:19920608 PHONE:7205144200
CORP:SUBARU OF AMERICA INC OWNER:PERNAS JAMES F B/D:1964-05-25
EFFDT:19920608

DLR:A OL#:18593 DIB:19920608 DT OUT OF BUSINESS:19980601
STAT:VALID LICX:19980630 PHONE:9099231412
DBA:SUBARU OF AMERICA INC ADDR:1907 LYNX PLACE CITY:ONTARIO
STATE:CA ZIP:91761 CC:36 RGN/D:R3 TYPEL:11

DIST:F OL#:18593 DIB:19920608 STAT:VALID PHONE:7205144200
DBA:SUBARU OF AMERICA INC ADDR:720 S COLORADO BLVD STE 300N
CITY:GLENDALE STATE:CO ZIP:80246 RGN/D:HQ TYPEL:18 DESTR:N

D01- COMM:ENT 050117 PER OL 22 ODRD REGCRDS 1A-2A/5A-6A/13A-14A/

D02- COMM:CANCD/EXP/DOB REQACCT PROCSUPV 75564JKD

D03- COMM:BLA-72410 CREATED INCORRECTLY BY KDO'S, ORIGINAL OL124 UPLOADED T
O

D04- COMM:ENT 5/15/17 RCVD SAOF NON-RCVDOF REG CRD 96A/RE-ORD REG CRD

D05- COMM:96-97A/1B-2B/4B/5B-8B/10B/13B-14B/17B-19B/23B-28B/30B-

D06- COMM:ENT 092822 ORD 5LRG PLTSDIST59C-63C #62665 PER OL22DMV

D07- COMM:ENT 061422 BRIEF OL124 TO INSP-SNT DIRECTLY TO BLUAYL

D08- COMM:ENT 081721 MLD SUPPLSDMV

D09- COMM:ENT 060121 RTRND OL22 BK TODISTCHK#1738153 $1000 EXPIRD

D10- COMM:PRCSSD $55 HQ RFND FOR DISTOVRPAIDJAS

E01- PRIOR:KH OSHIP:E B/D:19380807 EFFDT:19920608
OWNER:WORRELL CHARLES F DT OUT OF BUSINESS:19980601

E02- PRIOR:KH OSHIP:E B/D:19460828 EFFDT:20050520
OWNER:CYPHERS HARRY WILLIAM III DT OUT OF BUSINESS:19980601

E03- PRIOR:KH OSHIP:E B/D:19410914 EFFDT:19920608
OWNER:PARZYBOK TIMOTHY DT OUT OF BUSINESS:19980601

E04- PRIOR:KH OSHIP:E EFFDT:19930726
OWNER:ADCOCK FREDERICK DALE 070852 DT OUT OF BUSINESS:19980601

G01- DLR PRIR DIB:19920608 DT OUT OF BUSINESS:19980407
DBA:SUBARU OF AMERICA INC ADDR:12 WHATNEY DR CITY:IRVINE STATE:CA
ZIP:92718 CC:30 RGN/D:R5 TYPEL:11 MAILD:1997-06-10

G02- DIST PRIR DIB:19920608 DT OUT OF BUSINESS:19980407
DBA:SUBARU OF AMERICA INC ADDR:12 WHATNEY DR CITY:IRVINE STATE:CA

ZIP:92718 CC:30 RGN/D:R5 TYPEL:18 MAILD:1997-06-10

G03- DIST PRIR DIB:19980407 DT OUT OF BUSINESS:20140904
PHONE:3033738960 DBA:SUBARU OF AMERICA INC ADDR:1907 LYNX PLACE
CITY:ONTARIO STATE:CA ZIP:91761 CC:36 RGN/D:R3 TYPEL:18
MAILD:2014-08-06

G04- DIST PRIR DIB:20140904 DT OUT OF BUSINESS:20171101
PHONE:3033738960 DBA:SUBARU OF AMERICA INC
ADDR:5000 HOPYARD ROAD STE 125 CITY:PLEASANTON STATE:CA ZIP:94588

CC:01 RGN/D:R2 TYPEL:18 MAILD:2016-07-14

M01- M KEY:18593-01A

M01- M KEY:18593-01F

N01- P KEY:18593 - 01A

N02- P KEY:18593 - 01B

N03- P KEY:18593 - 01C

N04- P KEY:18593 - 02A

N05- P KEY:18593 - 02B

N06- P KEY:18593 - 02C

N07- P KEY:18593 - 03A

N08- P KEY:18593 - 03B

N09- P KEY:18593 - 03C

N10- P KEY:18593 - 04A
END

23N1L17078
Subaru of America Inc.

EVIDENCE 3

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

LI199933CZCA187811

DATE: 12/08/23 TIME: 04:23

FIRM#:87811 DIB:20150501 PHONE:5303459444
CORP:COURTESY AUTOMOTIVE GROUP INC OWNER:MIHANPAJOUH SHAHRAM
B/D:1967-06-10

DLR:A OL#:87811 DIB:20150501 STAT:VALID LICX:20250531
PHONE:5303459444 DBA:COURTESY AUTOMOTIVE CENTER
ADDR:2520 COHASSET ROAD CITY:CHICO STATE:CA ZIP:95973 CC:04
RGN/D:R1 TYPEL:1123438332 MAILD:2021-05-12
BD CO:FEDERATED MUTUAL INSURANCE COMPANY ADDR:P O BOX 328
CITY:OWATONNA STATE:MN ZIP:55060 BOND:6044965 AMT:$50,000
B EFF:20170614
PRINC:COURTESY AUTOMOTIVE GROUP INC DBA BUICK GMC OF CHICO DBA CAD
ILLAC OF CHICO DBA MERCEDES BENZ OF CHICO DBA BMW OF CHICO D

D01- COMM:ENT 050721 ORD 3-LRG PLTS21A-23A #62592RSL

D02- COMM:ENT 051915 APPROV BPAPARTICIPANT - IF LIC IS SUSP/

D03- COMM:REVOKED EXP CANC DOB ACCTPROC MGR 916-657-5564QYF

D04- COMM:CHICO 95973 INSP#788QYF

D05- COMM:ENT 052621 DOB BR EFF 080118ACR#X53421 2562 COHASSET RD

D06- COMM:ENT 062515 REQ CODE DC017NTFYACCT PROC IF LIC IS SUSP

D07- COMM:REVKD/CANC/DOB NOTIFY BPA MGR916657-6258RSL

D08- COMM:ENT 111219 RCVD SCN ACR#X47567ADD BR/ADD DBA NM-UPDTD REC-

D09- COMM:MLD VBL-WHN RCVE ORIG SND TOSCN PAR

D10- COMM:ENT 051121 SUPP MLD TO DLRMJJ

G01- DLR BRANH DIB:20191112 PHONE:5303459444
DBA:COURTESY SUBARU OF CHICO ADDR:896 EAST AVE CITY:CHICO STATE:CA
ZIP:95928 CC:04 RGN/D:R1 TYPEL:1132 BR ID:02

G02- DLR PRIR DIB:20150501 DT OUT OF BUSINESS:20180801
PHONE:5598242026 DBA:COURTESY AUTOMOTIVE CENTER
ADDR:2562 COHASSET ROAD CITY:CHICO STATE:CA ZIP:95973 CC:04
RGN/D:R1 TYPEL:13 MAILD:2015-07-30 BR ID:01

M01- M KEY:87811-01A

M02- M KEY:87811-02A

M03- M KEY:87811-03A

M04- M KEY:87811-04A

M05- M KEY:87811-05A

N01- P KEY:87811 - 01A

N02- P KEY:87811 - 02A

N03- P KEY:87811 - 03A

N04- P KEY:87811 - 04A

N05- P KEY:87811 - 05A

N06- P KEY:87811 - 06A

N07- P KEY:87811 - 07A

N08- P KEY:87811 - 08A

N09- P KEY:87811 - 09A

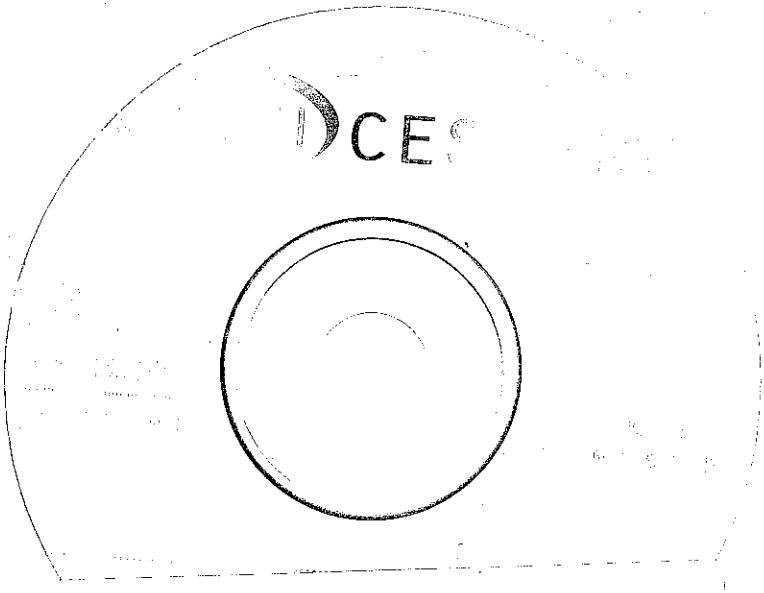
N10- P KEY:87811 - 10A

END

23N1L17078
Subaru of America Inc.

EVIDENCE 4

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560



Courtesy Subaru of Chico
Interview 08/15/2023

23N1L17078
Subaru of America Inc.

EVIDENCE 5

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
A Public Service Agency

X 47567 370.00
681 110819 L9 0005

APPLICATION FOR MODIFICATIONS TO AN OCCUPATIONAL LICENSE

(Submit a separate form for each business location)

Instructions: *Complete online or print and complete by hand using black or blue ink*

FOR DMV USE ONLY	
FIRM NUMBER 87811	DATE APPLICATION RECEIVED 11-7-19
ACR NUMBER X 47567	DATE PERMIT ISSUED
NVMB FEE $300.00	DATE PERMIT EXPIRES
OTHER FEE $70.00	REGION CC R-1 04
TOTAL FEE $370.00	INSPECTOR NAME/ID NUMBER 764
SUSPENSE RECEIPT NUMBER 681 110819 L9-0005	

SECTION 1 — CURRENTLY LICENSED AS *Check one box.*

- ☑ Dealer - *Complete information on right side.*
- ☐ Dismantler
- ☐ Lessor-Retailer
- ☐ Transporter
- ☐ Distributor
- ☐ Manufacturer
- ☐ Remanufacturer

FOR DEALERS ONLY – Check one box in each section.

Type of Dealer	Autobroker Endorsement
☑ Retail New	☑ Yes ☐ No
☐ Retail Used	☐ Yes ☐ No
☐ Wholesale	☐ Yes ☐ No
☐ No Retail or Wholesale	☐ Yes ☐ No

SECTION 2 — REASON FOR SUBMISSION *Check all that apply and complete the sections indicated.*

	COMPLETE SECTIONS								COMPLETE SECTIONS						
☑ Add Branch Location	3	5			9	10	11	☐ Change Branch Location	3	4	5		9	10	11
☐ Add Dismantler Location	3			8		10	11	☐ Change Corporate Name	3	4					11
☑ Add Firm Name	3						11	☐ Change Firm Address	3	4	5		9	10	11
☐ Add or Delete Make or Line	3		7				11	☐ Change Firm Name	3	4					11
☐ Add or Delete Category	3		7				11	☐ Dealer Type License Change	3		5	6			11
☐ Add Autobroker	3						11	☐ Delete Autobroker	3						11

SECTION 3 — FIRM INFORMATION

TRUE FULL NAME OF SOLE OWNER, ALL PARTNERS, CORPORATION, LIMITED LIABILITY COMPANY, OR ASSOCIATION
Courtesy Automotive Group, Inc.

FIRM NUMBER
87811

FIRM NAME *(IF CHANGING OR ADDING NAME, LIST NEW NAME)*
Courtesy Subaru of Chico

TELEPHONE NUMBER
(530) 345-9444

FIRM ADDRESS *(IF CHANGING ADDRESS OR ADDING BRANCH, LIST NEW ADDRESS)*
896 East Avenue

CITY
Chico

STATE
CA

ZIP CODE
95928

SECTION 4 — FORMER NAME OR ADDRESS

FORMER NAME

FORMER ADDRESS

SECTION 5 — CHECK THE VEHICLES TO BE SOLD, MANUFACTURED OR DISTRIBUTED AT THIS LOCATION

NEW	☑ Automobile/Commercial*	☐ Motorcycle* *(Including Off-Highway)*	☐ All-Terrain Vehicle*	☐ Motorhome*
	☐ Recreational Trailer*	☐ Trailer+	☐ Snowmobile*	
	**OL 124 required.*	*+Letter of Authorization required.*		
USED	☑ Automobile/Commercial	☐ Motorcycle *(Including Off-Highway)*	☐ All-Terrain Vehicle	☐ Motorhome
	☐ Recreational Trailer	☐ Trailer	☐ Snowmobile	

SECTION 6 — DEALER ONLY *Type of license change.*

CHANGING FROM	☐ Dealer New	☐ Dealer Used	☐ Dealer-Wholesale Only
CHANGING TO	☐ Dealer New	☐ Dealer Used	☐ Dealer-Wholesale Only

OL 21 (REV. 7/2014) WWW

066 DEC 05 2019 10

FIRM NUMBER 87811

NAME

SECTION 7 — ADD OR DELETE MAKE OR LINE	ADD OR DELETE CATEGORY
EXAMPLE: New dealer adding a new make or line.	*EXAMPLE: Authorized to sell autos/commercials and adding motorcycles.*
ADDING	ADDING
DELETING	DELETING

SECTION 8 — DISMANTLER ONLY

ALL PLATES ACQUIRED FROM VEHICLES WILL BE: ☐ DESTROYED ☐ TURNED INTO THE DEPARTMENT

1. Is a storm water permit required for this location? ☐ YES ☐ NO
2. Has an application been filed to obtain a storm water permit for this location? ☐ YES ☐ NO
3. Has a hazardous materials business plan been filed for this location? ☐ YES ☐ NO
4. Is a hazardous materials business plan required for this location? ☐ YES ☐ NO
5. Does location meet all city and county zoning requirements? ☐ YES ☐ NO

If yes, attach the Zoning Verification for Vehicle Dismantler's License, form OL 62 completed by an official responsible for this location.

SECTION 9 — PROPERTY USE APPROVAL
Must be completed by applicant. Excludes out-of-state Manufacturers and Distributors.

Does location meet all city and county property use requirements? ☑ YES ☐ NO

If yes, attach the appropriate property use form completed by an official of the agency responsible for this location.

SECTION 10 — PROPERTY DATA

Attach a copy of the lease or rental agreement or evidence of property ownership. If property is subleased, include a written authorization from the property owner.

PROPERTY IS: *(Check one box.)* ☑ Leased ☐ Rented ☐ Owned

LEASE OR RENTAL PERIOD	APPROXIMATE SQUARE FEET			
	Office Area	Building Area	Display Area	Total Area
Dec. 3, 2018	450	6,481	4,500	11,431

PROPERTY OWNER'S FULL NAME	TELEPHONE NUMBER
Giampaoli Enterprises LP,	(530) 891-4757

PROPERTY OWNER'S ADDRESS	CITY	STATE	ZIP CODE
901 Bruce Road Ste. 100	Chico	CA	95928

SECTION 11 — APPLICANT CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

PRINTED NAME OF SOLE OWNER, ALL PARTNERS, CORPORATE OFFICER, LLC MEMBER, OR ASSOCIATION REPRESENTATIVE	TITLE
Courtesy Automotive Group, Inc. By Shahram Mihanpajouh	President/CEO
SIGNATURE OF SOLE OWNER, ALL PARTNERS, CORPORATE OFFICER, LLC MEMBER, OR ASSOCIATION REPRESENTATIVE	DATE
X	10/29/2019

I, Carlos Cabrera INV# 560
HEREBY CERTIFY THAT THIS
DOCUMENT IS A CORRECT COPY
OF THE ORIGINAL TAKEN FROM
DMV DATABASE
SIGNATURE Carlos Cabrera DATE 08/15/23

OL 21 (REV. 7/2014) WWW

066 DEC 05 2019 10

23N1L17078
Subaru of America Inc.

EVIDENCE 6

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

A Public Service Agency

LICENSING OPERATIONS DIVISION

CERTIFICATE OF PROPOSED FRANCHISE

DMV USE ONLY
DEALER LICENSE NUMBER
8781

Instructions:

- This form must be completed by a licensed Manufacturer or Distributor.
- The licensed dealer is responsible for submitting this form to the Department of Motor Vehicles with the appropriate application form(s).
- This form will ***NOT*** be accepted if modified or altered and must contain an original signature.

The location is a ☑ Permanent Location
☐ Temporary Branch Location (must be 30 days or less)
Date(s) of Event: From: _____ To: _____

I/We

MANUFACTURER/DISTRIBUTOR NAME	LICENSE NUMBER
Subaru of America, Inc.	18593

hereby certify that:

☑ Written notification to the New Motor Vehicle Board and each franchisee is not required pursuant to Vehicle Code section 3062(b) or 3072(b), or there are no other franchised dealers within the same line-make located within the relevant market area.

☐ Written notification has been provided to the Board and each franchisee of this line-make of the intent to establish an additional motor vehicle dealership or relocate an existing motor vehicle dealership within the relevant market area, and no protests have been filed. (A change in ownership of an existing established location shall not be construed as establishing an additional location.) Enter date of notification below.

MAKE OF VEHICLE(S), MOTORHOME(S), OR RECREATIONAL TRAILER(S)
Subaru

DATE THE NEW MOTOR VEHICLE BOARD AND DEALER(S) WERE NOTIFIED, IF APPLICABLE
6/24/2019

PROPOSED FRANCHISEE NAME (AS IT APPEARS ON LICENSE OR APPLICATION FOR LICENSE)		DEALER LICENSE NUMBER (IF APPLICABLE)	
Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico			
ADDRESS (AS SHOWN ON LICENSE OR APPLICATION FOR LICENSE)	**CITY**	**STATE**	**ZIP CODE**
896 East Avenue	Chico	CA	95926
AUTHORIZED SIGNATURE (OWNER OF RECORD OR LICENSED REPRESENTATIVE)		**DATE**	
Anthony J. Graziano		06/24/2019	
PRINT OR TYPE NAME		**OWNER OR REPRESENTATIVE LICENSE NUMBER**	
Anthony J. Graziano, Vice President-Western Region		RD382451	

CALIFORNIA VEHICLE CODE (CVC) - Sections 3062 or 3072*, states in part:

Establishing or Relocating Dealerships

3062. (a) (1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area. Within 20 days of receiving that notice or within 20 days after the end of any appeal procedure provided by the franchisor, any such franchisee may file with the board a protest to the establishing or relocating of the dealership. If, within this time a franchisee files with the board a request for additional time to file a protest, the board or its Executive Director, upon a showing of good cause, may grant an additional 10 days to file the protest. When such a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor shall not establish or relocate the proposed dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(b) Subdivision (a) does not apply to either of the following:

(1) The relocation of an existing dealership to any location that is both within the same city as, and is within one mile from, the existing dealership location.

(2) The establishment at any location that is both within the same city as, and is within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.

*Section 3072, pertaining to Recreational Vehicles, contains virtually identical provisions, however, there are additional exemptions not listed above. Recreational Vehicle Manufacturers are encouraged to review the entire California Vehicle Code Section.

OL 124 (REV. 7/2008) WWW

066 DEC 05 2019 10

I, Carlos Cabrera INV# 5600
HEREBY CERTIFY THAT THIS
DOCUMENT IS A CORRECT COPY
OF THE ORIGINAL TAKEN FROM
DMV DATABASE
SIGNATURE Carlos Cabrera DATE 08/15/23

23N1L17078
Subaru of America Inc.

EVIDENCE 7

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

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

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

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

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Website | Facebook

EXHIBIT 4

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

19191 SOUTH VERMONT AVENUE | SUITE 301

TORRANCE, CA 90502

T 424.221.7406 M 310.989.3130 F 424.221.7499

NELSONMULLINS.COM VCARD VIEW BIO

From: Lisa Gibson
Sent: Friday, July 30, 2021 9:07 AM
To: Gavin M. Hughes (gavin@hughesdealerlaw.com) <gavin@hughesdealerlaw.com>
Cc: Amy Toboco <amy.toboco@nelsonmullins.com>; Robert Mayville <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 specification.

Best regards,

Lisa

LISA M. GIBSON PARTNER

lisa.gibson@nelsonmullins.com

19191 SOUTH VERMONT AVENUE | SUITE 900

TORRANCE, CA 90502

T 424.221.7405 M 310.989.3130 F 424.221.7499

NELSONMULLINS.COM VCARD VIEW BIO

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

RE: Sign Request -- Chico

Lisa Gibson <lisa.gibson@nelsonmullins.com>
Tue 5/10/2022 1:22 PM

To: Gavin M. Hughes <gavin@hughesdealerlaw.com>
Cc: Robert Mayville <mayville@hughesdealerlaw.com>;Amy Toboco <amy.toboco@nelsonmullins.com>

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

19191 SOUTH VERMONT AVENUE | SUITE 301

TORRANCE, CA 90502

T 424.221.7406 M 310.989.3130 F 424.221.7499

NELSONMULLINS.COM VCARD VIEW BIO

Subaru Signage

Jerry Pajouh <jpajouh@me.com>
Mon 4/4/2022 5:14 PM

To: Smit, Ray <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

23N1L17078
Subaru of America Inc.

EVIDENCE 8

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

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

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

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

23N1L17078
Subaru of America Inc.

EVIDENCE 9

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

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

FILED
Superior Court of California
County of Butte
4/6/2022
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**

Plaintiff Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico ("Courtesy"), through its attorneys, sues Defendants Subaru of America, Inc. ("SOA"), and Does 1 through 50, inclusive, and hereby alleges the following:

NATURE OF THE ACTION

1. Plaintiff seeks attorneys' fees and costs pursuant to the March 20, 2019, Exhibit 1 to Confidential Agreement to Stipulated Decision and Order of the Board, Filed Under Seal ("Confidential Stipulated Agreement") accompanying the March 20, 2019, [Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit and April 9, 2019, Order Adopting "[Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit" (collectively "Board Order Adopting Stipulated Decision and Order"). Plaintiff invoked the Board's jurisdiction pursuant to the Confidential Stipulated Agreement and prevailed in the underlying confidential action. Plaintiff is the prevailing party in the underlying confidential action and is entitled to recover its attorneys' fees and costs pursuant to California Civil Code section 1717.

2. Additionally, Plaintiff seeks payment of Letter of Credit ("LOC") funds totaling $750,000.00 which were called by Defendant SOA. SOA called the LOC in breach of the Confidential Stipulated Agreement, in breach of the covenant of good faith and fair dealing implied in the contract, and in violation of unfair competition laws. Upon information and belief, SOA's communications with BMO Harris Bank N.A. calling the LOC were also fraudulent and negligent misrepresentations. Moreover, SOA's efforts to retain the LOC funds would result in an unjust enrichment and the application of the LOC sections of the Confidential Stipulated Agreement as an unenforceable penalty provision. Plaintiff is separately entitled to recover its attorneys' fees and costs concerning the LOC causes of action based on California Civil Code section 1717 and the Confidential Stipulated Agreement.

PARTIES

3. Plaintiff, Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico ("Courtesy"), operates as a new motor vehicle dealer, as defined by California Vehicle Code section 426, selling new Subaru vehicles and parts, is duly licensed as a vehicle dealer by the State of California, and is located at 2520 Cohasset Rd., Chico, CA 95973.

4. Defendant, Subaru of America, Inc. ("SOA"), is a new motor vehicle distributor and manufacturer doing business with Subaru dealers in the State of California and throughout the United States, and is the franchisor of Plaintiff. SOA is licensed as a vehicle distributor and manufacturer in the State of California.

5. Plaintiff does not know the true names and capacities, whether corporate, partnership, associate, individual, or otherwise of Defendants sued herein as Does 1 through 50, inclusive, pursuant to California Code of Civil Procedure section 474. Defendants Does 1 through 50, inclusive, are in some manner responsible for the acts, occurrences, and transactions set forth herein, and are legally liable to Plaintiffs. Plaintiff will seek leave to amend this Complaint to set forth the true names and capacities of the fictitiously-named Defendants together with appropriate charging allegations when ascertained. Reference herein to Defendant SOA shall be interpreted as including Does 1 through 50, inclusive.

JURISDICTION AND VENUE

6. Pursuant to the California Constitution, Article VI, section 10, this Court has jurisdiction over the issues herein raised.

7. Venue is proper in this County pursuant to California Code of Civil Procedure section 395.

8. This Court has jurisdiction over Defendants because SOA is a corporation authorized to and conducting substantial business in the State of California, County of Butte.

GENERAL ALLEGATIONS

9. Courtesy and SOA (collectively the "Parties") sought to resolve Protest No. PR-2570-18 filed pursuant to California Vehicle Code section 3060 before the California New Motor Vehicle Board ("Board") and a lawsuit in the Eastern District of California, Case No. 2-18-cv-02778-KJM-KJN, by entering into a stipulated decision and order pursuant to California Vehicle Code section 3050.7.

10. On March 20, 2019, the Parties executed the [Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit and Exhibit 1 to Confidential Agreement to Stipulated Decision and Order of the Board, Filed Under Seal ("Confidential Stipulated Agreement"). A true and correct copy of the [Proposed] Stipulated Decision and Order of the Board Resolving Protest and

Lawsuit is attached hereto as Exhibit 1.

11. The Confidential Stipulated Agreement is confidential and is maintained outside public record pursuant to the [Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit. As a result, Courtesy does not attach hereto a copy of the Confidential Stipulated Agreement to maintain the document as confidential. SOA is in possession of the Confidential Stipulated Agreement and is aware of each of its terms and conditions. As necessary, Courtesy will seek to have the Confidential Stipulated Agreement filed under seal in this action to protect its confidential nature.

12. On April 9, 2019, pursuant to Vehicle Code section 3050.7, the Board issued its Order Adopting "[Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit." A true and correct copy of the Board's April 9, 2019, Order is attached hereto as Exhibit 2. Courtesy refers to the [Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit and Order Adopting "[Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit" collectively as the "Board Order Adopting Stipulated Decision and Order."

13. The Parties further entered into a Subaru Dealer Agreement and Standard Provision with a Facility Addendum dated October 17, 2019. The Facility Addendum provided that "[a]ll 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 [Dealer] Agreement pursuant to Paragraph 20.10 of the [Dealer] Agreement."[1] A true and correct copy of the October 17, 2019, Facility Addendum is attached hereto as Exhibit 3.

14. On May 21, 2020, the Parties entered into an Amendment to Existing Facility Addendum to Confidential Subaru Dealer Agreement ("Amended Facility Addendum"). A true and correct copy of the Amended Facility Addendum is attached hereto as Exhibit 4.

[1] The Facility Addendum incorporated the Confidential Stipulated Agreement into the Subaru Dealer 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.

15. The Confidential Stipulated Agreement required Courtesy provide SOA a $750,000.00 Letter of Credit ("LOC") or performance bond. In conformity with the Confidential Stipulated Agreement, Courtesy obtained the LOC from BMO Harris Bank N.A. (Standby Letter of Credit No. HACH621044OS) with SOA as the beneficiary. The LOC was designed to insure Courtesy's performance on its commitment to a new ground-up facility in Chico, California. A true and correct copy of the LOC is attached hereto as Exhibit 5.

16. As the LOC provides, "[It was] issued to support the obligations of Courtesy Automotive Group, Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement. We [BMO Harris Bank N.A.] 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 [SOA], by January 31, 2022." (*See* Exhibit 5 at page 3.)

17. The LOC further provides: "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. HACH6210440S. Please wire proceeds to Subaru of America, Inc.... (Instructions will be given at the time of the drawing).' 2. The original of this Credit and subsequent amendment(s), if any." (*See* Exhibit 5 at page 2.)

18. The LOC was amended by "Amendment no. 1" on July 7, 2020. The amended terms included changing the expiry date of the LOC to July 31, 2022. No other amendments were made to the LOC. Exhibit 5 attached hereto includes the Amendment no. 1.

19. The Board Order Adopting Stipulated Decision and Order and Confidential Stipulated Agreement provided the Board with continuing jurisdiction "solely to enforce its Order in the future if requested by either party." (*See, e.g.*, Exhibit 1 [hereto] at ¶ 18.)

///

20. The Confidential Stipulated Agreement contained a provision entitling the prevailing Party in a legal proceeding to enforce or interpret the terms of the Confidential Stipulated Agreement to its reasonable attorneys' fees and costs in the action. The provision entitles a prevailing party to attorneys' fees and costs pursuant to California Civil Code section 1717.

21. Pursuant to confidential provisions of the Confidential Stipulated Agreement, on or about September 3, 2020, Courtesy invoked the Board's continuing jurisdiction to enforce its Stipulated Decision and Order based on the Board Order Adopting Stipulated Decision and Order and the Confidential Stipulated Agreement.

22. After Courtesy invoked the Board's jurisdiction, the Board held a confidential proceeding before Administrative Law Judge Evelyn I. Matteucci ("ALJ Matteucci") pursuant to the terms of the Confidential Stipulated Agreement between Courtesy and SOA.

23. On or about March 8, 2022, BMO Harris Bank N.A. informed Courtesy that SOA was calling the LOC. Courtesy communicated with SOA in February and March 2022 requesting SOA refrain from its efforts to collect the funds secured by the LOC. Among other reasons, Courtesy communicated there was a pending decision by the Board and ALJ Matteucci concerning matters relevant to the LOC.

24. Courtesy requested SOA provide a copy of SOA's demand to BMO Harris Bank N.A. calling the LOC. SOA refused. As a result, upon information and belief, Courtesy alleges SOA demanded payment of the LOC based on the language contained in the LOC, in relevant part: "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." Courtesy expressly reserves the right to amend this Complaint upon discovering the actual demand SOA provided BMO Harris Bank N.A.

25. SOA did not call the LOC "to support the obligations of Courtesy Automotive Group, Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement." Courtesy has existing bank funding in place to complete construction of the permanent facility required by the Facility Addendum, through BMO Harris Bank N.A. Construction of the permanent facility is ongoing and has been ongoing since approximately June 2021.

26. Based on information and belief, SOA's calling of the LOC was fraudulent and a negligent misrepresentation. SOA was aware of Courtesy's ongoing facility construction without the need for further funding.

27. Based upon information and belief, on or about March 21, 2022, BMO Harris Bank N.A. released the LOC funds to SOA. Courtesy has incurred a $750,000.00 liability to BMO Harris Bank N.A. as a result of SOA calling the LOC.

28. On March 24, 2022, as the final determination in the Board's confidential proceeding, ALJ Matteucci issued a Confidential Decision Resolving Stipulated Decision and Order Dispute ("Confidential Decision"). The Confidential Decision is binding and non-appealable.

29. The Confidential Decision was in Courtesy's favor. Based on the Confidential Decision, Courtesy was the prevailing party in the confidential proceeding before the Board and ALJ Matteucci. The litigation was a proceeding to enforce or interpret the terms of the Confidential Stipulated Agreement as articulated by the Confidential Stipulated Agreement. As the prevailing party, Courtesy is entitled to recover its attorneys' fees and costs from SOA pursuant to California Civil Code section 1717.

30. Similar to the Confidential Stipulated Agreement, the Confidential Decision is confidential and is maintained outside public record pursuant to the [Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit. As a result, Courtesy does not attach hereto a copy of the Confidential Decision to maintain the document as confidential. SOA is in possession of the Confidential Decision and is aware of ALJ Matteucci's Decision. As necessary, Courtesy will seek to have the Confidential Decision filed under seal in this action to protect its confidential nature.

31. Following the Confidential Decision, on March 28, 2022, Courtesy sent SOA a demand letter requesting attorneys' fees and costs, pursuant to the attorneys' fees and costs provision of the Confidential Stipulated Agreement, as well as the return of the LOC funds in the amount of $750,000.00.

32. SOA responded to Courtesy's demand letter on the same day and refused to provide attorneys' fees and costs as required under the Confidential Stipulated Agreement or return the LOC funds.

33. Courtesy brings this action to obtain its attorneys' fees and costs incurred in the Board action because the Board possesses narrow jurisdictional limits. The Board is not authorized to award damages or attorneys' fees and costs. (Cal. Veh. Code § 3050; *see also Hardin Oldsmobile v. New Motor Vehicle Bd.* (1997) 52 Cal.App.4th 585, 597 ("While the Vehicle Code gives the Board statutory authority to hear specific protests by franchisees and also gives general authority to resolve honest differences of opinion between licensees and members of the public, it does not replace the judiciary with the Board as the forum for litigating other statutory and common law causes of action. While some of the language giving the Board authority appears broad, such as 'consider any matter,' the context of the language, especially the absence of statutory authority to award general compensatory and punitive damages, makes it evident the authority of the Board over traditional litigation involving its licensees is not plenary and, indeed, has not been broadly authorized by the Legislature.")) As a result, Courtesy is authorized to bring this action in a court having "jurisdiction over all common law and statutory claims originally cognizable in the courts" to recover its damages, attorneys' fees, and costs. (Cal. Veh. Code § 3050, subd. (e).)

34. In addition, Collateral Estoppel, also known as "Issue Preclusion," is an aspect of res judicata which precludes the relitigation of an issue which has been decided in a previous hearing. "'Collateral estoppel applies when (1) the party against whom the plea is raised was a party or was in privity with a party to the prior adjudication, (2) there was a final judgment on the merits in the prior action and (3) the issue necessarily decided in the prior adjudication is identical to the one that is sought to be relitigated.'" (*Smith v. ExxonMobil Oil Corp.* (2007) 153 Cal.App.4th 1407, 1414 (quoting *Roos v. Red* (2005) 130 Cal.App.4th 870, 879).)

35. "Thus, res judicata does not merely bar relitigation of identical claims or causes of action. Instead, in its collateral estoppel aspect, the doctrine may also preclude a party to prior litigation from redisputing issues therein decided against him, even when those issues bear on different claims raised in a later case." (*Smith, supra,* 153 Cal.App.4th at p. 1414.)

36. "It has long been recognized that collateral estoppel not only prevents relitigation of court findings, but also may be applied to the decision of an administrative agency when that agency is acting in a judicial or quasi-judicial capacity." (*Basurto v. Imperial Irrigation Dist.* (2012) 211 Cal.App.4th

866, 878 (citing *People v. Sims* (1982) 32 Cal.3d 468, 479; *Castillo v. City of Los Angeles* (2001) 92 Cal.App.4th 477, 481; *Knickerbocker v. City of Stockton* (1988) 199 Cal.App.3d 235, 242).) "'Indicia of [administrative] proceedings undertaken in a judicial capacity include a hearing before an impartial decision maker; testimony given under oath or affirmation; a party's ability to subpoena, call, examine, and cross-examine witnesses, to introduce documentary evidence, and to make oral and written argument; the taking of a record of the proceeding; and a written statement of reasons for the decision.'" (*Basurto, supra*, 211 Cal.App.4th at pp. 878-879 (quoting *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 944).)

37. Collateral Estoppel is applicable because ALJ Matteuci's March 24, 2022, Confidential Decision was produced pursuant to an administrative proceeding which was judicial in nature.

38. Collateral Estoppel precludes SOA from relitigating issues determined in the Confidential Decision, including but not limited to those issues relevant to each of Courtesy's Causes of Action below.

39. Any delay in Courtesy constructing the permanent facility is excused based on Courtesy's commercially reasonable best efforts as well as the force majeure event of the COVID-19 Pandemic. Courtesy did not materially fail to comply with the Confidential Stipulated Agreement.

FIRST CAUSE OF ACTION

(BREACH OF CONTRACT --- FAILURE TO PAY ATTORNEYS' FEES AND COSTS --- AGAINST DEFENDANT SOA)

40. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

41. Courtesy and SOA entered into the Confidential Stipulated Agreement on March 20, 2019. The Confidential Stipulated Agreement is a contract between Courtesy and SOA.

42. Courtesy properly invoked the Board's jurisdiction pursuant to the confidential terms of the Confidential Stipulated Agreement. SOA participated in the proceeding before the Board as described by the Confidential Stipulated Agreement.

43. Courtesy prevailed in the Board proceeding and was the prevailing party in ALJ 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.

///

52. Courtesy properly invoked the Board's jurisdiction pursuant to the confidential terms of the Confidential Stipulated Agreement. SOA participated in the proceeding before the Board as described by the Confidential Stipulated Agreement.

53. Courtesy prevailed in the Board proceeding and was the prevailing party in ALJ Matteucci's Confidential Decision. The Confidential Decision is binding and non-appealable.

54. 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.

55. On March 28, 2022, Courtesy sent a demand letter to SOA seeking its reasonable attorneys' fees and costs.

56. SOA refused to provide Courtesy its reasonable attorneys' fees and costs incurred in the action for enforcing and interpreting the terms of the Confidential Stipulated Agreement before the Board and ALJ Matteucci.

57. The law implies in every contract a covenant of good faith and fair dealing. (*See Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720 (recognizing the covenant in the insurance context); *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 683 (recognizing the covenant in the employment law context); *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371 (recognizing the covenant in the commercial lease context); Rest.2d Contracts § 205 (stating "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement").)

58. As the Restatement describes, "Subterfuges and evasions violate the obligation of good faith in the performance even though the actor believes his conduct to be justified. But the obligation goes further: bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. A complete catalogue of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify

terms, and interference with or failure to cooperate in the other party's performance." (Rest.2d Contracts § 205, Comment (d).)

59. SOA failed to comply with the covenant of good faith and fair dealing implied in the Confidential Stipulated Agreement.

60. SOA willfully rendered imperfect performance by failing to provide Courtesy its reasonable attorneys' fees and costs.

61. As a result of SOA's breach of the covenant of good faith and fair dealing implied in the Confidential Stipulated Agreement, Courtesy has been denied its reasonable attorneys' fees and costs which it is due.

62. 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.

63. 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.

THIRD CAUSE OF ACTION

(ACCOUNT STATED – AGAINST DEFENDANT SOA)

64. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

65. "An account stated is an agreement, based on prior transactions between the parties, that the items of an account are true and that the balance struck is due and owing." (*Maggio, Inc. v. Neal* (1987) 196 Cal.App.3d 745, 752 (see *Gleason v. Klamer* (1980) 103 Cal.App.3d 782, 786).) "To be an account stated, 'it must appear that at the time of the statement an indebtedness from one party to the other existed, that a balance was then struck and agreed to be the correct sum owing from the debtor to the creditor, and that the debtor expressly or impliedly promised to pay to the creditor the amount thus determined to be owing.'" (*Maggio, supra,* 196 Cal.App.3d at pp. 752-753 (quoting *H. Russell Taylor's Fire Prevention Service, Inc. v. Coca Cola Bottling Corp.*, (1979) 99 Cal.App.3d 711, 726).)

66. 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.

67. 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 totaling $213,703.34 as of March 28, 2022, incurred in the Board proceeding.

68. SOA refused to provide Courtesy its reasonable attorneys' fees and costs incurred in the action for enforcing and interpreting the terms of the Confidential Stipulated Agreement before the Board and ALJ Matteucci.

69. In the Confidential Stipulated Agreement, Courtesy and SOA agreed the prevailing party is entitled to attorneys' fees and costs. As a result, SOA impliedly agreed it would pay Courtesy's attorneys' fees and costs in the event it was the prevailing party in the Board proceeding.

70. As a result, SOA is liable for Courtesy's 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.

71. 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.

FOURTH CAUSE OF ACTION

(BREACH OF CONTRACT --- CALLING ON THE LETTER OF CREDIT --- AGAINST DEFENDANT SOA)

72. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

73. Courtesy and SOA entered into the Confidential Stipulated Agreement on March 20, 2019, which was adopted by the Board on April 9, 2019. The Confidential Stipulated Agreement is a

contract between Courtesy and SOA.

74. The Confidential Stipulated Agreement required Courtesy to provide SOA the LOC to insure Courtesy's performance of its commitment to the Permanent Facility.

75. Courtesy and SOA executed the Facility Addendum on October 17, 2019.

76. The Facility Addendum was amended on May 21, 2020.

77. Courtesy obtained and provided SOA the LOC on June 22, 2020, in conformity with the Confidential Stipulated Agreement and the Facility Addendum amended on May 21, 2020.

78. The LOC was issued "to support the obligations of Courtesy Automotive Group, Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement."

79. The LOC funds only become available to SOA if SOA provided documents to BMO Harris Bank N.A. stating "Courtesy Automotive Group, Inc. has failed to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement."

80. On March 8, 2022, Courtesy first learned SOA made demands to BMO Harris Bank N.A in order to obtain the LOC funds totaling $750,000.00. SOA refused to provide a copy of these demands to Courtesy.

81. Upon information and belief, SOA's demands were based on Courtesy allegedly failing to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement between Courtesy and SOA.

82. At the time SOA called the LOC, it was aware Courtesy was in the process of constructing the permanent facility described in the Facility Addendum as of the ground-breaking in approximately June 2021.

83. Upon information and belief, the LOC funds were released to SOA by BMO Harris Bank N.A. on or about March 21, 2022.

84. "If its presentation is honored, the beneficiary warrants: (1) to the issuer, any other person to whom the presentation is made, and the applicant that there is no fraud or forgery of the kind described in subdivision (a) of Section 5109; and (2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit." (Cal. Com. Code § 5110.)

85. The express terms which would allow SOA to call upon the LOC funds have not been met because Courtesy has not materially failed to fulfill its obligations under the Facility Addendum Amendment. The COVID-19 Pandemic represented a *force majeure* event precluding Courtesy's timely obligations under the Facility Addendum. Courtesy exercised commercially reasonable best efforts in having the permanent facility constructed. SOA is precluded based on the doctrine of Collateral Estoppel from arguing Courtesy did not exercise commercially reasonable best efforts, that the COVID-19 Pandemic was not a *force majeure* event precluding Courtesy's timely obligations under the Facility Addendum, or that Courtesy materially failed to comply with the Facility Addendum Amendment or the Stipulated Confidential Agreement.

86. The LOC was issued to insure Courtesy did not materially fail to comply with the conditions stated in the Facility Addendum Amendment,[2] however, construction of the permanent facility is ongoing and the project is fully funded. SOA's calling on the LOC was in breach of the Stipulated Confidential Agreement and the LOC funds called by SOA in no way supports Courtesy's obligations as described in the LOC.

87. As a result of SOA's breach of contract, Courtesy has been damaged in the amount of the LOC – $750,000.00.

88. SOA is liable for the breach of contract in the amount of $750,000.00.

89. In addition, 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.

90. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery of the LOC funds.

[2] The Facility Addendum incorporated the Stipulated Confidential Agreement by reference and the Stipulated Confidential Agreement provided for the determination of whether Courtesy materially failed to comply with conditions therein stated.

91. SOA is liable for Courtesy's damages in the amount of $750,000.00 and Courtesy's reasonable attorneys' fees and costs in this action concerning the LOC. SOA is also liable for pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION

(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING --- CALLING ON THE LETTER OF CREDIT --- AGAINST DEFENDANT SOA)

92. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

93. Courtesy and SOA entered into the Confidential Stipulated Agreement on March 20, 2019, which was adopted by the Board on April 9, 2019. The Confidential Stipulated Agreement is a contract between Courtesy and SOA.

94. The Confidential Stipulated Agreement required Courtesy to provide SOA the LOC to insure Courtesy's performance of its commitment to the Permanent Facility.

95. Courtesy and SOA executed the Facility Addendum on October 17, 2019.

96. The Facility Addendum was amended on May 21, 2020.

97. Courtesy obtained and provided SOA the LOC on June 22, 2020, in conformity with the Confidential Stipulated Agreement and the Facility Addendum amended on May 21, 2020.

98. The LOC was issued "to support the obligations of Courtesy Automotive Group, Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement."

99. Pursuant to the LOC, the LOC funds only become available to SOA if SOA provided documents to BMO Harris Bank N.A. stating "Courtesy Automotive Group, Inc. has failed to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement...."

100. On March 8, 2022, Courtesy first learned SOA made demands to BMO Harris Bank N.A. in order to obtain the LOC funds totaling $750,000.00. SOA refused to provide a copy of these demands to Courtesy.

101. Upon information and belief, SOA's demands were based on Courtesy allegedly failing to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement between Courtesy and SOA.

102. At the time SOA called the LOC, it was aware Courtesy was in the process of constructing the permanent facility described in the Facility Addendum as of the ground-breaking in approximately June 2021.

103. Upon information and belief, the LOC funds were released to SOA by BMO Harris Bank N.A. on or about March 21, 2022.

104. "If its presentation is honored, the beneficiary warrants: (1) to the issuer, any other person to whom the presentation is made, and the applicant that there is no fraud or forgery of the kind described in subdivision (a) of Section 5109; and (2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit." (Cal. Com. Code § 5110.)

105. The express terms which would allow SOA to call upon the LOC funds have not been met because Courtesy has not materially failed to fulfill its obligations under the Facility Addendum Amendment. The COVID-19 Pandemic represented a *force majeure* event precluding Courtesy's timely obligations under the Facility Addendum. Courtesy exercised commercially reasonable best efforts in the timely construction of the permanent facility. SOA is precluded based on the doctrine of Collateral Estoppel from arguing Courtesy did not exercise commercially reasonable best efforts, that the COVID-19 Pandemic was not a *force majeure* event precluding Courtesy's timely obligations under the Facility Addendum, or that Courtesy materially failed to comply with the Facility Addendum Amendment or the Stipulated Confidential Agreement.

106. The LOC was issued to insure Courtesy did not materially fail to comply with the conditions stated in the Facility Addendum Amendment, however, construction of the permanent facility is ongoing and the project is fully funded. SOA's calling on the LOC was in breach of the Stipulated Confidential Agreement and the LOC funds are not going toward supporting Courtesy's obligations as described in the LOC.

107. The law implies in every contract a covenant of good faith and fair dealing. (*See Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720 (recognizing the covenant in the insurance context); *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 683 (recognizing the covenant in the employment law context); *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th

342, 371 (recognizing the covenant in the commercial lease context); Rest.2d Contracts § 205 (stating "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement").)

108. As the Restatement describes, "Subterfuges and evasions violate the obligation of good faith in the performance even though the actor believes his conduct to be justified. But the obligation goes further: bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. A complete catalogue of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance." (Rest.2d Contracts § 205, Comment (d).)

109. SOA unreasonably and without justification called upon the LOC before a determination of whether Courtesy had materially failed to comply with its obligations had been reached.

110. SOA violated the covenant of good faith and fair dealing in the Confidential Stipulated Agreement by calling upon the LOC.

111. SOA refused to return the LOC funds following ALJ Matteuci's Confidential Decision.

112. SOA's calling of the LOC was in breach of the covenant of good faith and fair dealing.

113. As a result of SOA's breach, Courtesy has been damaged in the amount of the LOC – $750,000.00.

114. SOA is liable for the breach of the implied covenant in the amount of $750,000.00.

115. In addition, 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.

116. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery of the LOC funds.

117. SOA is liable for Courtesy's damages in the amount of $750,000.00 and Courtesy's reasonable attorneys' fees and costs in this action concerning the LOC. SOA is also liable for pre-judgment and post-judgment interest.

SIXTH CAUSE OF ACTION

(VIOLATION OF UNFAIR COMPETITION LAW – Business and Professions Code section 17200 et seq. --- AGAINST DEFENDANT SOA)

118. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

119. Courtesy and SOA entered into the Confidential Stipulated Agreement on March 20, 2019, which was adopted by the Board on April 9, 2019. The Confidential Stipulated Agreement is a contract between Courtesy and SOA.

120. The Confidential Stipulated Agreement required Courtesy to provide SOA the LOC to insure Courtesy's performance of its commitment to the Permanent Facility.

121. Courtesy and SOA executed the Facility Addendum on October 17, 2019.

122. The Facility Addendum was amended on May 21, 2020.

123. Courtesy obtained and provided SOA the LOC on June 22, 2020, in conformity with the Confidential Stipulated Agreement and the Facility Addendum amended on May 21, 2020.

124. The LOC was issued "to support the obligations of Courtesy Automotive Group, Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement."

125. The LOC funds only become available to SOA if SOA offered documents to BMO Harris Bank N.A. stating "Courtesy Automotive Group, Inc. has failed to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement...."

126. On March 8, 2022, Courtesy first learned SOA made demands to BMO Harris Bank N.A. in order to obtain the LOC funds totaling $750,000.00. SOA refused to provide a copy of these demands to Courtesy.

127. Upon information and belief, SOA's demands were based on Courtesy allegedly failing to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement between Courtesy and SOA.

128. At the time SOA called the LOC, it was aware Courtesy was in the process of constructing the permanent facility described in the Facility Addendum as of the ground-breaking in approximately June 2021.

129. Upon information and belief, the LOC funds were released to SOA by BMO Harris Bank N.A. on or about March 21, 2022.

130. "If its presentation is honored, the beneficiary warrants: (1) to the issuer, any other person to whom the presentation is made, and the applicant that there is no fraud or forgery of the kind described in subdivision (a) of Section 5109; and (2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit." (Cal. Com. Code § 5110.)

131. The express terms which would allow SOA to call upon the LOC funds have not been met because Courtesy has not materially failed to fulfill its obligations under the Facility Addendum Amendment. The COVID-19 Pandemic represented a *force majeure* event precluding Courtesy's timely obligations under the Facility Addendum. Courtesy exercised commercially reasonable best efforts in having the permanent facility constructed. SOA is precluded based on the doctrine of Collateral Estoppel from arguing Courtesy did not exercise commercially reasonable best efforts, that the COVID-19 Pandemic was not a *force majeure* event precluding Courtesy's timely obligations under the Facility Addendum, or that Courtesy materially failed to comply with the Facility Addendum Amendment or the Stipulated Confidential Agreement.

132. The LOC was issued to insure Courtesy did not materially fail to comply with the conditions stated in the Facility Addendum Amendment, however, construction of the permanent facility is ongoing and the project is fully funded. SOA's calling on the LOC was in breach of the Stipulated Confidential Agreement and the LOC funds are not going toward supporting Courtesy's obligations as described in the LOC.

133. Business and Professions Code section 17200 provides unfair competition "shall mean and include any unlawful, unfair or fraudulent business act or practice." (Cal. Bus. & Prof. Code § 17200.)

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134. "Notwithstanding Section 3369 of the Civil Code, specific or preventive relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition." (Bus. & Prof. Code § 17202.) "Actions for relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction … by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code § 17204.)

135. Upon information and belief, SOA communicated with BMO Harris Bank N.A. regarding Courtesy's alleged failure to fulfill obligations required by the Facility Addendum and Dealer Agreement. These communications are unfair and fraudulent.

136. Courtesy is building the permanent Subaru facility, has obtained all necessary funding, and any untimely performance was excused pursuant to the Facility Addendum, Dealer Agreement, and Stipulated Confidential Agreement. Courtesy exercised commercially reasonable best efforts to timely construct the permanent facility, and the COVID-19 Pandemic represented a force majeure event precluding Courtesy's timely obligations under the Facility Addendum. Courtesy did not materially fail to comply with the Facility Addendum Amendment. SOA is precluded based on the doctrine of Collateral Estoppel from arguing Courtesy did not exercise commercially reasonable best efforts, that the COVID-19 Pandemic was not a *force majeure* event precluding Courtesy's timely obligations under the Facility Addendum, or that Courtesy materially failed to comply with the Facility Addendum Amendment or the Stipulated Confidential Agreement.

137. SOA's actions of calling upon the LOC are unlawful, unfair, and fraudulent business acts or practices.

138. SOA is liable to Plaintiff for the harm caused by SOA's unlawful, unfair, and fraudulent communications in an amount equal to the LOC funds – $750,000.00.

139. In addition, 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.

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140. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery of the LOC funds.

141. SOA is liable for Courtesy's damages in the amount of $750,000.00 and Courtesy's reasonable attorneys' fees and costs in this action concerning the LOC. SOA is also liable for pre-judgment and post-judgment interest.

SEVENTH CAUSE OF ACTION

(INTENTIONAL MISREPRESENTATION --- AGAINST DEFENDANT SOA)

142. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

143. Pursuant to Civil Code section 1572, actual fraud includes any of the following acts committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into a contract:

a) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

b) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

c) The suppression of that which is true, by one having knowledge or belief of the fact;

d) A promise made without any intention of performing it; or,

e) Any other act fitted to deceive.

144. Here, SOA intentionally misled BMO Harris Bank N.A. by calling upon the LOC when Courtesy had not materially failed to comply with its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement or the Stipulated Confidential Agreement. SOA intended for BMO Harris Bank N.A. to rely on the representation of Courtesy's alleged failure in SOA's communication calling on the LOC.

145. SOA refused to provide Courtesy a copy of its demand for the LOC to BMO Harris Bank N.A., however, the LOC required a demand be made by SOA sending a beneficiary's certificate stating

Courtesy had failed to meet its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement.

146. In order to obtain the LOC funds, SOA was required to send such a document representing Courtesy had failed to meet its obligations.

147. "If its presentation is honored, the beneficiary warrants: (1) to the issuer, any other person to whom the presentation is made, and the applicant that there is no fraud or forgery of the kind described in subdivision (a) of Section 5109; and (2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit." (Cal. Com. Code § 5110.)

148. Based on information and belief, SOA intentionally and willfully presented BMO Harris Bank N.A. with the document described in the LOC fraudulently stating Courtesy failed to meet its obligations.

149. BMO Harris Bank N.A. reasonably relied on SOA's certified document in releasing the LOC funds to SOA on or about March 21, 2022.

150. SOA's actions constitute an intentional misrepresentation, deceit, or concealment of a material fact known to SOA with the intention on the part of SOA to obtain the LOC funds without the condition of Courtesy having materially failed its obligations to construct the permanent facility as provided for in the Facility Addendum, the Dealer Agreement, and the Stipulated Confidential Agreement.

151. SOA's fraudulent misrepresentation harmed Courtesy in the amount of the LOC – $750,000.00.

152. In addition, 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.

153. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery

of the LOC funds.

154. SOA is liable for Courtesy's damages in the amount of $750,000.00 and Courtesy's reasonable attorneys' fees and costs in this action concerning the LOC. SOA is also liable for pre-judgment and post-judgment interest.

155. Moreover, SOA's actions and communications constitute oppression, fraud, or malice within the meaning of California Civil Code section 3294.

156. Under California Civil Code section 3294, "Fraud" is defined as "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." Pursuant to California Civil Code section 3294, Courtesy is entitled to recover punitive damages due to SOA's commission of fraud as described herein. SOA is liable for punitive damages up to nine (9) times Courtesy's actual damages.

EIGHTH CAUSE OF ACTION

(NEGLIGENT MISREPRESENTATION)

157. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

158. Upon information and belief, SOA issued its demand for the LOC by sending a Beneficiary's Certificate to BMO Harris Bank N.A.

159. Upon information and belief, in its demand, SOA represented to BMO Harris Bank N.A. that Courtesy had materially failed to meet its obligations pursuant to the Facility Addendum and was therefore entitled to the LOC funds.

160. Thereafter, on or about March 21, 2022, BMO Harris Bank N.A. released the LOC funds to SOA.

161. SOA represented Courtesy allegedly failed to comply with its Courtesy under the Facility Addendum. SOA had no reasonable grounds for believing its representation was true when made.

162. SOA intended for BMO Harris Bank N.A. to rely on its representation.

163. BMO Harris Bank N.A. reasonably relied on SOA's representation.

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164. SOA's actions constituted a negligent misrepresentation. SOA negligently misled BMO Harris Bank N.A. by calling upon the LOC when Courtesy had not materially failed to comply with its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement or the Stipulated Confidential Agreement. SOA knew or should have known Courtesy was complying with the Facility Addendum and any delays were excused pursuant to the terms of the Stipulated Confidential Agreement.

165. SOA's negligent misrepresentation harmed Courtesy in the amount of the LOC – $750,000.00.

166. In addition, 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.

167. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery of the LOC funds.

168. SOA is liable for Courtesy's damages in the amount of $750,000.00 and Courtesy's reasonable attorneys' fees and costs in this action concerning the LOC. SOA is also liable for pre-judgment and post-judgment interest.

NINTH CAUSE OF ACTION

(UNJUST ENRICHMENT --- AGAINST DEFENDANT SOA)

169. Plaintiff incorporates by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

170. "We begin with the law of restitution. An individual is required to make restitution if he or she is unjustly enriched at the expense of another." (*First Nationwide Savings v. Perry* (1992) 11 Cal.App.4th 1657, 1662 (see Rest., Restitution, § 1; *California Federal Bank v. Matreyek* (1992) 8 Cal.App.4th 125, 131).) "A person is enriched if the person receives a benefit at another's expense." (*First Nationwide Savings, supra,* 11 Cal.App.4th at p. 1662 (see Rest., Restitution, supra, § 1, com.

a).)

171. The LOC required its funds be issued "to support the obligations of Courtesy Automotive Group, Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement."

172. SOA called the LOC funds from BMO Harris Bank N.A. and has thereafter refused to use the funds to support the obligations of Courtesy. The terms of the LOC required the funds be used to support Courtesy's obligations.

173. By calling the LOC, SOA is treating the LOC as if it constituted an alleged liquidated damages provision. California Civil Code section 1671 concerns whether a liquidated damages clause is enforceable.

174. "A liquidated damages clause will generally be considered unreasonable, and hence unenforceable under section 1671(b), if it bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a breach. The amount set as liquidated damages must represent the result of a reasonable endeavor by the parties to estimate a fair average compensation for any loss that may be sustained. In the absence of such relationship, a contractual clause purporting to predetermine damages must be construed as a penalty. A penalty provision operates to compel performance of an act and usually becomes effective only in the event of default upon which a forfeiture is compelled without regard to the damages sustained by the party aggrieved by the breach. The characteristic feature of a penalty is its lack of proportional relation to the damages which may actually flow from failure to perform under a contract." (*Ridgley v. Topa Thrift & Loan Assn.* (1998) 17 Cal.4th 970, 977 (internal citations omitted) ("*Ridgley*").)

175. Here, SOA's treatment of the LOC as a liquidated damages provision violates California Civil Code section 1671 because it is being used as an unenforceable penalty provision. The $750,000.00 amount of the LOC lacks any proportional relationship to any of SOA's actual damages. SOA has not suffered any actual damages as a result of any delays in the permanent facility's construction. Courtesy continues to sell as many Subaru vehicles as SOA is capable of providing. Courtesy could not have sold any more new Subaru vehicles than it sold from 2020 through present because SOA was unable to provide additional vehicle inventory as a result of ongoing supply constraints.

176. SOA's receipt of the LOC funds is an unjust enrichment. SOA's use of the LOC provision as a penalty should be considered void pursuant to California Civil Code section 1671. In addition, SOA is retaining the LOC funds instead of using the funds to support the obligations of Courtesy as outlined in the Facility Addendum to the Subaru Dealer Agreement.

177. Courtesy is entitled to receive restitution from SOA in the amount of the LOC funds SOA received in the amount of $750,000.00.

178. In addition, 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.

179. The LOC was obtained and issued pursuant to the terms of the Confidential Stipulated Agreement. SOA is also liable to Courtesy for its attorneys' fees and costs incurred in seeking recovery of the LOC funds.

180. SOA is liable to Courtesy in the amount of $750,000.00. SOA is also liable for Courtesy's reasonable attorneys' fees and costs in this action concerning the LOC. SOA is further liable for pre-judgment and post-judgment interest.

[*intentionally left blank*]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment as follows and as requested for each cause of action:

A. For an award of Courtesy's attorneys' fees and costs incurred in the underlying Board proceeding in the amount of $213,703.34 as of March 28, 2022.

B. For an award of Courtesy's further attorneys' fees and costs incurred in seeking the award of its attorneys' fees and costs incurred in the underlying Board proceeding in an amount to be determined at the time of the award.

C. For an award of Courtesy's damages as a result of SOA calling the LOC in the amount of $750,000.00.

D. For an award of Courtesy's attorneys' fees and costs incurred in seeking recovery of the LOC fund in an amount to be determined at the time of the award.

E. For an award of punitive damages up in an amount equal to nine (9) times Courtesy's actual damages.

F. For an award of pre-judgment interest at the legal rate.

G. For an award of post-judgment interest at the legal rate.

H. For such and other further relief as this Court deems just and proper.

Dated: April 6, 2022

LAW OFFICES OF
GAVIN M. HUGHES

By Gavin Hughes
Gavin M. Hughes
Robert A. Mayville, Jr.
Attorneys for Plaintiffs

EXHIBIT 1

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

Attorneys for Respondent
Subaru of America, Inc.

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In The Matter Of The Protest Of: COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO, Protestant, v. SUBARU OF AMERICA, INC., Respondent.	Protest No. PR-2570-18 **[PROPOSED] STIPULATED DECISION AND ORDER OF THE BOARD RESOLVING PROTEST AND LAWSUIT**

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

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

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

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

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

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

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

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

10. The Sales Premises are currently occupied by a Hyundai dealer and are under renovation for the purposes of operating a Hyundai dealership. The Subaru constellation logo and 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.

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

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

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

DATED: 3/19/19, 2019

COURTESY AUTOMOTIVE GROUP, INC. DBA COURTESY SUBARU OF CHICO

By _____

Print Name: Shahram Mirhamjoo

Title: President

DATED: March 20, 2019

SUBARU OF AMERICA, INC.

By _____

Print Name: Anthony J. Graziano

Title: Vice President, Western Region

APPROVED AS TO FORM AND SUBSTANCE:

DATED: March 20, 2019

NELSON, MULLINS, RILEY & SCARBOROUGH

By _____
Lisa M. Gibson
Crispin L. Collins
Attorneys for Subaru of America, Inc.

DATED: March 19, 2019

LAW OFFICES OF GAVIN M. HUGHES

By _____
Gavin M. Hughes, Esq.
Attorneys for Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico

EXHIBIT 2

NEW MOTOR VEHICLE BOARD
1507 – 21ST Street, Suite 330
Sacramento, California 95811
Telephone: (916) 445-1888

CERTIFIED MAIL

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

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

Protestant,

v.

SUBARU OF AMERICA, INC.,

Respondent.

Protest No. PR-2570-18

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

To: Gavin M. Hughes, Esq.
Robert A. Mayville, Jr., Esq.
Attorneys for Protestant
LAW OFFICES OF GAVIN M. HUGHES
3436 American River Drive, Suite 10
Sacramento, California 95864

Lisa M. Gibson, Esq.
Crispin L. Collins, Esq.
Attorneys for Respondent
NELSON MULLINS RILEY & SCARBOROUGH
19191 South Vermont Avenue, Suite 900
Torrance, California 90502

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Pursuant to the provisions of Vehicle Code section 3050.7, the "[Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit," relating to the above-entitled matter, is hereby adopted by the New Motor Vehicle Board.

SO ORDERED.

DATED: April 9, 2019

NEW MOTOR VEHICLE BOARD

By _____
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

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

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-

Exhibit Name: Executed Dealer Agreement

Dealer Number: 401763

Signature:	Role:	Date:	Signed By:
jpaj4931	retailer	10/16/2019 03:09 PM	Mr. Jerry Pajouh
Anthony J Graziano	region	10/17/2019 01:04 PM	Anthony Graziano

EXHIBIT 4

SUBARU

Subaru of America, Inc.
Western Region
Galleria North Tower
720 S. Colorado Blvd., 3rd Floor, Ste 300-N
Glendale, CO 80246
720-514-4200
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>

Exhibit Name: Amendment to Dealer Agreement

Dealer Number: 401763

Signature:	Role:	Date:	Signed By:
jpaj4931	retailer	05/21/2020 05:01 PM	Mr. Jerry Pajouh
Anthony J Graziano	region	05/22/2020 09:18 AM	Anthony Graziano

EXHIBIT 5

BMO Harris Bank

BMO Harris Bank N.A.

STANDBY LETTERS OF CREDIT
C/O Bank of Montreal
250 Yonge Street 11th Floor
Toronto, Ontario M5B 2L7
Tel: 1-877 801-0414
Fax: 1-877-801-7707
SWIFT: HATRUS44

DOCUMENTARY COLLECTIONS
C/O Bank of Montreal
250 Yonge Street 11th Floor
Toronto, Ontario, M5B 2L7
Tel: 1-888-258 6378
Fax: 1 888-258-6383
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

BMO Harris Bank

BMO Harris Bank N.A.

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

23N1L17078
Subaru of America Inc.

EVIDENCE 10

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

EXHIBIT 1

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.:

[UNREDACTED] PETITION

MAY NOT BE EXAMINED WITHOUT COURT ORDER-CONTAINS MATERIAL 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)[1] 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

[1] 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 Courtesy did not materially fail to comply with the March 20, 2019, [Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit, Exhibit 1 to Confidential Agreement to Stipulated Decision and Order of the Board, Filed under Seal, and the April 9, 2019, Order Adopting "[Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit" (collectively, "Stipulated Decision"). The Confidential Decision denied SOA's efforts to terminate Courtesy's Subaru Dealer Agreement and Standard Provisions ("Dealer Agreement"). ALJ Matteucci's Confidential Decision is binding and non-appealable pursuant to the terms of the Stipulated Decision paragraphs 28(b) and 28(c).

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. The parties incorporated the Stipulated Decision by reference into Courtesy's Dealer Agreement. (*See* Exhibit 2 at ¶ 5.)

13. The Stipulated Decision at paragraph 39 required Courtesy and SOA to "cooperate fully with each other in the performance of this Confidential Agreement, and will execute such additional documents or instruments as may reasonably be required to carry out the intent of the Parties." (Exhibit 1 at ¶ 39.)

14. The Stipulated Decision at paragraph 29 also required the parties to "not do anything to interfere with or inhibit the ability of any other Party to comply with their respective obligations under the terms of the Confidential Agreement." (Exhibit 1 at ¶ 29.)

15. Pursuant to the terms of the Stipulated Decision, Courtesy agreed to remodel a temporary Subaru facility while continuing efforts to complete its multi-franchise facility project to provide a permanent Subaru facility. (Exhibit 1 at ¶¶ 15-16.)

16. Courtesy completed the required renovations to the temporary facility at 896 East Avenue, Chico, California 95926 and is currently operating its Subaru franchise at this location.

17. Courtesy and SOA entered into an Amendment to the Facility Addendum to Courtesy's Dealer Agreement dated May 21, 2020, concerning the dates to complete milestones for the permanent facility. (*See* Exhibit 2 at ¶ 6.) The milestones in the Amended Facility Addendum provided for Courtesy to obtain final permits by July 31, 2020; commence construction September 30, 2020; complete construction by December 31, 2021; and obtain final verification by January 31, 2022. (*See* Exhibit 2 at ¶ 165.)

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

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

19. Courtesy employed commercially reasonable best efforts to secure permits for the facility project as well as start construction of the sales facilities and service facility at the dates provided in the Stipulated Decision and Amended Facility Addendum. Delays to the facility project have frustrated Courtesy as much, if not more so, than any of Courtesy's franchisors. The project delays significantly harmed Courtesy and would have been avoided were it possible to do so. At no time did Courtesy suspend its efforts, even upon the onset of the COVID-19 Pandemic.

20. Despite Courtesy's ongoing efforts to obtain facility permits in the middle of the COVID-19 Pandemic, on August 24, 2020, SOA issued Courtesy a Notice of Non-Compliance, pursuant to the terms of the Stipulated Decision. SOA's notice alleged Courtesy failed to comply with the Stipulated Decision by purportedly failing to comply with the milestones set forth in the Stipulated Decision.

21. On September 3, 2020, Courtesy filed a Request for Appointment of ALJ to Determine Compliance with Stipulated Decision pursuant to paragraph 28(b) of the Stipulated Decision. (Exhibit 1 at ¶ 28(b).) Paragraph 28(b) specifically provided the Board "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." The Board timely appointed ALJ Matteucci to hear the dispute.

22. Following discovery, deposition designations, briefing, and witness testimony, ALJ Matteucci issued the March 24, 2022, Confidential Decision. The Confidential Decision determined SOA failed to prove Courtesy to be in material breach of the Stipulated Decision and the delays in

[2] The annexation occurred in November 2017 and was completed in approximately a third the usual time.

performance are excused as they are due to circumstances beyond its control. As a result, ALJ Matteucci denied SOA's request to terminate Courtesy's Subaru Dealer Agreement.

23. ALJ Matteucci's Confidential Decision is binding and non-appealable. The Stipulated Decision provides in pertinent part at paragraphs 28(b) and 28(c) that "'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."

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

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

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

dealer principal (Mr. Pajouh) is allegedly required to "mitigate his damages" based on SOA's pending writ petition.

27. SOA's writ petition is meritless. ALJ Matteucci's Confidential Decision was authorized by paragraph 28(b) of the Stipulated Decision. (*See* Exhibit 1 at ¶ 28(b).) SOA is not permitted to seek a writ petition to dispute ALJ Matteucci's binding, non-appealable Confidential Decision pursuant to Stipulated Decision paragraphs 28(b) and 28(c). (*See* Exhibit 1 at ¶ 28(b) and 28(c).)

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

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

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

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

[3] 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. SOA's position contained in the May 25, 2022, ignores the legal effect of ALJ Matteucci's binding, non-appealable Confidential Decision. The Decision precluded SOA from terminating Courtesy's franchise. Courtesy must continue its efforts to construct the permanent facility pursuant to the terms of the Stipulated Decision and the Dealer Agreement. SOA cannot unilaterally decide Courtesy's permanent facility "should not be built" when the Stipulated Decision and Dealer Agreement remain in effect and each require the parties continued good-faith performance.[4]

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

[4] As noted above, ALJ Matteucci's Confidential Decision was within the Board's jurisdiction. Paragraph 28 of the Stipulated Decision reserved the Board's continuing jurisdiction to determine whether there has been a failure by Courtesy to materially comply with the Stipulated Decision. (Exhibit 1 at ¶ 28(b).) Within that jurisdiction, the Confidential Decision reached a determine of whether Courtesy materially failed to comply with the Stipulate Decision. (*See* Exhibit 2.)

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

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

FIRST VIOLATION:

SOA violates California Vehicle Code section 11713.3(l) by treating Courtesy's Dealer Agreement as terminated or modified in violation of Section 3060

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

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

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

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

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

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

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

43. As noted above, SOA sought to terminate Courtesy's Dealer Agreement pursuant to the Stipulated Decision. Following the proceeding called for in the Stipulated Decision, ALJ Matteucci issued the Confidential Decision finding SOA was unable to show Courtesy materially failed to comply with the Stipulated Decision and denying SOA's efforts to terminate Courtesy's Dealer Agreement.

44. As a result of the Confidential Decision, the Stipulated Decision, and Courtesy's Dealer Agreement remain in full force and effect. Courtesy is required to continue construction of the permanent facility and SOA is required to "cooperate fully with [Courtesy] in the performance of this Confidential Agreement, and will execute such additional documents or instruments as may reasonably be required to carry out the intent of the Parties." (Exhibit 1 at ¶ 39.) This provision requires SOA to provide the Sign Package necessary to permit Courtesy to complete construction of the permanent facility. Moreover, the parties incorporated the Stipulated Decision, including the provision in paragraph 39, by reference into Courtesy's Dealer Agreement. (*See* Exhibit 2 at ¶ 5.)

45. Similarly, Paragraph 29 of the Stipulated Decision required the parties "not do anything to interfere with or inhibit the ability of any other Party to comply with their respective obligations under the terms of the Confidential Agreement." (Exhibit 1 at ¶ 29.) SOA is treating Paragraph 29 and other provisions of the Stipulated Decision and Dealer Agreement as terminated by refusing to provide the

Sign Package.

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

47. In addition, by refusing to provide the Sign Package, SOA is modifying the Stipulated Decision and Courtesy's Dealer Agreement by unilaterally preventing Courtesy from completing the permanent facility as authorized in the agreements. This modification will substantially affect Courtesy's investment as well as its sales and service obligations because it will be unable to complete and utilize a permanent facility in which Courtesy has already invested over $14 million.

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

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

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

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

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

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

53. Courtesy respectfully 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. Upon receipt of the DMV's written report, Courtesy requests the Board make a determination whether or not to order the DMV to take action against SOA's license.

SECOND VIOLATION:

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

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

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

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

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

[5] As noted above, SOA writ petition in this instance is unauthorized and meritless.

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

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

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

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

61. Courtesy respectfully 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. Upon receipt of the DMV's written report, Courtesy requests the Board make a determination whether or not to order the DMV to take action against SOA's license.

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REQUEST FOR RELIEF

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

A. 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. Upon receipt of the DMV's written report, Courtesy requests the Board make a determination whether or not to order the DMV to take action against SOA's license pursuant to California Vehicle Code section 3050 subdivision (b)(3).

Dated: June 20, 2022

LAW OFFICES OF
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In The Matter Of The Protest Of: COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO, Protestant, v. SUBARU OF AMERICA, INC., Respondent.	Protest No. PR-2570-18 **[PROPOSED] STIPULATED DECISION AND ORDER OF THE BOARD RESOLVING PROTEST AND LAWSUIT**

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

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

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

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

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

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

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

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

10. The Sales Premises are currently occupied by a Hyundai dealer and are under renovation for the purposes of operating a Hyundai dealership. The Subaru constellation logo and 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.

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

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

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

DATED: 3/19/19, 2019

COURTESY AUTOMOTIVE GROUP, INC. DBA COURTESY SUBARU OF CHICO

By _____

Print Name: Shahram Mihanpajouh

Title: President

DATED: March 20, 2019

SUBARU OF AMERICA, INC.

By _____

Print Name: Anthony J. Graziano

Title: Vice President, Western Region

APPROVED AS TO FORM AND SUBSTANCE:

DATED: March 20, 2019

NELSON, MULLINS, RILEY & SCARBOROUGH

By _____
Lisa M. Gibson
Crispin L. Collins
Attorneys for Subaru of America, Inc.

DATED: March 19, 2019

LAW OFFICES OF GAVIN M. HUGHES

By _____
Gavin M. Hughes, Esq.
Attorneys for Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico

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Crispin L. Collins, Bar No. 311755
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Attorneys for Respondent
Subaru of America, Inc..

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In The Matter Of The Protest Of: COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO, Protestant, v. SUBARU OF AMERICA, INC., Respondent.	Protest No. PR-2570-18 **EXHIBIT 1 TO CONFIDENTIAL AGREEMENT TO STIPULATED DECISION AND ORDER OF THE BOARD, FILED UNDER SEAL**

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

SOA and Chico (the "Parties") hereby request that the California New Motor Vehicle Board (the "Board") issue an order approving the Stipulated Decision as a Stipulated Decision and Order of the Board, and that the Board reserve jurisdiction solely to enforce its Order if requested by 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 or about August 11, 2018, Chico vacated the Sales Premises and moved all Subaru sales operations to 2522 Cohasset Road, Chico, California 95763 (the "Unauthorized Premises".)

5. 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;

6. 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");

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

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

III.

SETTLEMENT

In view of the foregoing, it is hereby stipulated by and between the Parties to this Confidential Agreement, and the Board finds, as follows:

9. Subject to its full and timely compliance with the conditions specified below ("Conditions"), Chico shall continue to operate its SOA dealership operations unless and until its Dealer Agreement is terminated pursuant to the terms of this Confidential Agreement or pursuant to a new NOT issued on factual circumstances and factual grounds separate from and in addition to the facts and grounds which are currently the subject of the Protest.

10. Voluntary Dismissal of Lawsuit. Upon issuance of the Order by the Board of this Stipulated Decision, counsel for SOA shall file with the court for the Eastern District of California a Request for Dismissal of the Lawsuit, and shall copy counsel for Chico with same.

11. Attorney Fees. Both Parties acknowledge and agree that each party is solely responsible for its own attorneys' fees, costs and expenses in all circumstances, including the Lawsuit and the Protest.

12. Withdrawal of NOT. SOA shall withdraw the NOT and shall forbear from issuing a new NOT to Chico for a period of four (4) months from the date of this Stipulated Decision. SOA does not waive any right to issue a new NOT to Chico after that time, if it is deemed warranted by SOA. Other than as set forth herein, SOA expressly does not waive its right to raise any additional breaches of the Dealer Agreement, or issue any NOT or Notice To Cure pertaining to such breaches at a later time.

13. Acquisition of Temporary Property and Renovation of Temporary Subaru Sales Facility. Chico has executed a lease of the property identified as 896 East Avenue, Chico, California 95926 (the "Temporary Property"), for a total term of time necessary (the "Lease") until the facility at the New Location is completed and approved by SOA as set forth herein. In return, SOA will, in a new Subaru Dealer Agreement to be executed by the Parties concurrently herewith, consent to the establishment of temporary sales operations to be located at the Temporary Property, subject to the terms and conditions set forth below.

14. Chico agrees to remodel the facility located on the Temporary Property to meet SOA's requirements, in consideration of the available space, as set forth in the SOA Facilities Addendum, to be attached to the new Subaru Dealer Agreement which will be executed by the Parties concurrently herewith. A relocation documentation package must be completed with SOA/Western Region and all requirements met and approved **before** Chico can begin operating in Temporary Property.

15. Concurrently with the execution of this Confidential Agreement and the completion, submission and approval of any SOA-required documentation by Chico, SOA will offer, and Chico agrees to execute a new Subaru Dealer Agreement and Standard Provisions

("Dealer Agreement") in a form acceptable to SOA, which shall approve Chico sales operations at the Temporary Property at 896 East Avenue, Chico, California 95926, subject to the conditions set forth in this Confidential Agreement. The Dealer Agreement shall include a Facility Addendum, which shall include the following provisions related to the Temporary Property approved operations of Chico:

a) Chico will provide to SOA (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) will provide written evidence to SOA that Chico has obtained the right to occupy the Temporary Property, both prior to the execution of this Confidential Agreement.

b) Within 90 days of the execution of this Confidential Agreement and the dismissal of the Lawsuit, Chico will provide a a $750,000 letter of credit or performance bond to insure Chico's performance on its commitment to the new ground-up facility on the New Location in Chico, CA ("Permanent Facility".) In good faith, SOA will refund the $200,000 performance funds that Chico previously provided to SOA. These funds will be returned to Chico contemporaneous upon issuance of letter of credit or performance bond.

c) An initial visual inspection of the Proposed Temporary Facility must be scheduled and performed by the San Francisco Zone, any corrections and modifications stated by the San Francisco Zone must be completed and the Proposed Temporary Facility must have SOA's final approval before Chico commences operations there. The Temporary Property is presently unacceptable to conduct Subaru operations. In order to obtain SOA's approval, the building's interior paint, furniture, ceiling tiles (if applicable), floor tiles, customer lounge amenities, etc. must comply with the Subaru Finish Schedule and brand standards. Additionally, the Temporary Property must have 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 Property must also have all approved Subaru signage. This Temporary Property, will not be considered a Subaru Signature Facility even if approved after Chico's completion of the above-referenced renovations. Which Signature Facility standards will and will not be required is in

SOA's sole discretion. Chico agrees that no other line makes will be allowed to utilize the Temporary Property at any time that Subaru occupies that location. The San Francisco Zone's final inspection must occur and conclude that the required improvements are complete no later than 120 days from the date of execution of this Confidential Agreement and dismissal of the Lawsuit.

d) A Facility Addendum will be required as part of the relocation documentation package for the Temporary Property and will be part of the Subaru Dealer Agreement for the Temporary Property. This Addendum will include benchmarks for the completion of the permanent facility that Chico has committed to build at the New Location (as defined below.)

e) Chico will commence remodelling of the facility at the Temporary Property upon execution of this Confidential Agreement;

f) Chico will complete remodelling of the facility on the Temporary Property by no later than Sixty (60) days after execution of this Confidential Agreement; and

g) Chico will occupy and commence operations at the Temporary Property upon completion of the remodelling, which shall be by no later than Fifteen (15) days following completion of the remodeling of the Temporary Facility.

h) Chico agrees that the Subaru facility at the Temporary Property must satisfy SOA's requirements and be approved in writing to be satisfactory to SOA at the time that remodelling is completed and prior to Chico's occupancy and commencement of any dealership operations thereat.

16. New Location. Chico's new Subaru vehicle and used vehicle sales, service and parts operations will relocate permanently to one of the APN parcels (APN: 006-400-061 APN: 006-400-063, 006-400-064, 006-400-065 and 006-400-066, the "New Location".) With respect to the New Location, Chico agrees to construct the facility to meet or exceed the 2023 SOA Signature Facility Image standards, and the Minimum Standards and Operating Guidelines for Dealership Operations taking place at the New Location. The Dealer Agreement shall include the following provisions:

a) Chico will submit completed construction drawings and site plans to SOA for its prior written approval by June 1, 2019. Such plans will be for a facility which shall comply with Subaru's projected Signature Image Facility Standards for a dealership facility, (Exhibit A hereto), and be approved in advance of construction in writing by SOA.

b) Chico will obtain necessary zoning, permits and necessary governmental approvals to provide for the construction of the permanent facility at the New Location as soon as practicable, but in any event on or before December 1, 2019.

c) Chico will commence construction of the facility on or before January 31, 2020.

d) Chico will complete construction of the facility and obtain all necessary licenses and permits as to the Subaru sales facility at the New Location by January 31, 2021 and

e) Chico will obtain 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.

f) Chico will complete the permanent facility at the New Location by no later than January 31, 2021.

17. The parties agree that compliance with the terms of this Confidential Agreement and execution by both parties of a Subaru Dealer Agreement with Facility Addendum, containing the milestones for completion of construction and renovations to both the Temporary Property and the New Facility as set forth herein are each separately required according to the timetables set forth in this Confidential Agreement, and completion of construction and renovations for one property/facility does not excuse the need to complete the construction/renovation of the other and that SOA may seek any and all available legal and equitable remedies for any breach of this Confidential Agreement and/or the Dealer Agreement.

18. Delay Based On Government Action or Inaction. If, notwithstanding Chico's commercially reasonable best efforts, the necessary approval of a governmental entity cannot be obtained in order to timely satisfy the deadlines set forth herein, solely for reasons beyond the control of Chico, Chico shall, upon first learning of such delay, immediately notify SOA's SFO Zone representative in writing, and shall request the minimum extension of time necessary to

complete the actions set forth herein. SOA representatives are and shall be authorized by Chico to verify these facts (or any facts deemed relevant by SOA in its sole discretion) directly with any governmental entity representatives, and SOA shall retain all rights and remedies as set forth herein.

19. If SOA verifies that the delay is caused by the governmental entity and not by Chico, SOA shall agree to extend the affected deadlines set forth above, on a weekly basis, until the governmental-caused delay is not a factor. Chico shall provide weekly reports to SOA regarding the status of any governmental delay and the progress, if any, being made on the elimination of the delay and expected duration of the remaining delay. However, should SOA determine, that all or part of the delay is caused by Chico or its agents, vendors or employees, or should Chico fail or refuse to promptly provide either the first notice or the weekly reports to SOA or not allow SOA to verify such facts directly with any governmental entity representative, then SOA shall not grant any extension (or any further extension), and the deadlines (either as set forth herein or as previously extended by SOA) shall remain in place.

20. No Obligation to Provide Extensions and Force Majeure. Chico also understands and agrees that SOA has no obligation to extend any time periods or deadlines set forth in this Confidential Agreement, whether or not Chico is unable to comply due to causes within or beyond Chico' control, and further, that any extension of time and the duration of any such extension are made, if at all, solely at SOA's discretion, except as expressly set forth herein and in Paragraph 18. Any such extension shall be valid only if made in writing, signed by then-current Western Regional Manager of SOA and delivered to Chico.

21. Notwithstanding the provisions of this section, neither party shall be in default or liable for any delay or failure of compliance with this Confidential Agreement to the extent due to any future event which is beyond the control of the defaulting party including, without limitation, landlord approval, fire, flood, hurricane, tornado, earthquake, war, acts of terrorism, embargo, riot or an unforeseeable intervention of any government authority (excluding delays in obtaining permits and licenses), but excluding transport difficulties or strike, lock out or other labor disputes of Chico or third parties, provided the party suffering such delay or failure of compliance

immediately notifies the other party of such delay or failure of compliance. Should such an event of *force majeure* take place, SOA shall extend the time periods set out in Paragraph 16 to this Confidential Agreement to allow for delays incurred as a result of the event of *force majeure*. Failure to obtain landlord approval for any change contemplated herein shall not be excused by the terms of this paragraph and Chico shall immediately notify SOA of any such failure to obtain landlord approval.

22. Eligibility for SOA Remodelling Funds. Chico is eligible to obtain funds from SOA if there is a facility funding program in place at the time of execution of this Confidential Agreement and if Chico qualifies under the terms of said facility funding program. Additionally, the remodelling contemplated by this Confidential Agreement must be completed according to its terms and within a time period and in a manner meeting the eligibility requirements for the applicable SOA program, if any. The amount of such funds and the timing of their disbursement shall be determined by the terms of the SOA program rules.

23. Notices. All notices, requests or other communications hereunder shall be in writing and, except as otherwise expressly provided in this Confidential Agreement, shall be deemed to have been duly given when transmitted by facsimile or e-mail or by a nationally recognized overnight courier service addressed to the Parties' respective addresses set forth below, as such addresses may be modified from time to time on written notice as provided herein.

To Chico:
Shahram "Jerry" Mihanpajouh
Courtesy Automotive Group, Inc.
dba Courtesy Subaru of Chico
2520 Cohasset Road
Chico, CA 95973
jpajouh@me.com

With copy to:
Gavin M. Hughes, Esq.
Law Offices of Gavin M. Hughes
3436 American River Drive, Suite 10
Sacramento, California 95864
gavin@hughesdealerlaw.com

EXHIBIT 2

To SOA :
Al Salazar
Assistant General Counsel
Subaru of America, Inc.
One Subaru Drive
Camden, NJ 08103
asal@subaru.com

With copy to:
Lisa M. Gibson
Crispin L. Collins
Nelson Mullins Riley & Scarborough LLP
Pacific Gateway, Suite 900
19191 South Vermont Ave
Torrance, CA 90502
Lisa.Gibson@nelsonmullins.com
Crispin.Collins@nelsonmullins.com

24. Mutual Release and Covenant Not To Sue. SOA and Chico, each for themselves, their owners, Affiliates and any of their respective members, partners, venturers, stockholders, officers, directors, employees, agents, spouses, legal representatives, successors, and assigns (collectively, the "Related Parties"), hereby release, settle, cancel, discharge, and acknowledges to be fully satisfied any and all claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, actions, and causes of action of every kind and nature whatsoever, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, which either Party or Related Parties or anyone claiming through or under them currently has against the other Party or Related Parties arising out of or relating to the Protest, Lawsuit or any issues in connection therewith, provided that the foregoing releases shall not extend to:

a) Valid, non-false and unpaid claims: (a) any vehicle sale incentives currently owing to Chico; (b) any amounts currently owing to Chico in its open account (or equivalent); (c) any advertising incentives or co-op funds currently due and owing to Chico; (d) any credits due SOA from Chico based on transactions in the ordinary course of business posted or to be posted to the open account or Chico' floor plan credit line or otherwise due and owing by Chico to SOA, including but not limited to (1) valid warranty and incentive chargebacks and adjustments, (2) amounts due SOA for the purchase of vehicles, parts or accessories, or for special tools, and (3) amounts due to SOA or third parties for training, publications, subscriptions, data processing or

other goods or services that normally post to the open account; (4) enforcement of this Confidential Agreement; and (5) any dispute over the failure or refusal of SOA to pay Chico any amounts due or alleged to be due under any SOA Program.

b) Product liability or service-related claims alleging a defect in a vehicle manufactured or distributed by SOA or service or inspection provided on a vehicle by Chico and other claims for indemnity by either party under the provisions of the Subaru Dealer Agreement.

c) The Parties hereby acknowledge, understand and agree that, except as provided above and as to any claims arising from a claimed breach of this Confidential Agreement, the foregoing release extends to, and is expressly intended by them to extend to, all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected. In this regard, each of the Parties hereby expressly waives the benefit, if any, to it of Section 1542 of the California Civil Code, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTION OF THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

d) The Parties expressly assume the risk that after the execution and delivery of this Confidential Agreement they may discover facts which are different from those facts which they believed to be in existence on the date hereof. Any such discovery shall not affect the validity or effectiveness of the release contained herein.

25. Buy/Sell Deadline. Subject to potential delays and extensions as set forth above, should Chico either (a) not complete the remodeling and construction and occupancy of the permanent facility at the New Location on or before January 31, 2021; or (b) fails to meet any other Condition or Deadline set forth in this Confidential Agreement, as set forth above; or (c) not timely produce a Buy/Sell Application Package involving all of its stock or assets, herein by close of business on the Buy/Sell Deadline, as defined herein below, then SOA shall have the right to issue a notice of non-compliance with the terms of this Stipulated Decision and Order.

a) The Buy/Sell Deadline shall be calculated as follows: If Chico notifies SOA that it desires to sell its SOA dealership assets, in writing and in the matter set forth in Paragraph 23, Chico shall have six (6) months to submit a complete Buy/Sell Application Package, as defined herein.

b) SOA reserves the right at any time following Chico's failure to comply with the foregoing to issue a notice of non-compliance with the Conditions of this Confidential Agreement, effective 60 days following its receipt by Chico. SOA will provide written notice to Chico of any perceived non-compliance providing at least 30 days to correct or rebut any alleged non-compliance, prior to invoking the Board's jurisdiction to request an order of termination pursuant to the stipulated decision and order.

c) The Parties agree that Chico's failure to comply with any of the Conditions herein shall constitute good cause to terminate the SOA Dealer Agreement between them under Vehicle Code sections 3060 and 3061.

d) Post-termination provisions of the Dealer Agreement remain in effect, including: i) Chico would remain liable to SOA for any balance owed on its Parts Account and SOA would remain liable to Chico for any credit balance due Chico on the Parts Account; ii) SOA would honor a repurchase request from Chico for the eligible SOA vehicles and products in the manner provided for in the Dealer Agreement; and iii) Chico shall remove at its expense or permit SOA to remove at Chico's expense, all SOA signs and trademarks at the Chico facilities. Chico acknowledges and agrees that either it owns the dealership facilities and grants SOA permission to remove the subject signs and trademarks or that it will obtain written permission from the land owner for SOA to do so.

26. Alternatively to its compliance with the terms and conditions in a timely manner and for the periods set forth above, the Parties agree that SOA will permit Chico to present SOA with a Buy/Sell Application Package, prior to the Buy/Sell Deadline, and under the terms and conditions as set forth herein. The Buy/Sell Deadline period shall be tolled upon submission of a completed buy-sell and shall resume upon receipt of a written rejection.

27. Any such proposed buy/sell must satisfy the following requirements, or be subject to automatic rejection by SOA ("Buy/Sell Application Package"):

a) The Asset Purchase Agreement ("APA") entered into by Chico must be with an entity or persons not owned or controlled, in whole or in part, by the current owners of Chico and/or their family members;

b) The APA must provide for a closing within 60 days of approval of the proposed transferee by SOA;

c) The proposed transferee must agree to abide by the terms of a SOA Dealer Agreement as presented to it by SOA and agree to provide an acceptable facility in accordance with the requirements and timeline as reasonably determined by SOA;

d) The proposed transferee must agree to operate in a market acceptable to SOA, and at a location acceptable to SOA in its sole discretion.

e) Failure to close the transfer of the SOA dealership assets within 60 days of approval by SOA, which APA was timely submitted during the period created by Paragraph 11(g) of this Confidential Agreement, for any reason will result in the immediate issuance of a notice of non-compliance with the Conditions of this Confidential Agreement.

f) As modified herein, Chico shall have the right to submit and SOA reserves the right to approve or reject any proposed Buy/Sell Application Package pursuant to the provisions of the California Vehicle Code and other applicable law. Should SOA reject the proposed Buy/Sell Application Package Chico's remedies are limited to those set forth herein;

g) Should either SOA reject or should Chico withdraw the first Buy/Sell Application Package, Chico shall have the right to submit at least one other Buy/Sell Application Package, in compliance with the terms set forth above, pursuant to the following terms and conditions: if Chico submits a Buy/Sell Application Package prior to the close of business on the Buy/Sell Deadline, SOA shall have 60 calendar days from the date of SOA's receipt to approve or reject the final Buy/Sell Application Package. However, if Chico fails to submit a Buy/Sell Application Package by the Buy/Sell deadline, SOA reserves its right to issue the notice of non-compliance with conditions of this Confidential Agreement.

h) The Parties hereto acknowledge that, under California law, the New Motor Vehicle Board does not have jurisdiction to adjudicate claims regarding buy/sell rejections and that such claims are adjudicated in the courts.

i) Under no circumstances shall SOA be required to consider more than one Buy/Sell Application Package from Chico at the same time. Submission of a subsequent Buy/Sell Application Package at any time prior to the Buy/Sell Deadline, whether approved or rejected or not yet acted upon by SOA, shall be considered to be a simultaneous withdrawal of any previous Buy/Sell Application Package by Chico, and

j) Chico will provide or has already provided SOA with a buy/sell assist letter for the purposes of facilitating Chico in locating potentially qualified transferees.

28. Notice of Non-Compliance. If SOA contends that there is a failure by Chico to comply with any or all of the Conditions set forth herein, SOA shall, within fifteen (15) business days of its awareness of such failure, serve a notice on Chico in the manner set forth in paragraph 23, setting forth its alleged non-compliance with the Conditions, with a courtesy copy to the Board. Chico shall have fifteen (15) days from receipt of that notice to file a written request with the Board asking it to appoint an Administrative Law Judge ("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. Chico shall serve a copy of such written request in the manner set forth in paragraph 23 on SOA.

a) If Chico fails to file such request in accordance with the deadline set forth in this Paragraph, Chico shall terminate automatically as a SOA dealer without any recourse or right of appeal to any individual, forum, or entity of any kind or nature whatsoever, including, without limitation, the Board, any state or federal agency, any state or federal court, or any other governmental, judicial, quasi-judicial, or private entity or forum, in any proceeding challenging the termination or seeking damages or relief of any nature whatsoever arising out of the termination.

b) 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.

c) "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.

d) 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.

29. The Conditions set forth in this Confidential Agreement, and each of them, are fair, reasonable and in the best interests of Chico, SOA, and the consuming public. Chico agrees and acknowledges that this Confidential Agreement and the provisions herein do not violate the provisions of the California Vehicle Code or any other provision of California or Federal law due to the actions and agreements of the Parties as set forth herein, that the each of the Parties has entered and will enter into this Confidential Agreement of its own free will, and agrees not to challenge the legality of this Confidential Agreement under any provision of California or Federal law. Chico understands that SOA is entering into this Confidential Agreement in reliance upon all of Chico's commitments set forth herein. Chico agrees to execute or obtain any documents required by SOA to evidence its agreement as set forth in this paragraph. The Parties agree that they will

not do anything to interfere with or inhibit the ability of any other Party to comply with their respective obligations under the terms of the Confidential Agreement.

30. Terms Reasonable Under Economic Conditions. Chico agrees that both a construction of a facility at the New Location, as well as the remodeling of facility at the Temporary Property, as contemplated under this Confidential Agreement are each reasonable in light of all existing circumstances, including economic conditions and are not prohibited or affected by any provision of applicable law, including without limitation section 11713.13 of the California Vehicle Code.

31. Informed and Voluntary Acts. The Parties have reviewed this Confidential Agreement with their legal, tax, or other advisors and are fully aware of all of its rights and alternatives. In executing this Confidential Agreement, each Party acknowledges that its decisions and actions are entirely voluntary and free from any mental, physical, or economic duress. The Parties represent and acknowledge that they have carefully read this Confidential Agreement, that they have not relied upon any oral statements, promises or explanations made by the other party, and that they understand all of its terms.

32. Effectiveness. This Confidential Agreement shall be deemed executed on the date on which it has been fully and properly executed by both Parties, which date shall be entered in the introductory paragraph of this Confidential Agreement. If any portion of this Confidential Agreement is held invalid by operation of law, the remaining terms of this Confidential Agreement shall not be affected.

33. Complete Agreement of the Parties. This Confidential Agreement contains the entire understanding of the Parties relating to the subject matter of this Confidential Agreement and supersedes all prior statements, representations and agreements relating to the subject matter of this Confidential Agreement. The Parties represent and agree that, in entering into this Confidential Agreement, they have not relied upon any oral or written agreements, representations, statements or promises, express or implied, not specifically set forth in this Confidential Agreement.

34. Interpretation. Each Party and its counsel have reviewed this Confidential Agreement and the rule of construction that any ambiguities are to be resolved against the drafter will not be employed in the interpretation of this Confidential Agreement.

35. Non-Assignability. The Parties agree that this Confidential Agreement shall not be assignable without the express written consent of the non-assigning Party. Any purported assignment in violation of the preceding sentence shall be void.

36. No Third-Party Beneficiaries. This Confidential Agreement does not encompass any third-party beneficiaries, and is intended to benefit only the actual parties executing this agreement.

37. Captions. The caption headings in this Confidential Agreement are for convenience purposes only and shall not be used to interpret or to define any of the terms and provisions of this Confidential Agreement.

38. Enforcement of Confidential Agreement. Should it become necessary for any Party to this Confidential Agreement to commence a legal proceeding for the purpose of enforcing or interpreting the terms of this Confidential Agreement, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs incurred in prosecuting or defending that action.

39. Further Assurances. All the Parties hereto agree to and will cooperate fully with each other in the performance of this Confidential Agreement, and will execute such additional agreements, documents or instruments as may reasonably be required to carry out the intent of the Parties.

40. Time is of the Essence. Time is of the essence and the timely satisfaction of the conditions of this Confidential Agreement, and each of them, is necessary in order to provide adequate SOA motor vehicles sales, service, and parts to the consuming public and to provide for the needs of the consuming public, and it would be injurious to the public welfare if the Conditions, and each of them, were not fulfilled by the deadlines set forth in this Confidential Agreement.

41. Final and Binding. It is the intention of the Parties that this Confidential Agreement be final as between them and that this Confidential Agreement shall resolve this Protest and Lawsuit

in its entirety, as well as any claims that could have been brought in connection with the Protest and Lawsuit, and concludes all proceedings before the Board.

42. Entire Agreement. This Confidential Agreement contains the entire agreement and understanding concerning the subject matter hereof between the Parties and supersedes and replaces all prior negotiations, proposed settlements and agreements, written or oral relating to the resolution of the Protest and Lawsuit. Each of the Parties to this Confidential Agreement acknowledges that no other party to this Confidential Agreement, nor any agent or attorney of any such party, has made any promise, representation, or warranty whatever, express or implied, not contained in this Confidential Agreement, to induce him to execute this Confidential Agreement. Each of the Parties further acknowledges that he is not executing this Confidential Agreement in reliance on any promise representation or warranty not contained in this Confidential Agreement.

43. Days. Any reference to "days" in this Confidential Agreement is to calendar days. Where the final day to undertake an act contemplated herein falls on a weekend or holiday, the time to perform that act is extended to the next regular business day.

44. Counterparts. This Confidential Agreement may be executed in several counterparts, each of which shall be an original as against any party who signed it, and all of which shall constitute one and the same document.

45. Waiver. To the extent any party has, by entering into this Confidential Agreement, waived any right of action, recourse, or appeal, that waiver is intentional, knowing, voluntary, and on advice of counsel of that party's choosing.

46. Advice of Counsel. The Parties to this Confidential Agreement acknowledge that they have signed this Confidential Agreement of their own free will; that they know all of the relevant facts and their rights in connection therewith; that they have received legal advice from attorneys of their choice with respect to the preparation, review and advisability of executing this Confidential Agreement; that they have not been improperly influenced or induced to sign this Confidential Agreement as a result of any act or action on the part of any party or employee, agent, attorney or representative of any other party hereto; and that the terms of this Confidential Agreement have been bargained for after negotiations between the Parties.

47. Jointly Drafted. Neither party nor their respective counsel shall be deemed the drafter of this Confidential Agreement and instead it shall be deemed to have been jointly drafted, and all provisions hereof shall be construed in accordance with their fair meaning and not for or against either party.

48. Confidential. The parties Confidential Agreement and each of its terms shall remain strictly confidential between the parties and their respective attorneys, accountants, and necessary financial institutions. Neither the Confidential Agreement nor any part of its terms shall be disclosed to any unauthorized third party without the express written consent of both parties.

49. Subsequent Waiver. The waiver by any party hereto of the breach of any term, covenant, agreement or condition herein contained shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition herein, nor shall any custom, practice or course of dealings arising among the Parties hereto in the administration hereof be construed as a waiver or diminution of the right of any party hereto to insist upon the strict performance by any other party of the terms, covenants, agreements and conditions herein contained.

50. Severability. Should any portion (word, clause, phrase, sentence, or paragraph) of this Confidential Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

51. Due Authority. Each of the persons executing this Confidential Agreement represents and warrants that he is fully authorized to enter into this Confidential Agreement on behalf of the party on whose behalf he is executing the Confidential Agreement and that any required consents, authorizations or approvals have been obtained. Each of the Parties to this Confidential Agreement represents and warrants that it owns all right, title and interest to all claims, causes of action, demands or indebtedness provided to be released or waived pursuant to

this Confidential Agreement and that no such claims, causes of action, demands or indebtedness have been assigned, hypothecated, transferred or otherwise alienated in whole or in part.

52. Further Assurances. The Parties hereto agree to cooperate in good faith to effectuate all the terms and conditions of this Confidential Agreement, including doing or causing their agents and attorneys to do whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, and entry of any documents necessary to perform the terms of this Confidential Agreement.

53. California Law. This Confidential Agreement shall in all respects be interpreted, enforced and governed by the laws of the State of California.

IN WITNESS WHEREOF, the Parties have entered into this Confidential Agreement to the Stipulated Decision and Order as of the date last signed below.

DATED: 3/19/19, 2019

COURTESY AUTOMOTIVE GROUP, INC. DBA COURTESY SUBARU OF CHICO

By _____

Print Name: Shahram Mhavajad

Title: President.

DATED: March 20, 2019

SUBARU OF AMERICA, INC.

By _____

Print Name: Anthony J. Graziano

Title: Vice President, Western Region

APPROVED AS TO FORM AND SUBSTANCE:

DATED: March 20, 2019

NELSON MULLINS RILEY & SCARBOROUGH

By _____
Lisa M. Gibson
Crispin L. Collins
Attorneys for Subaru of America, Inc.

DATED: March 19, 2019

LAW OFFICES OF GAVIN M. HUGHES

By _____
Gavin M. Hughes
Attorneys for Courtesy Automotive Group, Inc. dba Courtesy Subaru of Chico

NEW MOTOR VEHICLE BOARD
P.O. Box 188680
Sacramento, California 95818-8680
Telephone: (916) 445-1888

CERTIFIED MAIL

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

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

Protestant,

v.

SUBARU OF AMERICA, INC.,

Respondent.

Protest No. PR-2570-18

CONFIDENTIAL DECISION RESOLVING STIPULATED DECISION AND ORDER DISPUTE

PRELIMINARY STATEMENT[1]

1. In 2015, Protestant Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico ("Courtesy" or Protestant)[2] was authorized to conduct its Subaru sales operations at 2562 Cohasset Road, Chico, California ("sales premises") and to service Subaru Products and maintain its parts and general office operations at 2520 Cohasset Road, Chico, California. [Exh. J-301.02:20-26, .08:22-27] In 2016, the Subaru sales premises which Courtesy leased, were sold to an entity associated with the competing Nissan and Hyundai dealerships. In 2018, the property became occupied by a Hyundai dealership, and

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[1] References herein to Roman numerals are to the transcript volumes of the proceedings.

[2] All references to "Chico" in the Stipulated Decision and letters from Subaru of America, Inc. ("SOA") are to the Protestant, and not the City of Chico. It was agreed at the hearing that for purposes of clarity, Protestant would be referred to as Courtesy, not Chico. [RT Vol. I 11:25-2:17]

the Subaru constellation logo and name were removed. [Exh. J-301.03:18-23; .03:26-.04:3; .09:3-6] In August 2018, Courtesy relocated its Subaru sales operations to its Buick/GMC facility located at 2522 Cohasset Road in Chico, California, which was not an authorized location for Subaru sales. [Exh. J-301.03:15-17; RT Vol. V 181:12-18; Vol. VI 140:24-141:12] Subaru service, and the sale of Subaru parts and other products continued to be maintained at 2520 Cohasset Road, as authorized by the Dealer Agreement. [Exhs. J-300.05; J-301.02:20-26]

2. In 2018, Respondent Subaru of America, Inc. ("SOA") sent Courtesy a notice of intent to terminate the franchise because of Courtesy's unauthorized relocation of its Subaru sales facility. Courtesy filed a timely Vehicle Code section 3060 termination protest on August 22, 2018.[3]

3. The parties sought to resolve the protest by entering into a Confidential Agreement ("Confidential Agreement") and Stipulated Decision and Order (collectively "Stipulated Decision") on March 20, 2019, pursuant to Sections 3050.7, 3060, 3061, 3066 and 3067.[4] Section 3050.7(a) provides that the "board may adopt stipulated decisions and orders, without a hearing pursuant to Section 3066 . . ., to resolve one or more issues raised by a protest . . . filed with the board."

4. The Stipulated Decision noted that Courtesy had executed a lease for a temporary Subaru location at 896 East Avenue, Chico, and that SOA agreed to consent to the establishment of temporary Subaru vehicle sales at this location, in a concurrently executed new Subaru Dealer Agreement.[5] Courtesy agreed to complete remodeling of the facility to meet SOA's requirements no later than 60 days after execution of the Confidential Agreement. [Exh. J-301.10:13-19, .12:12-13] Further, the Stipulated Decision provided that a new Subaru Dealer Agreement and Standard Provisions, which shall include a Facility Addendum, will be executed by Courtesy and it will include "benchmarks for the completion of the permanent facility" at the "New Location" referenced as certain APN parcels on Garner Lane in Chico. [Exh. J-301.10:26-.11:4,12:7-9, 21-23; P-32.001, .023, .043; P-64.010; R-104.17-.18, .21] The Stipulated Decision, which became a New Motor Vehicle Board ("Board") Order on April 9, 2019,

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[3] Hereinafter, all section references are to the California Vehicle Code unless otherwise indicated.

[4] This Decision is confidential and is not subject to disclosure absent stipulation of counsel for both parties. [Exh. J-301.04-.05]

[5] The new Subaru Dealer Agreement, executed on October 17, 2019, authorized Subaru vehicle sales at the temporary location, subject to five conditions as outlined in Joint Exhibit 300, pages .33-.34.

confirmed that the Board shall retain jurisdiction pursuant to the terms and conditions contained therein. [Exhs. J-301.20:26-21:1; J-302.01-.02]

5. SOA and Courtesy entered into a Subaru Dealer Agreement and Standard Provisions ("Dealer Agreement") and Facility Addendum dated October 17, 2019. [Exh. J-300.01-.36] The Dealer Agreement has a stated termination date of October 16, 2022. [J-300.02] The Facility Addendum provided that "[a]ll 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 [Dealer] Agreement pursuant to Paragraph 20.10 of the [Dealer] Agreement."[6] [Exh. J-300.35, ¶ 7]

6. Subsequently, an Amendment to the Facility Addendum to the Subaru Dealer Agreement was entered into by the parties. The Amendment to Facility Addendum, dated May 21, 2020, was executed by Mr. Pajouh on behalf of Courtesy on May 21, 2020, and by Mr. Graziano for SOA on May 22, 2020. [Exh. R-101.01-.03]

STATEMENT OF THE CASE

7. In 2020, a dispute arose between Courtesy and SOA concerning Courtesy's compliance with the terms of the Stipulated Decision.

8. On August 24, 2020, SOA issued a Notice of Non-Compliance to Courtesy. The Notice stated:[7]

> On March 20, 2019, Courtesy Subaru of Chico ("Chico") and Subaru of America, Inc. ("SOA") entered into a Stipulated Decision ("Stipulated Decision") pursuant to which Chico agreed to meet certain milestones required for compliance with the Confidential Agreement attached as Exhibit 1 thereto ("Confidential Agreement"). The final Subaru Facility Addendum amendment dated on 05/22/2020 ("Facility Addendum") to the Subaru Dealer Agreement dated October 17, 2019 ("Subaru Dealer Agreement") also includes agreed-upon benchmarks related to the construction of Courtesy Subaru of Chico. At this point, Chico has missed the first two Stipulated Decision milestones as noted below. **Accordingly, this letter serves as formal Notice of Non-Compliance with the Stipulated Decision based on Chico's failure to meet the following milestones:**

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[6] Paragraph 20.10 of the Dealer Agreement is entitled Documents Incorporated by Reference and provides that the Dealer Agreement is "deemed to incorporate and render enforceable" nine listed documents. [Exh. J-300.31]

[7] See Footnote 2.

1. Obtain zoning and permits.

Pursuant to paragraph 16.b of the Confidential Agreement, Chico was required to "obtain necessary zoning, permits and necessary governmental approvals to provide for the construction of the permanent facility at the New Location as soon as practicable, but in any event on or before December 1, 2019."

Paragraph 4.b. of the Facility Addendum also requires Chico to obtain "necessary zoning, permits and necessary governmental approvals to provide for the construction of the Permanent Facility on or before December 1, 2019."

To date, Chico has not obtained the necessary zoning, permits and government approvals necessary to satisfy this milestone.

2. Commence construction.

Pursuant to paragraph 16.c of the Confidential Agreement, Chico was required to "commence construction of the facility on or before January 31, 2020." However, Chico has still not commenced construction as required.

The milestones for obtaining zoning/permits and commencing construction pursuant to the Stipulated Decision have not been achieved and are dates that clearly precede any COVID-19 related timeframe. Even during the pandemic timeframe, construction has been ongoing throughout California due to its status as an essential service under California Executive Order N-33-20. There is, therefore, nothing that Chico has provided SOA in terms of establishing either the necessary governmental action or inaction that the zoning permits have not been attainable. Chico also has not established a *force majeure* given that the Executive Orders in California deem construction as an essential business. The Stipulated Decision milestones are each separately required to be achieved and each separately constitute its own material breach of the Stipulated Decision. Based on its failure to meet the two milestones outlined above, at this time, Chico is in material breach of the Stipulated Decision.

The failure to meet the first benchmark of the Facility Addendum is also a material breach of the Subaru Dealer Agreement. Although this letter should not be deemed a notice of termination of the Subaru Dealer Agreement under California Vehicle Code §3060(a)(1)(A), it is notification in writing of the non-compliance of the Stipulated Decision by [Courtesy] Subaru of Chico relating to the two missed milestones. SOA reserves the right to exercise all remedies available under the Subaru Dealer Agreement and Facility Addendum, including but not limited to issuing a notice of intent to terminate the Subaru Dealer Agreement.

Accordingly, please be advised that should Chico not come into compliance with the milestones outlined above within thirty (30) days of receipt of this letter, SOA is hereby requesting an order of termination of your Subaru Dealer Agreement from the California New Motor Vehicle Board in accordance with its rights under the Stipulated Decision. (Emphasis in original.) [Exh. J-303.01-.02]

9. On February 1, 2021, SOA issued an Amended Notice of Non-Compliance and added the failure by Courtesy to complete construction by January 31, 2021. The Notice had essentially the first two paragraphs set forth above, and in addition provided, in pertinent part, as follows:

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To date, Chico[8] has not completed construction or obtained the necessary licenses and permits for its Subaru sales facility as required.

. . .

Accordingly, please be advised that should Chico not come into compliance with the milestones outlined above within thirty (30) days of receipt of this letter, SOA is hereby requesting an order of termination of your Subaru Dealer Agreement from the California New Motor Vehicle Board in accordance with its rights under the Stipulated Decision and this Amended Notice of Non-Compliance. The additional missed milestone is hereby included with the issues raised by SOA in the non-compliance hearing relating to the Protest filed by Chico as Protest No. PR-2570-18 which is currently pending before the New Motor Vehicle Board in accordance with its rights under the Stipulated Decision. (Emphasis in original.) [Exh. J-304.01-02]

10. Pursuant to Paragraph 28 of the Stipulated Decision, the Administrative Law judge is to hold a hearing and "to make the final determination of whether there has been a material failure to comply with the Conditions" by Courtesy. [Exh. J-301.20] Thus, this Decision will not be considered by the Board.

11. Section 3050.7 (b) provides that:

> "[i]f the board adopts a stipulated decision . . . filed pursuant to Section 3060 . . . in which the parties stipulate that good cause exists for the termination of the franchise of the protestant, and the order provides for a conditional or unconditional termination of the franchise of the protestant, . . . a hearing to determine whether good cause exists for termination of the franchise, is inapplicable to the proceedings. . . . If 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. If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the stipulated conditions have occurred."

Section 3050.7 does not state what standard applies to determine if conditions "have been met" or "occurred." The statute does not preclude substantial occurrence or excuse of condition.

12. The Stipulated Decision does not provide that good cause existed at that time of the execution of the Confidential Agreement for the termination of Protestant's franchise. Rather, the parties agreed that Courtesy's failure to comply with any of the conditions in the Stipulated Decision shall constitute good cause to terminate the SOA Dealer Agreement between them under Sections 3060 and

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[8] See Footnote 2.

3061. [Exh. J-301.18:11-13]

PARTIES AND COUNSEL

13. Courtesy is a new motor vehicle dealer and a "franchisee" within the meaning of Sections 331.1 and 3060(a)(1). Courtesy's general office, parts facility, and service facility are located at 2520 Cohasset Road and its new vehicle showroom and display, outside used vehicle display and storage, and sales work area and office are located at 896 East Avenue in Chico, California. [Exh. J-300.05]

14. Protestant is represented by Gavin M. Hughes, Esq. and Robert A. Mayville, Jr., Esq. of the Law Offices of Gavin M. Hughes at 3436 American River Drive, Suite 10, Sacramento, California 95864.

15. SOA is a distributor of new motor vehicles and is a "franchisor" within the meaning of Sections 331.2 and 3060(a)(1).

16. Respondent is represented by Lisa M. Gibson, Esq. and Amy M. Toboco, Esq. of Nelson Mullins Riley & Scarborough LLP, 19191 South Vermont Avenue, Suite 900, Torrance, California 90502.

17. This matter was assigned to Administrative Law Judge Evelyn I. Matteucci ("ALJ Matteucci"). Initially, it was to be decided on the parties' briefs, declarations with exhibits, and a day of witness testimony. After extensive briefing, this matter was heard on September 14-16, 2021, and October 18-19, 26, and 28, 2021.

WITNESSES

Respondent's Witnesses

18. Anthony ("Tony") Graziano has been the Regional Vice-President of the Western Region of SOA since 2005. [Stipulation Regarding Background and Qualifications of Witnesses] The Western Region is based in Denver, Colorado and covers 13 western states, including California. Courtesy is located in the SOA Western Region. [Stipulated Glossary of Non-Controversial Terms]

19. Scott Farabee has been the Director, San Francisco Zone, SOA since 2017. [Stipulation Regarding Background and Qualifications of Witnesses] The Zone is the geographic area including sub-groupings of Subaru Retailers' Areas of Responsibilities ("AORs") within the Region that are called upon by a District Sales Manager and a District Parts and Service Manager. Courtesy is located in the

San Francisco Zone.[9] [Amended Stipulated Glossary of Non-Controversial Terms]

20. Ray Smit is the Market Development Manager for SOA in Northern California. [Stipulation Regarding Background and Qualifications of Witnesses] Mr. Smit is the "SOA employee who is responsible for working with SOA Retailers in undersized or non-compliant dealership facilities to expand their facility capacity through upgrades, construction, expansions and/or relocations." [Stipulated Glossary of Non-Controversial Terms]

Protestant's Witnesses

21. Jerry Mihanpajouh ("Mr. Pajouh") is the Dealer Principal of Courtesy and also owns and operates franchises for Cadillac, Buick, GMC, BMW, Mercedes-Benz and Volvo. He previously constructed a dealership facility in Fresno, California and has been involved in the new car sales industry for 42 years. [Stipulation Regarding Background and Qualifications of Witnesses] Mr. Pajouh was also called as an adverse witness for Respondent pursuant to Evidence Code section 776.[10] [RT Vol. I 104:2-4, 117:5-7]

22. James Stevens (testimony via deposition only) is a land surveyor with Northstar Design Solutions ("Northstar"), an engineering and building design firm, where he has worked since 1983. He was charged with securing entitlements from the County of Butte[11] prior to annexation of the Courtesy properties by the City of Chico.[12] [Stipulation Regarding Background and Qualifications of Witnesses; Exh. P-46.009:9-15; RT Vol. I 152:12-17] Northstar originally contracted directly with Courtesy for site plans related to grading and drainage, County entitlements and the Development Agreement until June 25, 2020. Mr. Stevens then contracted with Modern Building in August 2020 for further site development and design services for an estimated fee of $6,200. [Exhs. P-20.001; P-21.001-.010; P-46.009:9-15; P-62.051:12-18; P-66.002:3-16; R-119.27:17-19, .28:10-12; RT Vol. I 134:21-24, 135:12-

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[9] The Stipulated Glossary states that Courtesy is in the San Francisco *Region*, but it is clear from the testimony that Courtesy is in the San Francisco Zone, which covers from Monterey to Eureka, California and over to Reno, Nevada. [RT Vol. II 69:23-70:9]

[10] Subdivision (a) of Evidence Code section 776 provides that: "A party to the record of any civil action, or a person identified with such a party, may be called and examined as if under cross-examination by any adverse party at any time during the presentation of evidence by the party calling the witness."

[11] References to "County" mean "Butte County."

[12] References to "City" mean the "City of Chico."

20, 138:17-22; Vol. II 29:25-30:10]

23. James Seegert is the Responsible Managing Officer and president of Modern Building, the general contractor on the multi-franchise dealership under construction for Courtesy. [Stipulation Regarding Background and Qualifications of Witnesses]

Independent Witness

24. Michael Sawley, employed by the City of Chico since 2006, is currently the principal planner for the City, and during some of the timeframe of this matter, was the senior planner. Mr. Sawley was assigned to process the Development Agreement in connection with the project. [Stipulation Regarding Background and Qualifications of Witnesses; RT Vol. III 7:17-23]

ISSUES PRESENTED

25. Did SOA sustain its burden of proof of establishing that which is alleged in the Notice of Non-Compliance dated August 24, 2020, that: "The Stipulated Decision milestones are each separately required to be achieved and each separately constitute its own material breach of the Stipulated Decision. Based on its failure to meet the two milestones outlined above,[13] at this time, Chico [Courtesy] is in material breach of the Stipulated Decision" and that "[t]he failure to meet the first benchmark of the Facility Addendum is also a material breach of the Subaru Dealer Agreement?"[14] [Exh. J-303.02]

26. If Courtesy has failed to achieve the milestones/benchmarks as alleged by SOA, should Courtesy's delay be excused due to circumstances beyond its control? This is Courtesy's burden of proof.

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[13] As stated in the Notice of Non-Compliance of February 1, 2021, there are now three missed milestones which are: "[t]he milestones for obtaining zoning/permits and commencing construction pursuant to the Stipulated Decision have not been achieved and are dates that clearly precede any COVID-19 related timeframe. Chico [Courtesy] has now also failed to meet the milestone to complete construction of the Subaru sales facility." [Exh. J-304.02]

[14] It is noted that the Notice of Non-Compliance is reinforcing the conclusion that the parties intended that the standard to be applied to the non-occurrence of the milestones/benchmarks is that of whether any non-occurrence constitutes a "material breach" of the Stipulated Decision and the Subaru Dealer Agreement.

PROCEDURAL BACKGROUND

Request for Appointment of ALJ to Determine Compliance with Stipulated Decision

27. Paragraph 28 of the Stipulated Decision provides that if SOA contends that there is a failure by Courtesy "to comply with any or all of the Conditions, SOA shall, within fifteen (15) business days of its awareness of such failure, serve a notice on [Courtesy] in the manner stated in paragraph 23, setting forth its alleged non-compliance with the Conditions, with a courtesy copy to the Board." Courtesy "shall have fifteen (15) days from receipt of that notice to file a written request with the Board asking it to appoint an Administrative Law Judge ('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* [*Courtesy*]."[15] (Emphasis added.) [Exh. J-301.20]

28. Paragraph 28.b further provides "[t]he 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 [Courtesy], *whether there has been a failure by* [*Courtesy*] *to materially comply* with any of the Conditions of this Confidential Agreement. Any such timely request will be submitted for binding, non-

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[15] Respondent asserts that there is no authority for the ALJ to hold an "evidentiary hearing," with live testimony in this matter. [Respondent's Reply Brief p. 20, lines 19 through 27] In a traditional merits hearing, the Board conducts its hearings pursuant to the Administrative Procedure Act ("APA"). The provisions, beginning in Government Code section 11400 through 11529, Chapter 4.5 (Gov. Code §§ 11400-11475.70), apply to any adjudicative proceeding required to be conducted under Chapter 5 (Gov. Code §§ 11500-11529). These statutes are the basic authority or "rules of procedure" governing administrative quasi-judicial proceedings. They govern administrative hearing procedures unless the statutes relating to a specific agency's proceedings provide otherwise. (Gov. Code §§ 11410.50, 11415.10, and 11415.20) Government Code section 11415.20 defines "adjudicative proceeding" as "an evidentiary hearing for determination of facts pursuant to which the agency formulates and issues a decision." The hearing the parties agreed to is an adjudicative proceeding.

Any provisions of the APA not in conflict or inconsistent would supplement the Vehicle Code and the Board's regulations in Title 13 of the California Code of Regulations. The Courtesy hearing is a hybrid that is, in part, defined by the Stipulated Decision. The parties stipulated and the Board ordered a "hearing" be held. Subdivision (b) of Section 3050.7 provides in part: "If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of specified conditions, the franchise may be terminated upon a determination, *according to the terms of the stipulated decision and order*, that the stipulated conditions have occurred." (Emphasis added.) Without a specifically defined dispute mechanism in the Stipulated Decision (other than the word "hearing"), the Board defaults to the APA, the Vehicle Code, the Board's Regulations and any other applicable laws to ensure due process. A hearing was held over seven days and SOA was allowed to present witnesses, including Mr. Pajouh as an adverse witness, and Courtesy called witnesses, including Mr. Sawley.

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 [Courtesy] of the request." (Emphasis added.) [Exh. J-301.20-.21]

29. On February 8, 2022, the record was opened to admit additional exhibits.

30. On March 18, 2022, a Zoom hearing was held regarding "counsel for Respondent's assertion that ALJ Matteucci received an 'impermissible ex parte communication during a pending proceeding under Section 11430.10 of the Government Code.'"[16] (March 11, 2022 Order Opening the Record Regarding the Alleged Ex Parte Communication) At the commencement of the hearing, ALJ Matteucci indicated that it was not necessary to open the record to have the emails be admitted as evidence in the proceeding as the email communications from each side became part of the administrative record upon their receipt by the Board. ALJ Matteucci determined that the March 10, 2022, email communication did not meet the definition of an ex parte communication pursuant to Government Code section 11430.10[17] because "[t]he content of the alleged ex parte communication is: (1) Not an 'issue in the proceeding;' (2) The Board is not a party to the Protest; (3) Respondent's counsel was copied in the email communication; and (4) The Responses of Respondent's counsel were forwarded to ALJ Matteucci prior to her response to Protestant's March 10, 2022 email." ALJ Matteucci also determined that "Respondent's assertions that the transmission of the March 10, 2022, email to the Board and its subsequent handling by the Board's staff and the Administrative Law Judge resulted in an ex

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[16] The communication in question was an email sent on March 10, 2022, from Mr. Hughes, counsel for Protestant, with a copy to Ms. Gibson and Ms. Toboco, counsel for Respondent, directed to Robin P. Parker, Esq., Chief Counsel, and Danielle R. Phomsopha, Esq., Senior Staff Counsel, New Motor Vehicle Board. This email was forwarded in the normal and customary course by Ms. Parker to ALJ Matteucci. Ms. Gibson responded to the initial email and those responses were also forwarded to ALJ Matteucci. After consideration of Protestant's request and Respondent's responses, ALJ Matteucci indicated in an email sent by Ms. Parker that "Protestant's request for relief is outside the Board's jurisdiction. The dispute as to whether the payment is proper under the Letter of Credit needs to be resolved in Superior Court. This email correspondence will not be considered by ALJ Matteucci in drafting the Decision. . . ." (March 10, 2022, email chain) The referral to Superior Court is consistent with subdivision (e) of Section 3050 ("the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.")

[17] Government Code section 11430.10(a) provides: "While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication."

parte communication in violation of ethical standards are without merit."[18] (March 21, 2022 Order Following Hearing Opening the Record Regarding the Alleged Ex Parte Communication/Order Striking Language in the "Order Opening the Record Regarding the Alleged Ex Parte Communication" Dated March 11, 2022)

Effect of the ALJ's Findings in this Matter Per the Stipulated Decision

31. Paragraph 28.c of the Stipulated Decision states that "'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 . . . 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." [Exh. J-301.21]

32. Further, in Paragraph 28.d of the Stipulated Decision it is stipulated that "[i]f the ALJ *determines that* [*Courtesy*] *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 [Courtesy]." (Emphasis added.) [Exh. J-301. 21]

33. On September 3, 2020, Protestant filed a Request for Appointment of ALJ to Determine Compliance with Stipulated Decision. In its request, Courtesy asserted that it "exercised its best efforts to achieve timely compliance" and any non-compliance on its part "is due to factors beyond Protestant's control." [Exh. J-305.02:13-15] Protestant claimed that: (1) it used commercially reasonable best efforts to satisfy its obligations set forth in the Stipulated Decision; (2) governmental delays excused Protestant's alleged untimely compliance; and (3) substantial investment had already been made toward the construction of its permanent facility as well as the investment made in its temporary location. [Exh. J-305.02:19-23] On February 8, 2021, Courtesy filed with the Board an Amended Request for Appointment of ALJ to Determine Compliance with Stipulated Decision, with essentially the same contentions. [Exh. J-306]

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[18] There has been no violation of Rule 3.5 of the California Rules of Professional Conduct.

The ALJ's November 5, 2020 Order

34. On November 5, 2020, an Order was issued pertaining to the relevancy of the Facility Addendum to the Subaru Dealer Agreement and the parties' burden of proof. The Order provided that:

> The burden to prove there has been a "material failure" by Protestant to "materially comply" with Paragraphs 16.b and 16.c of the Stipulated Decision is on SOA. Paragraph 28 of the Stipulated Decision provides, the ALJ is to hold a hearing on the allegations of non-compliance made by SOA and make a determination of whether there has been a "material failure to comply with the Conditions by Chico [Courtesy]." The parties are in agreement with this initial burden determination.[19]
>
> Once that burden is met by SOA, the burden shifts to Courtesy to show that its failure to comply or perform the Condition(s) is not material or is otherwise excused, including, but not limited to, that performance of the Condition(s) was waived by SOA.
>
> The Subaru Dealer Agreement with Facility Addendum, which includes different deadlines, although referenced in Paragraphs 15(d) [*sic*] and 17 of the Stipulated Decision, is not part of the Stipulated Decision nor incorporated explicitly or by reference into the Stipulated Decision. However, in order to determine non-compliance with the Conditions of the Stipulated Decision, the Subaru Dealer Agreement with Facility Addendum may be relevant to the determination of material compliance or excuse. If the deadlines in the Subaru Dealer Agreement with Facility Addendum are relevant, the burden of proof would not change." [Order Following Briefing and Oral Argument on Issues Pertaining to Respondent's Notice of Protestant's Non-Compliance with the Conditions in the Stipulated Decision]

35. That Order was subsequently amended on July 20, 2021, clarifying the language concerning Courtesy's burden, and provides as follows: "Once that burden is met by SOA, the burden shifts to Courtesy to show that its failure to comply or perform the Condition(s) is excused, including, but not limited to, that performance of the Condition(s) was waived by SOA." [Amended "Order Following Briefing and Oral Argument on Issues Pertaining to Respondent's Notice of Protestant's Non-Compliance with the Conditions in the Stipulated Decision"]

THE CONFIDENTIAL SETTLEMENT AGREEMENT AND STIPULATED DECISION

The Milestones

36. Both Paragraphs 15 and 16 of the Stipulated Decision required that a new Subaru Dealer

[19] At the hearing on this matter, SOA noted for the first time that the November 2020 order placed a "double materiality burden" on SOA of showing both material failure by Protestant to comply, and also Protestant's failure to materially comply with Paragraphs 16.b pertaining to zoning, permits and approvals by December 1, 2019, and 16.c regarding Courtesy commencing construction by January 31, 2020. Such a "double burden" was not intended by the wording of the order, and it was clarified at the hearing that SOA's burden was to show only material failure by Courtesy to comply with or complete the milestones. [RT Vol. I 48:19-50:10]

Agreement and Standard Provisions be executed concurrently with the execution of the Confidential Agreement, including a Facility Addendum. The parties agreed that the Facility Addendum shall include the milestones set forth in Paragraphs 15 and 16 related to the Temporary Property and the New Location.

37. The following milestones[20] were set forth in the Confidential Agreement and agreed to by the parties:

a. Paragraph 15.a required Courtesy provide SOA a fully executed copy of the lease for the property at 896 East Avenue and evidence of the right to occupy.

b. Paragraph 15.b required Courtesy provide SOA a $750,000 letter of credit ("LOC") or performance bond. (Courtesy provided $750,000 cash in lieu of the LOC.)

c. Paragraph 15.c sets forth a series of facility remodeling requirements for the temporary Courtesy Subaru location required to be completed to SOA's satisfaction and approval.

d. Paragraph 15.d-h required that a Facility Addendum will be part of the Subaru Dealer Agreement and largely reiterated the preceding benchmarks.

e. Paragraph 16 required the Dealer Agreement include the following provisions:

(1) Paragraph 16.a required Courtesy submit construction drawings and site plans for a facility meeting Subaru's Signature Image Facility Standards and receive SOA's approval in writing by June 1, 2019.

(2) Paragraph 16.b required Courtesy to have secured all government approvals and construction permits to provide for the construction of the permanent facility at the new location by December 1, 2019.

(3) Paragraph 16.c required Courtesy to have commenced construction of the facility before January 31, 2020.

(4) Paragraph 16.d required Courtesy to have completed construction of the facility and obtain all necessary licenses and permits as to the Subaru sales facility at the new location by January 31, 2021.

[20] The Stipulated Decision uses the following terms seemingly interchangeably: "conditions," "Conditions," "deadlines," "benchmark," and "milestones."

(5) Paragraph 16.e required Courtesy to have obtained a Final Review Verification letter from Feltus Hawkins by March 1, 2021.[21]

(6) Paragraph 16.f required Courtesy to have completed the permanent facility by January 31, 2021. [Exh. J-301.10-.13]

38. Paragraph 17 provides, in part, that "[t]he parties agree that compliance with the terms of this Confidential Agreement and execution by both parties of a Subaru Dealer Agreement with Facility Addendum, containing the milestones for completion of construction and renovations to both the Temporary Property and the New Facility as set forth herein are each separately required according to the timetables set forth in this Confidential Agreement . . ."

OTHER RELEVANT PROVISIONS OF THE STIPULATED DECISION

39. Paragraph 9 of the Stipulated Decision provides that Courtesy shall, "[s]ubject to its full and timely compliance with the conditions specified . . ., continue to operate its SOA dealership operations" unless and until terminated or pursuant to a Notice of Intent to Terminate. [Exh. J-301.09:22-26]

40. With regard to delays in performance by Courtesy, the Stipulated Decision provides, in relevant part, as follows:[22]

> 18. Delay Based On Government Action or Inaction. If, notwithstanding Chico's commercially reasonable best efforts, the necessary approval of a governmental entity cannot be obtained in order to timely satisfy the deadlines set forth herein, solely for reasons beyond the control of Chico, Chico shall, upon first learning of such delay, immediately notify SOA's SFO Zone representative in writing, and shall request the minimum extension of time necessary to complete the actions set forth herein. SOA representatives are and shall be authorized by Chico to verify these facts (or any facts deemed relevant by SOA in its sole discretion) directly with any governmental entity representatives, and SOA shall retain all rights and remedies as set forth herein.
>
> 19. If SOA verifies that the delay is caused by the governmental entity and not by Chico, SOA shall agree to extend the affected deadlines set forth above, on a weekly basis, until the governmental-caused delay is not a factor. Chico shall provide weekly reports to SOA regarding the status of any governmental delay and the progress, if any, being made on the elimination of the delay and expected duration of the remaining delay. However, should SOA determine, that all or part of the delay is caused by Chico or its

[21] Feltus Hawkins is a "[t]hird-party vendor (architectural consultants) utilized by SOA to perform on-site dealership design consultations, the renderings for the Retailer's Subaru Signature compliant design, and post-construction compliance evaluations against Subaru Signature requirements." [Stipulated Glossary of Non-Controversial Terms]

[22] As noted in footnote 2, "Chico" is used by the parties in the Stipulated Decision to refer to "Courtesy."

agents, vendors or employees, or should Chico fail or refuse to promptly provide either the first notice or the weekly reports to SOA or not allow SOA to verify such facts directly with any governmental entity representative, then SOA shall not grant any extension (or any further extension), and the deadlines (either as set forth herein or as previously extended by SOA) shall remain in place.

20. No Obligation to Provide Extensions and Force Majeure. Chico also understands and agrees that SOA has no obligation to extend any time periods or deadlines set forth in this Confidential Agreement, whether or not Chico is unable to comply due to causes within or beyond Chico' [*sic*] control, and further, that any extension of time and the duration of any such extension are made, if at all, solely at SOA's discretion, except as expressly set forth herein and in Paragraph 18. Any such extension shall be valid only if made in writing, signed by then-current Western Regional Manager of SOA and delivered to Chico.

21. Notwithstanding the provisions of this section, neither party shall be in default or liable for any delay or failure of compliance with this Confidential Agreement to the extent due to any future event which is beyond the control of the defaulting party including, without limitation, landlord approval, fire, flood, hurricane, tornado, earthquake, war, acts of terrorism, embargo, riot or an unforeseeable intervention of any government authority (excluding delays in obtaining permits and licenses), but excluding transport difficulties or strike, lock out or other labor disputes of Chico or third parties, provided the party suffering such delay or failure of compliance immediately notifies the other party of such delay or failure of compliance. Should such an event of *force majeure* take place, SOA shall extend the time periods set out in Paragraph 16 to this Confidential Agreement to allow for delays incurred as a result of the event of *force majeure*. Failure to obtain landlord approval for any change contemplated herein shall not be excused by the terms of this paragraph and Chico shall immediately notify SOA of any such failure to obtain landlord approval. (Italics in original.) [Exh. J-301.13-.15]

41. Paragraph 25 of the Confidential Agreement, provides in relevant part:

25. Buy/Sell Deadline. Subject to potential delays and extensions as set forth above, should Chico either (a) not complete the remodeling and construction and occupancy of the permanent facility at the New Location on or before January 31, 2021; or (b) fails to meet any other Condition or Deadline set forth in this Confidential Agreement, as set forth above; or (c) not timely produce a Buy/Sell Application Package involving all of its stock or assets, herein by close of business on the Buy/Sell Deadline, as defined herein below, then SOA shall have the right to issue a notice of non-compliance with the terms of this Stipulated Decision and Order.

. . .

b) SOA reserves the right at any time following Chico's failure to comply with the foregoing to issue a notice of non-compliance with the Conditions of this Confidential Agreement, effective 60 days following its receipt by Chico. SOA will provide written notice to Chico of any perceived non-compliance providing at least 30 days to correct or rebut any alleged non-compliance, prior to invoking the Board's jurisdiction to request an order of termination pursuant to the stipulated decision and order.

c) The Parties agree that Chico's failure to comply with any of the Conditions herein shall constitute good cause to terminate the SOA Dealer Agreement between them under Vehicle Code sections 3060 and 3061. [Exh. J-301.17-.18]

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42. Other relevant provisions of the Stipulated Decision include:

(1) Paragraph 29, which acknowledges that the provisions and conditions of the parties' agreement pursuant to the Stipulated Decision are "fair" and "reasonable" and in the best interests of the parties and the consuming public. [Exh. J-301.21-.22]

(2) Paragraph 30, which provides that Courtesy agrees that "construction of a facility at the New Location . . . as contemplated under [the Stipulated Decision is] reasonable in light of all existing circumstances, including economic conditions. . . ." [Exh. J-301.22]

(3) Paragraph 33, which provides that "[t]his Confidential Agreement contains the entire understanding of the Parties relating to the subject matter of this Confidential Agreement and supersedes all prior statements, representations and agreements relating to the subject matter of this Confidential Agreement. . . ." [Exh. J-301.22]

(4) Paragraph 40, which sets forth that "[t]ime is of the essence and the timely satisfaction of the conditions of this Confidential Agreement, and each of them, is necessary in order to provide adequate SOA motor vehicles sales, service, and parts to the consuming public and to provide for the needs of the consuming public, and it would be injurious to the public welfare if the Conditions, and each of them, were not fulfilled by the deadlines set forth in this Confidential Agreement." [Exh. J-301.23] and,

(5) Paragraph 47 provides that the agreement is jointly drafted by the parties and their counsel and states that "all provisions hereof shall be construed with their fair meaning and not for or against either party." [Exh. J-301.25]

RESPONDENT SOA'S CONTENTIONS

43. Respondent asserts that pursuant to the language of the Stipulated Decision, Courtesy "agreed to meet certain construction benchmarks for a new permanent facility beginning in June 2019" in Chico. Starting with the benchmark to secure building permits by December 1, 2019, Courtesy, according to SOA, has failed to meet any of the other agreed upon benchmarks and "all are material breaches of its obligations and substantially based on events within its control." [Respondent Subaru of America, Inc.'s Opening Brief, p. 1, lines 20-24; p. 2, lines 5 through 6]

44. According to Respondent, "[t]he language of the Stipulated Decision itself … reflects that

the construction deadlines are **'material'** and must be met in a timely fashion and that a breach of one provision constitutes a breach of the entire agreement, entitling SOA to issue a notice of non-compliance to Courtesy" and support a finding of material breach. (Emphasis in original) [Respondent Subaru of America, Inc.'s Opening Brief, p. 20, lines 20-22; p. 23, lines 20-23] SOA asserts any other interpretation of the Stipulated Decision would render the decision and Board's Order "entirely meaningless" and would require SOA to repeatedly litigate issues concerning Courtesy's non-compliance. "Vehicle Code [Section] 3050.7 would also be gutless [*sic*];" it "would become a nullity." SOA contends that the entire purpose of the Stipulated Decision, which was to eliminate the need for further litigation over Courtesy's non-performance with regard to its Subaru dealership, would be undermined. [Respondent's Reply Brief, p. 1, lines 16 through 19; p. 5, lines 4 through 8; p. 16, lines 27 through p. 17, lines 5]

45. Respondent's position is that Courtesy "is unable to demonstrate any viable excuse for its failure to achieve the construction benchmarks which would relieve it from performance under the terms of the Stipulated Decision." The delays in obtaining permits were caused by Courtesy "itself failing to timely apply for permits from the County of Butte early on, before Chico annexed the subject dealership property." That failure "resulted in Chico's hands being tied with respect to honoring the County rules for public improvements." SOA contends that because Courtesy "wanted a really sweet deal" in terms of a Development Agreement with Chico, which would significantly benefit [Courtesy] financially, [Courtesy] unnecessarily prolonged negotiations for two years on extraneous factors." Rather than pushing forward and, at least, achieving the agreed-upon milestone of December 1, 2019 for permits, Courtesy "persisted in pursuing a waiver from Chico relating to a right-of-way on a parcel and for a purpose wholly unrelated to permitting the Subaru dealership," causing unnecessary delay in the permitting and finalization of the Development Agreement until February 2021. [Respondent Subaru of America, Inc.'s Opening Brief, p. 2, lines 7-18; p. 4, lines 25 through 28; p. 5, lines 18 through 21]

46. Courtesy, according to Respondent, "will seek to shift the blame for its failure to meet benchmarks in the Stipulated Decision to Chico, the COVID-19 pandemic and the Camp Fire in Northern California." [Respondent Subaru of America, Inc.'s Opening Brief, p. 2, lines 25-27; Respondent Subaru of America, Inc.'s Reply Brief, p. 3, lines 20-22] However, the provisions of Paragraph 18 of the Stipulated Decision state that before SOA will extend any deadlines set forth in the Stipulated Decision

for failure to obtain the necessary approval of a governmental entity, the delays must be "solely" for reasons beyond the control of Courtesy. [Respondent Subaru of America, Inc.'s Opening Brief, p. 24, line 22 through p. 25, line 2; Respondent Subaru of America, Inc.'s Reply Brief, p. 13, lines 1-12] Respondent notes that the Camp Fire in Butte County occurred in November 2018, one year prior to Courtesy submitting the permit application in November 2019 and did not affect Courtesy's "ability to meet any of the construction benchmarks in the Stipulated Decision." [Respondent Subaru of America, Inc.'s Opening Brief, p. 19, lines 6-10] In addition, "the statewide stay-at-home order related to the COVID[-19] pandemic was not issued by the Governor of the State of California until March 19, 2020, well ***after*** the deadline for [Courtesy] to obtain permits (December 1, 2019) and to commence construction (January 31, 2020)." (Emphasis in original.) [Respondent Subaru of America, Inc.'s Opening Brief, p. 19, lines 3-6] And, although the City of Chico may have closed its physical office doors for a period of time during the pandemic, City employees were working remotely. [Respondent Subaru of America, Inc.'s Opening Brief, p. 3, lines 1-3]

47. Moreover, Respondent asserts in order for Courtesy to exercise the excuse for delay provisions of Paragraph 18 of the Stipulated Decision, Courtesy "must establish that it has met certain conditions precedent to raising that provision, namely that [Courtesy] properly notified SOA in writing of its inability to achieve the stated deadlines and the need for an extension of time and that [Courtesy] secured SOA's written authorization to extend the deadlines on a weekly basis. [Respondent Subaru of America, Inc.'s Opening Brief, p. 3, lines 12-16] Courtesy failed to properly notify SOA and thus, did not obtain any written extensions as required. [Respondent Subaru of America, Inc.'s Opening Brief, p. 26, lines 16-23; Respondent Subaru of America, Inc.'s Reply Brief, p. 13, lines 1-6]

48. It is Respondent's position that because "the milestones for permitting the building (December 1, 2019) and commencing construction (January 31, 2020) all occurred prior to any COVID-related shutdowns (which began in March, 2020)" it could not have been truly excused. Additionally, since construction has been ongoing throughout California during the pandemic and is designated an "essential service" under California Executive Order N-33-20, there is no excuse for Courtesy's failure to construct the facility during the pandemic. [Respondent Subaru of America, Inc.'s Opening Brief, p. 3, lines 19-23]

49. Respondent further asserts that because Paragraph 21 specifically excludes "delays in obtaining permits and licenses" from the *Force Majeure* provisions, evidence relating to the Camp Fire and COVID-19 pandemic and the governmental orders and actions related thereto, and their impact on construction and permitting in Chico, is not relevant to any of the issues in this matter and cannot excuse Protestant's non-compliance.[23] [Respondent's Reply Brief p. 2, lines 10 through 12; p. 3, lines 20 through 22, p. 4, lines 23 through 24]

50. SOA also contends that "in California, a 'time is of the essence provision' is generally held to mean that a failure to perform within the time specified in the parties' agreement is [considered] a ***material*** breach of the agreement." See, *Gold Mining & Water Co.* v. *Swinerton* (1943) 23 Cal.2d 19, 27 ("[i]t has been held that when time is made of the essence of a contract, a failure to perform within the time specified is a material breach of the contract," citing *C. O. Bashaw Co.* v. *A. U. Pink ham Co.* (1926) 77 Cal. App. 591) . . ." (Emphasis in original.) [Respondent Subaru of America, Inc.'s Opening Brief, p. 22, lines 17-21; Respondent Subaru of America, Inc.'s Reply Brief, p. 16, lines 17-21] Respondent contends Protestant's reliance on the opinion in *Magic Carpet Ride LLC* v. *Rugger Investment Group, LLC* (2019) 41 Cal. App. 5th 357 is misplaced. According to SOA, *Magic Carpet Ride* is distinguishable because: (1) This case is not a simple breach of contract or a mere settlement agreement, but involves a negotiated Stipulated Decision and order which was approved by the Board; (2) Courtesy has not missed deadlines just by a few days, but by one year, seven months and counting and; (3) "*Magic Carpet Ride* still requires that adherence to time and date conditions be reasonably met." [Respondent Subaru of America, Inc.'s Opening Brief, p. 22, line 23 through p. 23, line 2; Respondent Subaru of America, Inc.'s Reply Brief, p. 18, line 27 through p. 19, line 1]

51. SOA further asserts that the language of the "no waiver provision" and "integration clause" in the Stipulated Decision "expressly provides that the Stipulation is not modified or affected by any other agreement between the parties. Therefore, the Stipulated Decision stands alone with respect to the issues" in this matter and was not amended by the Amendment to the Facility Addendum.

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[23] As such, Respondent contended in its Motion in Limine No. 2 that all evidence, testimony and argument regarding these issues should be excluded from consideration at the hearing in this matter. This motion was denied on September 14, 2021. [RT Vol. I 52:21-64:3]

[Respondent Subaru of America, Inc.'s Opening Brief, p. 32, lines 6-9, 18-24]

PROTESTANT COURTESY'S CONTENTIONS

52. Protestant admits that there has been a failure of certain conditions by Courtesy but asserts "the failure of these conditions cannot be considered material because the evidence demonstrates Courtesy's tremendous investment and efforts to achieve full compliance with its obligation [] to construct a new Subaru branded facility." [Protestant's Opening Brief, p. 5, lines 9-12]

53. Moreover, according to Protestant, "the failures of the conditions are the result of circumstances beyond Courtesy's control" and occurred "despite Courtesy's commercially reasonable best efforts." [Protestant's Opening Brief, p. 5, lines 12-13; Protestant's Reply to Subaru of America Inc.'s Opening Brief, p. 19, lines 13-17] "Courtesy has been diligently working to complete a complex facility project involving seven different brands to be housed in three separate showroom buildings, a separate service center, collision center, car wash, and used car lot." The project is complex, requiring "facility design approval from each franchisor and its independent design firms" and is further complicated because the "proposed location is entirely without improvements and requires the establishment of sewer, water, and electricity." [Protestant's Opening Brief, p. 5, lines 16-21]

54. Protestant asserts that the doctrine of equitable estoppel is applicable. "It has four elements: '(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.' (*Mathews* v. *Happy Valley Conference Center, Inc.* (2019) 43 Cal.App.5th 236, 258 (quoting *City of Goleta* v. *Superior Court* (2006) 40 Cal.4th 270, 279).)" [Protestant's Opening Brief, p. 10, lines 6-11] SOA therefore "should be estopped from denying it modified the deadlines described in the Stipulated Decision . . . by entering into a subsequent dealer agreement with Courtesy." [Protestant's Opening Brief, p. 10, lines 12-13]

55. Courtesy acknowledges that "SOA was understandably frustrated with the project delays . . ." Courtesy asserts that "it was Mr. Smit's negligent attention to detail that poisoned SOA's decision-making process" by incorrectly assuming and falsely notifying SOA that Courtesy had obtained building permits in January of 2020. [Protestant's Opening Brief, p. 10, line 28 through p. 11, line 4; p.

12, lines 15-18] Because of this mistaken belief that Courtesy had obtained permits, Courtesy contends that "SOA persists in its refusal to acknowledge the extent of Courtesy's efforts toward compliance, the evidence of government delays, and the impact from the pandemic." [Protestant's Opening Brief, p. 11, line 25 through p. 12, line 8; p. 12, lines 15-20]

56. Courtesy contends that the "primary factual question before the Board is whether Courtesy exercised commercially reasonable efforts to comply with the obligations of the Stipulation." Courtesy claims it exercised "commercially reasonable efforts and should not be considered in breach because the delay is directly attributable to government delay that was compounded by the pandemic." [Protestant's Opening Brief, p. 12, lines 24-27]

57. Protestant claims to the extent any delay may reasonably be attributable to Courtesy, this delay is immaterial. [Protestant's Opening Brief, p. 5, lines 13-14] "[I]n the event the Board determines Courtesy to be in breach, the Board's inquiry must turn to the question of whether any such breach is *material*." Protestant contends that "'[i]n determining the materiality of a failure to fully perform a promise[,] the following factors should be considered: (1) The extent to which the injured party will obtain the substantial benefit which he could have reasonably anticipated; (2) the extent to which the injured party may be adequately compensated in damages for lack of complete performance; (3) the extent to which the party failing to perform has already partly performed or made preparations for performance; (4) the greater or less hardship on the party failing to perform in terminating the contract; (5) the willful, negligent, or innocent behavior of the party failing to perform; and (6) the greater or less uncertainty that the party failing to perform will perform the remainder of the contract. (*Sackett* v. *Spindler* (1967) 248 Cal.App.2d 220, 229.)" (Italics in original.) [Protestant's Opening Brief, p. 12, line 28 through p. 13, line 9]

58. Protestant claims "the substantial forfeiture that would result to Courtesy if the Board determines the failure of the conditions to be material based on timing alone, is not justified in equity." [Protestant's Reply Brief, p. 7, lines 16-17] Courtesy notes that "SOA asks the Board to presume it has been injured because Courtesy's compliance has been delayed. The requirements for the determination of materiality require the consideration of any harm to SOA—there is none. In contrast, Courtesy faces the extreme harm of the loss [of] its Subaru franchise, which is a central piece of its facility project."

[Protestant's Reply Brief, p. 8, lines 10-13]

59. Protestant does not claim its entire performance should be excused but rather that the Board must determine "whether Courtesy's inability to timely perform the Stipulation's remaining conditions should be considered a material breach. Courtesy's inability to provide timely compliance is both excused and cannot be considered material." [Protestant's Reply Brief, p. 16, lines 17 through 22]

STIPULATED FACTS[24]

60. Respondent SOA is a corporation organized and existing under the laws of New Jersey, and is authorized to do business in the State of California. SOA distributes Subaru-brand vehicles in the United States, and holds an occupational license issued by the California Department of Vehicles. [Stipulation of Facts, ¶ 1]

61. Protestant Courtesy Automotive, Inc. dba Courtesy Subaru of Chico ("Courtesy") is a corporation organized and existing under the laws of California, and is a new motor vehicle dealer licensed by the California Department of Motor Vehicles. [Stipulation of Facts, ¶ 2]

62. Courtesy operates a Subaru dealership in Chico, California pursuant to a Subaru Dealer Agreement and Standard Provisions, executed between Courtesy and SOA on October 17, 2019. [Stipulation of Facts, ¶ 3; see also Exh. J-300]

63. The owners and officers of Courtesy are husband and wife, Sharam Mihanpajouh (aka "Jerry Pajouh") and Diane Mihanpajouh (aka "Diane Pajouh"). [Stipulation of Facts, ¶ 4]

64. Mr. Pajouh is the President, Executive Manager, General Manager and Treasurer of Courtesy Subaru. [Stipulation of Facts, ¶ 5]

65. SOA and Courtesy entered into a Stipulated Decision on March 20, 2019 pursuant to Sections 3050.7, 3060, 3061, 3066 and 3067 of the California Vehicle Code to resolve the Section 3060 protest filed by Courtesy. [Stipulation of Facts, ¶ 6]

66. The Stipulated Decision was adopted by the New Motor Vehicle Board on April 9, 2019 and is a final Order of the Board. [Stipulation of Facts, ¶ 7]

67. The final Order of the Board adopting the Stipulated Decision has never been amended by

[24] The Stipulation of Facts filed by the parties used Chico as the reference for Courtesy but for clarity, all references to Chico are replaced with Courtesy, unless it is a reference to the City of Chico.

the Board. [Stipulation of Facts, ¶ 8]

68. The Stipulated Decision provides the Board shall retain jurisdiction pursuant to the terms and conditions contained therein. [Stipulation of Facts, ¶ 9]

69. Courtesy and SOA executed the Amendment to Existing Facility Addendum to Conditional Subaru Dealer Agreement Future Address, dated May 21, 2020. This document provided benchmarks for the Courtesy facility project that are different from those set forth in the Stipulation. However, the parties did not seek to amend the Stipulated Decision. [Stipulation of Facts, ¶ 10]

70. On August 24, 2020, SOA issued a Notice of Non-Compliance with the Stipulated Decision to Courtesy. [Stipulation of Facts, ¶ 11]

71. On September 3, 2020, Protestant filed with the Board its Request for Appointment of ALJ to Determine Compliance with Stipulated Decision. [Stipulation of Facts, ¶ 12]

72. On February 1, 2021, SOA issued an Amended Notice of Non-Compliance with the Stipulated Decision to Courtesy. [Stipulation of Facts, ¶ 13]

73. On February 8, 2021, Courtesy filed with the Board an Amended Request for Appointment of ALJ to Determine Compliance with Stipulated Decision. [Stipulation of Facts, ¶ 14]

74. In addition to the Subaru dealership, Courtesy also plans to have dealership franchises with Mercedes-Benz, Cadillac, Buick-GMC, BMW and Volvo at the multi-franchise dealership project in Chico, California. [Stipulation of Facts, ¶ 15]

75. Courtesy submitted its application to Chico for a building permit for the construction of the sales facility for the Subaru dealership on November 26, 2019. [Stipulation of Facts, ¶ 16]

76. Annexation of the project into Chico commenced by the City of Chico at the end of 2017 and was completed in six months.[25] [Stipulation of Facts, ¶ 17]

77. Chico issued a building permit for the construction of the sales facility for the Subaru dealership on April 30, 2021. [Stipulation of Facts, ¶ 18]

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[25] Although the parties stipulated that the annexation of the area where the project is located started in late 2017 and was completed approximately six months later, that is not correct. The City produced via Mr. Sawley, the City planner, a Butte Local Agency Formation Commission Certification of Completion recorded November 30, 2017 showing annexation of the Esplanade Annexation No. 29 (which includes the project site) was completed by Resolution on October 5, 2017. [Exh. P-64.010]

78. Courtesy submitted its application for the service building permits on or about June 10, 2021. Chico has not issued a building permit for the construction of the service center dealership facility. Courtesy entered into a Development Agreement with Chico with regard to the multi-franchise dealership construction project which was finalized and recorded on April 16, 2021. [Stipulation of Facts, ¶ 19]

OFFICIAL NOTICE

79. Government Code section 11515 provides for official notice "of any fact which may be judicially noticed by the courts of the state." Official Notice was taken of the following documents:

(1) State of California Executive Order N-33-20 ("Stay-At-Home Order") issued by Gavin Newsom, Governor of the State of California, on March 19, 2020, available online at https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf.

(2) Relevant excerpts from the document entitled "Essential Workforce" designating "Essential Critical Infrastructure Workers" under the Governor of California's Executive Order N-33-20, available online at https://COVID19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf which included construction as an essential business.

(3) California Department of Forestry and Fire Protection "Cal Fire News Release" dated May 15, 2019, available online at https://www.fire.ca.gov/media/5121/capfire_cause.pdf. The news release states: "The Camp Fire in Butte County, started the morning of November 8, 2018, and burned a total of 153,336 acres, destroying 18,804 structures and resulting in 85 civilian fatalities and several firefighter injuries. The Camp Fire is the deadliest and most destructive fire in California history." The release continued: "Tinder dry vegetation and Red Flag conditions consisting of strong winds, low humidity and warm temperatures promoted this fire and caused extreme rates of spread, rapidly burning into Pulga to the east and west into Concow, Paradise, Magalia and the outskirts of east Chico."

(4) Relevant excerpts from United States of America Department of Commerce, Service Assessment "November 2018 Camp Fire," available online at https://www.weather.gov/media/publications/assessments/sa1162SignedReport.pdf. The assessment notes that: "The Camp Fire began around 6:30 AM PST on Thursday, November 8, 2018 near Pulga in Butte County of Northern California . . . . The Fire was 100 percent contained on November 25, 2018."

(5) Acting Governor Newsom's November 8, 2018 Proclamation of a State of Emergency pertaining to the Camp Fire in Butte County.

(6) Governor Newsom's March 4, 2020 Proclamation of a State of Emergency pertaining to COVID-19.

(7) Chico "On-Line Permit," Permit No. B19-00573, for Butte Humane Society, issued on 7/2/2020 and approved on June 24, 2020. [Exh. R-141]

(8) Chico "On-Line Permit," Permit No. B19-00481, for Subaru/Volvo, issued on 4/30/2021 and approved on May 3, 2021.[26] [Exh. R-142]

FINDINGS OF FACT[27]

The Camp Fire and the COVID-19 Pandemic

80. The Camp Fire in Butte County, California, the deadliest and most destructive fire in California history, began on November 8, 2018. The fire decimated three towns, including Paradise, California, a town of 27,000 people, and burned as far as the outskirts of east Chico. The fire was contained on November 25, 2018. On that same day, Acting Governor Newson declared a State of Emergency to exist in Butte County. [See Paragraph 79, *supra*] After the Camp Fire, residential permits in Chico took precedence over commercial permits, including through mid-2020. [RT Vol. III 8:16-9:25] Mr. Sawley, senior planner for the City, testified the impact from the Camp Fire on Chico was "surreal." There was "a crush of stress on the [City] Planning Department . . . it was another huge distraction." [Exh. P-63.112:16-19, 113:17-20]

81. During the aftermath of the Camp Fire, Mr. Sawley thanked Mr. Stevens, who was the point person on the Courtesy project at the time, for understanding that Mr. Sawley could not give the Courtesy project timely consideration nor review the Development Agreement between the City and Courtesy. Mr. Sawley was instead focused on the residential needs of people displaced from Paradise,

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[26] The permit for the Butte Humane Society facility was approved first and then issued. Whereas, the permit for the Subaru/Volvo facility was issued first and then approved. [RT Vol. II 167:11-22; Exhs. R-141.01; R-142.01]

[27] References to testimony, exhibits or other parts of the record are intended to be examples of evidence relied upon to reach a finding, and not to be exhaustive. Findings of Fact are organized under topical headings for readability only, and not to indicate an exclusive relationship to an issue denoted by the topic heading. The absence of a citation generally signifies that the underlying facts are foundational or uncontested, or that the finding is an ultimate fact finding of the Board based upon other facts in the record and reasonable inferences therefrom.

California. [RT Vol. III 14:1-9; Exh. P-63.111:19-112:7]

82. On March 4, 2020, Governor Newsom declared a State of Emergency in California due to the COVID-19 pandemic. The California statewide COVID-19 stay-at-home Executive Order was issued by Governor Newsom on March 19, 2020. In accordance with the order, the State Public Health Officer designated a list of 13 categories of "Essential Critical Infrastructure Workers," who were exempt from the stay-at-home order. Item 13 was identified as "Industrial, Commercial, Residential and Sheltering Facilities and Services" and included construction workers (and those who assist in construction such as plumbers and electricians) who support construction projects. [See Paragraph 79, *supra*]

83. Similar to events after the Camp Fire, Mr. Sawley testified that Mr. Pajouh was understanding about not being able to give the Courtesy project the time or the immediate attention when Courtesy's items were submitted for review during the COVID-19 pandemic. [Exh. P-63.111:19-.112:14] The Courtesy facility was not a priority for the City during the pandemic. [RT Vol. III 11:2-24]

84. The Chico City offices at 411 Main Street were closed from March 2020 to mid-May 2021. [Exh. P-63.109:3-14] The Chico building department offices continued to conduct business during the COVID-19 pandemic and statewide stay-at-home order and employees worked remotely during that time. [Exh. P-63.25:24-.26:11] Mr. Sawley testified the City may have slowed down in its responses, and instituted some protocols during the pandemic. City business was conducted by appointment. COVID-19 created additional burdens and "tremendous" delay in City functions.[28] [Exh. P-63.109:15-110:1] During COVID-19 "it was much harder to get meetings . . . it was extra difficult." [Exh. P-63.27:16-28:2] Mr. Stevens testified that COVID-19 had an effect on virtually all his projects. "It was more challenging and more effort-inspiring, more effort intense." [Exh. P-46.028:2-14]

85. Mr. Pajouh testified to the difficulty communicating with the City in 2020 due to COVID-19. He explained there were delays in City responses throughout 2020 due to the fact that many City staff

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[28] Mr. Sawley testified that the City opened its doors the day before his deposition on May 19, 2021. May 18, 2021 was the first day the doors had not been locked in over a year. [Exh. P-63.109:8-14]

were working remotely and that City offices were closed.[29] [Exhs. P-14.001-.002; P-62.164:11-24] However, the situation improved at the start of 2021. [Exh. P-62.052:17-20, .053:8-9, .064:11-17, .083:17-24]

86. Mr. Farabee testified in April 2021 that, although technically the automotive industry was deemed essential, SOA employees had not been in their offices and offices were closed to most people for the majority of COVID-19. [Exh. P-59.006:12-20] SOA representatives stopped visiting dealers in person in March 2020. [Exh. P-59.006:12-25] Mr. Graziano confirmed that COVID-19 had impacted SOA and both the regional office and zone offices were closed for some period of time.[30] [Exh. P-61.006:23-.007:21, .008:2-12]

The Leased Subaru Facility

87. Mr. Pajouh is currently leasing the property at 896 East Avenue, Chico, a former video store location, for its Subaru sales. [Exh. J-300.02] The store is across the street from Mr. Pajouh's other franchises and has been remodeled, rebranded, and approved by SOA. [RT Vol. II 75:6-17; Vol. IV 80:8-10, 118:3-21] It is on the corner of Cohasset Road and East Avenue. [Exh. P-62.142:11-19] The building does not currently look like a video store. However, it does not look like a traditional dealership building either. [RT Vol. IV 118:18-21] The current Subaru facility is deficient in that it does not meet Subaru Minimum Standards and Operating Guidelines, but Mr. Pajouh said it is better than any of his other facilities. [Exhs. J-300.33; P-62.142:11-19] It is the newest and most modern building that Courtesy operates out of and has better exposure on East Avenue. [RT Vol. VII 24:14-25:9, Exh. 62.142:11-19] Everything that was required to be done at the temporary facility under the Stipulated Decision was completed. [RT Vol. III 232:12-14] Courtesy has a lease on the sales building at the East Avenue location until March 31, 2023. [RT Vol. VI 221:21-222:1; Vol. VII 14:20-15:9]

88. Mr. Pajouh also leases property at 2520-2522 Cohasset Road for his European car sales and the Buick/GMC sales and service facility. Courtesy uses this facility for service of Subaru customers'

[29] See Exhibit P-14 which are emails to Mr. Smit from Mr. Pajouh about the status of the plans and the difficulty working with City officials during COVID-19.

[30] BMW, unlike SOA, recognized that dealers faced issues during COVID-19. BMW sent out a letter to all dealerships that were under either renovations or new building construction, giving an automatic extension of six months to any deadlines, and indicated a re-evaluation of the projects would be done after that. [RT Vol VI 153:8-23]

cars (as was previously authorized). The term of that property lease is through December 31, 2021. [Exhs. R-176; R-177] Courtesy is negotiating an addendum to the lease to extend the lease until December 2022. [RT Vol. VI 224:8-10; Vol. VII 15:10-17] The European building on Cohasset is currently in escrow to Enterprise Rent-a-Car and the sale is subject to the lease. [RT Vol. VII 15:18-16:25]

Sales by Courtesy of Subaru Vehicles

89. In 2015, Mr. Pajouh purchased Courtesy Subaru and his other dealerships in Chico. [Exh. 62.022:2-10, .029:7-13] Courtesy's total investment in the purchase all of the dealerships (Courtesy Automotive Group) was $6.6 million plus assets of approximately $1 million for a total of $7.6 million. [RT Vol. VII 11:1-20] Mr. Pajouh estimated that the cost to purchase the Subaru franchise was approximately 40 percent of the total cost or about $3 million. [RT Vol. VII 11:21-12:2]

90. For 2016 through 2020, Mr. Pajouh's most profitable year was 2020 by approximately a quarter million dollars. [Exh. P-62.029:20-.030:6] Mr. Farabee testified that he could not offer an opinion whether Subaru is losing sales as a result of Courtesy still being in a temporary location. [RT Vol. III 222:14-21] Subaru sales generally are up six percent and Courtesy's Subaru sales, in particular, were up year-to-date (July 2020 to July 2021). [RT Vol. III 222:18-19, 224:20-23] Courtesy's sales were triple the national average sales (up 19 percent) during that timeframe. [RT Vol. III 224:7-23; Vol. IV 66:22-24, 79:17-22] According to Mr. Farabee, Courtesy sells probably 35-45 Subaru vehicles a month. [RT Vol. IV 116:2-5] Mr. Pajouh testified in his deposition that Subaru is an integral part of the business of Courtesy Automotive Center and is its biggest volume. [Exh. P-62.147:3-21] In 2019, Subaru sales and service accounted for over 40 percent of Courtesy's unit sales in generating cash flow. [RT Vol. VII 8:8-25, 29:20-30:3] Subaru is Courtesy's biggest generator of revenues based on volume.[31] [RT Vol. VII 7:21-8:25, 29:16-30:3]

91. Courtesy could not sell any more Subaru vehicles than they are currently selling because

[31] According to Mr. Pajouh, Courtesy's GM franchise generates more revenues as far as gross profit. He explained that when you multiply the number of units sold per gross profit, gross profit per unit is higher on GM, "but the unit sales are not anywhere near Subaru Sales." As an example, if on an average month Courtesy sells 50 Subaru vehicles and each unit generates $1,500 the total gross revenue would be $75,000, but that same month it sells 8-10 GM products and they generate $2,000-$2,500 per unit the maximum gross would be $25,000. [RT Vol VII 9:9-10:7]

of the worldwide problem producing computer chips due to COVID-19.[32] [RT Vol. III, 213:5-22, 222:22-223:15] Courtesy is "nearly flat to where they were in [2019], which is pre-pandemic numbers" but "that's better performance than Northern California or the country too."[33] [RT Vol. III 225:1-4] Mr. Farabee testified that in terms of presently not having an inventory of cars that "[m]ost retailers would tell you they're okay with how things are right now . . . because profitability is through the roof. They're making more per car than they have. Their pricing on cars has gone up." [RT Vol. IV 67:24-68:3] In 2021, to the date of Mr. Pajouh's testimony, Courtesy is two-and-a-half times more profitable than 2020. [RT Vol. VII 39:6-15, 40:5-8] Mr. Graziano confirmed that it was the best profit year for Subaru retailers and for the company itself in the history of SOA. [Exh. P-61.006:23-007:4]

The Butte Humane Society Building

92. According to SOA, the construction of the Butte Humane Society building in Chico is a comparable project and relevant to whether Courtesy could have built its multi-franchise project in a timelier manner. The Butte Humane Society applied for a permit at approximately the same time as Courtesy and is nearing completion. [Exhs. R-141.01; R-142.01; RT Vol. II 168:12-15; Vol. V 92:11-14] The Butte Humane Society owns a 10-acre parcel located at 13391 Garner Lane across the street from th Courtesy property and was originally located in the County and annexed in 2017. [RT Vol. II 167:5-10; Vol. III 24:3-14; Exh. P-64.010] It is currently constructing an approximately 20,000-25,000 square foot main office/kennel building on a portion of the 10 acres [Exh. R-141.01; RT Vol. II 167:17-19; Vol. III 111:8-16; Vol. V 94:17-21] The value of the construction project shown on the permit is a little over $4.3 million. [Exh. R-141.01; RT Vol. III 111:7-21, 119:7-14] The total project cost is approximately $8-9 million. [RT Vol. V 95:1-3]

93. The entire Butte Humane Society project, which includes a future barn and dog park, is to be done in phases. [RT Vol. III 111:11-16, 111:23-112:5, 113:21-114:4; Vol. V 93:10-13; Exh. P-63.076:13-25] The Butte Humane Society parceled off the three acres where the building was to be built

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[32] Mr. Farabee explained that longer term, because of a business model shift in the last year of people ordering cars and taking possession in 60 days, Courtesy (and other dealers) could take more sold orders and get more cars. [RT Vol III 223:16-224:5, 225:5-13]

[33] Prior to March 2020 (pre-pandemic), Courtesy's average inventory level was 50-70 cars and in 2019 Courtesy sold 594 new Subaru vehicles or approximately 49 per month. [RT Vol. VI 128:25-129:14]

prior to City design review and the use permit application. This was more of a logical sequencing and thus, easier to process for the City. [RT Vol. III 116:10-25] Butte Humane Society applied for a permit on December 19, 2019 (Permit No. B-19-00573). The permit was approved on June 24, 2020, and issued on July 2, 2020, approximately six months after its application. [RT Vol. II 167:11-22; Exh. R-141.01]

94. Mr. Sawley, although not assigned to the Butte Humane Society project, was familiar with it. [RT Vol. III 109:21-24, 110:15-111:1] Mr. Sawley explained that unlike Courtesy, Butte Humane Society did not plan to build in the County; it did not submit building permits or planning entitlements prior to annexation. It was conceived and approved in the City. [RT Vol. III 24:12-18, 118:16-119:6] Butte Humane Society's design professionals knew they needed to show and pay for City improvements. There was no need for a Development Agreement to defer improvements and costs.[34] [RT Vol. III 24:15-18, 113:11-15, 118:16-23] Butte Humane Society did ask for the same kind of deferral as Courtesy was getting approved for, but Mr. Sawley stated that the City "shut that down." [RT Vol. III 113:16-20] Because Butte Humane Society was designed to meet City standards, they were able "to get faster through the process." [RT Vol. III 146:3-16] Mr. Sawley agreed that the projects were not comparable given that one did not qualify for use of a Development Agreement and the other did; Courtesy planned to build in the County and had plans that reflected County-level improvements.[35] [RT Vol. III 118:16-119:6] It would have required changes to Courtesy's plans to build to City standards. [*Ibid.*]

95. Construction of the Butte Humane Society building was very close to being completed at the time of the hearing in September 2021. [RT Vol. II 168:12-24; Vol. V 92:11-14]

96. Mr. Sawley testified that the Butte Humane Society was "more of a lovable project that doesn't get much opposition." He explained that it was an easier project to process because of its mission to take care of animals that may be displaced from fires and "the wind they have at their back with all their donors and stuff. I mean, don't get in the way of Butte Humane." [RT Vol. III 116:10-25].

97. Mr. Seegert was also familiar with the project as Modern Building was also the

[34]Mr. Sawley admitted that these City requirements for the Butte Humane Society were like "building a sidewalk to nowhere." [Exh. P-63.117:13-22]

[35] Mr. Sawley at the same time testifying the projects were not comparable, clarified his testimony, noting that the building was bigger than he had originally thought (20,000 square feet versus 25,000 square feet) and that the acreage was larger than what he originally testified to (five acres versus 10 acres). [RT Vol. III 111:12-21] He explained that the Butte Humane Society project is "a big project." [RT Vol. III 119:7-19]

contractor on the building project. [Vol. II 166:22-167:1; Vol. V 107:21-25] In his opinion, the Butte Humane Society kennel building is on a smaller portion of the overall site than Courtesy's and not as complex; "it's not even a comparable project." [RT Vol. II 167:11-22]

98. Although the two projects have some similarities, such as needing to be connected to utilities and the land is approximately 10 acres, they are not comparable. [RT Vol. II 167:11-22, 169:10-15; Vol. III 118:9-119:6] Butte Humane Society is a single building about 20,000-25,000 square feet. Courtesy has five buildings with 110,00-120,000 square feet, needed four permits, and had multiple plan checks. [RT Vol. V 120:2-18] Mr. Sawley testified that that Butte Humane Society project was more straightforward, with one building and a parking area in front. [RT Vol. III 148:9-16] The Courtesy project had more "problems" in obtaining approval such as lot line adjustments and shared parking areas between all the buildings, which required the City to see all the connections. [RT Vol. III 148:1-8] Butte Humane Society had no basis for asserting that City improvements were not required because the project had not applied for any entitlements with the County. Thus, there was no issue of City versus County requirements that would have triggered delay in coordination between the two entities. Butte Humane Society did not have the option to have a Development Agreement to avoid paying presently for City improvements. [RT Vol. II 167:11-22; Vol. III 113:7-114:4, 117:24-118:23] Therefore, the fact that Butte Humane Society applied for their building permit at about the same time as Courtesy, and that its construction is almost complete, is not relevant to whether Courtesy could have built its facility in a timelier manner, or whether it materially breached the conditions of the Stipulated Decision.

The New Courtesy Multi-Franchise Project[36]

(1) The Building Permits and the City Plan Check Process

99. The Courtesy project is a complex multi-franchise project involving seven different brands: Subaru, Mercedes-Benz, Cadillac, Buick-GMC, BMW and Volvo. [Stipulation of Facts, ¶ 15] The dealerships are to be housed in three separate showroom buildings, each 17,600 square feet, a

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[36] For a better understanding of the site and the layout of the project, see Attachments 1, 2 and 3, which were Exhibits "A " and "C" to the Development Agreement. [Exh. R-104.17, .18 and .20] Attachment 1 shows the vicinity of the project, Attachment 2 shows the total acreage and the parcels on the property, and Attachment 3 depicts the layout of the buildings superimposed over the five parcels.

separate service and repair center, which is 56,000 square feet, a car wash,[37] and used car lot. [Exhs. P-63.044:1-5, 103:3-8; R-104.02, Section 1.4; RT Vol. VII 18:21-19:21] It is located on five parcels. [Exh. R-172.02] The property is a little over 11 acres and the square footage of the project is approximately 110,000-120,000. [Exh. R-104.02; RT Vol. II 168:7-9, 171:25-172:5; Vol. III 113:1-6]

100. This project requires facility design approval from each franchisor and their independent design firms. The project is further complicated by the fact the proposed location is a "greenfield project:" which is a ground up facility entirely without public improvements and requires connection to utilities such as sewer, water, gas, fiber optics and electricity. [RT Vol. I 177:11-12; Vol. II 111:25-112:4, 192:7-8]

101. Courtesy timely completed the first five milestones of the Stipulated Decision and the Facility Addendum, including acquisition and remodeling of the temporary facility according to SOA specifications, provision of $750,000 cash in lieu of a LOC, and completion of, and approval of, construction drawings by June 1, 2019. [RT Vol. IV 58:21-23; Vol. VI 55:15-60:3]

102. The Subaru and Volvo building was the first to be approved by Courtesy Automotive Group's franchisors and the first to be submitted for approval to the City. [RT Vol. V 115:22-116:3, 116:10-18] Courtesy submitted the application for four permits to the City on November 26, 2019, including for the Subaru/Volvo building (Permit No. B-19-00481).[38] [RT Vol. V 115:22-116:3, 119:19-120:8] The initial plan set was submitted for the Subaru/Volvo building in late 2019, and for the other buildings just after the first of the year in 2020.[39] [40] [RT Vol. V 116:12-18, 117:4-14]

103. The Chico Building Department is the City unit that is the "pinpoint [department] that delegates or distributes to other departments" and issues the permit. [RT Vol. II 160:7-14, 164:4-16,

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[37] There is a quick oil and lube building that was specifically requested by SOA. The cost of this building to construct is approximately $200,000. [RT Vol. V 163:19-25, 164:6-25; Vol. VII 18:21-19:9]

[38] Mr. Smit received a copy of the November 26, 2019 permit application and payment receipt from Courtesy, and mistakenly thought the permit had been issued. [Exh. P-51.022:5-24, .035-.036] Mr. Pajouh sent an email on January 8, 2020 explaining to Mr. Smit that he had applied for plan check and permitting in November [2019] and that the City has everything they need to "proceed with permitting." [Exh. P-48.030] However, still under the misunderstanding, Mr. Smit sent out letters indicating that the zoning and permit objective had been achieved. [Exh. P-51.012:20-.013:10, .015:22-.016:14, .026:14-.027:1, .037-.038] Mr. Smit later requested a copy of the permit but it could not be produced since Mr. Pajouh had only filed the application. [Exh. P-51.013:5-16]

[39] Mr. Seegert was given instructions to prioritize the Subaru building. [RT Vol. II 146:18-147:4]

[40] The City of Chico has no capability of having documents submitted online. [Exh. P-47.022:3-17]

165:2-12] The City plan check is a process whereby the building department and a third-party vendor, Bureau Veritas ("BV"), review submitted plans on "big plan checks" such as Courtesy's, and provide feedback to the applicant concerning requested changes or additions to be included with the next set of submitted plans. [Exhs. P-32.003; P-47.015:3-17, .016:13-25; P-63.107:16-25; RT Vol. I 203:18-204:12; Vol. III 21:17-22:4, 71:15-19] The project also required multiple approvals from various other City departments such as Planning, Sewer, and Development Engineering. [Exhs. P-13.002; P-17.001, .003; P-32.001-.062]

104. On February 14, 2020, Tony Lindsey with the City's building department contacted Mr. Seegert to ask how complete Courtesy's plans were. [Exh. P-17.004; RT Vol. III 179:4-5] Mr. Seegert responded that when the drawings were submitted, the intent was to have the City start the plan check process at that time. [Exh. P-17.004]

105. Mr. Sawley reviewed the plans on February 18, 2020, and noted that the plans needed to "show public frontage improvements meeting City standards (or complete draft Development Agreement authorizing waiver therefrom)." [Exh. P-32.001; RT Vol. III 36:16-24] Mr. Sawley testified at the hearing that he and the other City reviewers were not "urgently wanting to look at these plans" while the Development Agreement was being negotiated because it would be premature and cause incomplete reviews.[41] [42] [RT Vol. III 29:7-14, 169:19-170:9, 171:6-172:12] Mr. Sawley confirmed that BV performed timely reviews of the plans because they wanted to get back to the City at the predetermined deadlines set by the City. [RT Vol. III 172:4-8]

106. On February 20, 2020, Mr. Lindsey told Mr. Seegert that BV would receive the plans the following week and had been notified that "it's a priority project." [Exh. P-17.003] BV received the plans from the City the last week of February 2020 or early March due to a delay in City staff receiving

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[41] Although Mr. Sawley's comments on the City permit review form on February 18, 2020 seem consistent with his testimony, Mr. Sawley did not mention in his deposition the delay of plan reviews pending the Development Agreement. Further, it seems inconsistent with Mr. Lindsey's email where he indicates that Courtesy's plans will be given "priority."

[42] Upon later questioning, Mr. Sawley testified inconsistently. He said that late requests from the City in January and February 2021 asking for such things as intersection alignment and frontage improvements on a nearby private lane to be included in the Development Agreement, did not delay the permit because "the permits are on their own separate track and they're being reviewed by the Building Department for adherence to the building codes." [RT Vol. III 20:3-21:20]

shipping labels.[43] [RT Vol. III 30:10-24; Exhs. P-17.002-.003; P-47.016:9-22] On March 3, 2020, Mr. Lindsey confirmed that BV had the plans and were reviewing them. [Exh. P-17. 002] The structural calculations from Courtesy were received by the City on March 5, 2020, and provided to BV. [RT Vol. III 33:2-34:4; Exh. P-32.003] BV did a building initial review in approximately three weeks, and on March 20, 2020, provided a six-page response to the City. [Exh P-32.003-.00.10; Vol. V 144:23-145:4] Mr. Seegert did not receive any plan check responses until the end of March 2020, which did not include comments from all departments, and some did not arrive until after April 20, 2020. [RT Vol. II 158:15-22; Vol. III 30:25-31:16, 40:5-16, 42:4-15; Exhs. P-13.003; P-14.003-004; P-17.001-.004; P-32.003]

107. The City departments other than building and planning started reviewing the plans on February 24, 2020. [RT Vol. III 30:10-18, 36:21-24; Exhs. P-32.003; R-166.03] On April 15, 2020, Mr. Seegert sent an email asking Mr. Lindsey the status of the engineering, parks and sewer departments' reviews. Mr. Lindsey responded that he would send a reminder to the reviewers and "urge them to review" the plans.[44] [Exh. P-17.001]

108. Mr. Pajouh had never heard from Mr. Seegert or been told by anyone from the City that City personnel were not working on the plan check because the Development Agreement was not complete or that the plan check process was not proceeding as quickly as possible. [RT Vol. VI 87:12-25, 88:6-14] Mr. Pajouh testified that he understood that the Development Agreement and the plan check/permit process were "two ships sailing alongside each other." [RT Vol. VI 86:13-23, 87:21-88:5]

109. Resubmittals were often done by mail during COVID-19, and the plans sat on a shelf for a couple of days because the City staff thought they could not touch them due to protocols. [RT Vol. III 35:4-16]

110. Courtesy resubmitted documents responsive to the City's plan check responses on five occasions. [Exh. P-32.001-.022; RT Vol. II 158:7-14; Vol. III 50:14-22, 52:4-9, 170:21-25] Mr. Sawley testified that Modern Building was checking in frequently "([Mr. Seegert] was being the pest that he said

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[43] The City delayed shipment of the plans because of late receipt of shipping labels. [Exh. P-17.002]

[44] Mr. Sawley, when asked about this email, testified that he did not know why these other departments had not responded. He did however note, given the date of "one month into COVID[-19]," that many people were not allowed into the building due to COVID-19 restrictions. The plans were "hard copy plans on the shelf, which means you have to be in the building to look at them." [RT Vol. III 184:18-185:12]

he didn't want to be") and they were moving forward on all fronts "in the pursuit of trying to get to the end result faster." [RT Vol. III 182:19-184:7]

111. Courtesy had a billing disagreement with Mr. Stevens at Northstar Design Solutions, who was hired to do the civil design work. Northstar sent a letter to Courtesy dated June 25, 2020, terminating their contract. Northstar noted that it was paid its November 2019 invoice, its December 2019 invoice was skipped, and had not been paid since January 10, 2020. Mr. Pajouh asked for documentation for the disputed billings in February 2020 and Mr. Stevens responded on April 3, 2020. [Exh. R-102.01-.03] The contract termination letter listed 10 remaining items that were "necessary to secure a building permit according to City staff." [Exh. R-102.02-.03] Items one through five (secure ARB approval, ensure site design was acceptable to City staff, design intersection improvements and frontage improvements, and prepare and complete use permit) were not items Northstar had been engaged to perform.[45] [Exhs. R-102.02-03; R-119.15:16-.17:24] There were two other items (numbers six and seven) that NorthStar asserted it had been engaged to perform: (I) apply for and complete the Boundary Line Modification (the five parcels had to be reconfigured because a building cannot be built on an existing parcel line), and (2) abandonment of the right-of-way or ROW[46] at the Highway 99 and Garner Lane intersection.[47] Both could have been done later and did not need to be done before permitting. [Exhs. R-102.03; R-119.18:3-.20:14]

112. The dispute was resolved "amicably" and Courtesy paid the agreed amount to Northstar after the June 25, 2020 letter Northstar sent to Mr. Pajouh. [Exhs. R-102.01-.03; R-119.11:10-14, .13:2-25, .14:11-15:1] Courtesy was later advised that a storm drainage report was needed, as well as additional civil design services for the Express Service and Wash/Detail buildings, and that Northstar's involvement would be beneficial. [Exh. P-21.001-002] Courtesy then authorized Modern Building to contract directly

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[45] There is an April 2019 email from Mr. Stevens to Mr. Pajouh indicating that Mr. Sawley agreed with the County's decision to not require a use permit since a rezone was done. [Exh. R-130.10] Mr. Stevens testified that the City changed its mind and wanted a use permit. [Exh. R-119.17:17-24] The Development Agreement indicates that no use permit was required by the City. [Exh. R-104.03, Section 2.1]

[46] Right-of-Way or ROW is defined by the parties as: "The parcel of land owned by the City of Chico, and preserved as a right-of-way, on Garner Lane in the City of Chico adjacent to the property on which the Multi-franchise project is located." [Stipulated Glossary of Non-Controversial Terms]

[47] Mr. Pajouh testified that Northstar was not contracted to do items six and seven. [RT Vol. I 194:5-12, 195:3-5]

with Northstar on August 4, 2020, to complete the work for a fixed price. [Exhs. P-21.003-.010; P-66.002:10-16] Items six and seven in the June 25, 2020 letter from Northstar were not performed by Northstar under the subcontract with Modern Building. [Exh. P-46.025:4-8, .026:10-16]

113. On July 15, 2020 Mr. Pajouh sent an email to Mr. Smit stating that "James Seegert mentioned they are having difficulties not just with the City Officials but also with their subcontractors and field crew as some have contracted the virus so the rest of the group don't show up for work." [Exh. R-159.08] Mr. Farabee testified in his deposition that he called Mr. Pajouh about the email because his understanding had been that the project was stalled because of the City's closure. According to Mr. Farabee, Mr. Pajouh told him that "there had been some issues contacting the correct people" on Mr. Pajouh's side to secure the information needed by Chico to move forward with the permits and to process requests made by the City on plan checks. Mr. Pajouh told Mr. Farabee that "between his contractor and subcontractors, they were having difficulty getting what they needed back to the city." [Exh. R-122.02:24-.04:15, .12:5-.13:12; .14:8-.15:18]. Mr. Farabee testified at the hearing that he called Mr. Pajouh about the email and Mr. Pajouh "told me that he had what he needed and the City was waiting on his team for a response." He did not recall Mr. Pajouh saying he was having "difficulty with his subcontractors." [RT Vol. II 96:8-97:2]

114. Mr. Pajouh in his corrected declaration in support of the Protestant's Reply Brief and in his testimony asserts Mr. Farabee's testimony was incorrect. [Exh. P-66.001:26-002:2] Mr. Pajouh explained he was merely repeating in the email what he had heard from Mr. Seegert and that it was not related to the Courtesy project or its subcontractors. [RT Vol. I 184:17-185:2, 186:1-10, 188:16-23] Mr. Pajouh stated that he "was never aware of any significant issue with subcontractor availability due to COVID-19 illness or any other reason." [Exh. P-66.001:26-002:2]

115. Mr. Seegert testified that intermittently, throughout the job, there were general delays from some of his subcontractors because of issues related to working remotely during COVID-19. [RT Vol. II 172:8-173:3] He did have discussions with Mr. Pajouh about some "boots on the ground" or field crew subcontractors that did not show up for work because of COVID-19 illnesses. [Vol. II 173:12-174:2] There was never a specific instance where a subcontractor on the Courtesy project who was supposed to respond to City plan check could not respond due to COVID-19. [RT Vol. II 173:4-11] Mr.

Seegert also testified that there was no one working on responses to plan checks that was unavailable due to anything else in July 2020. [RT Vol. II 177:25-178:4, 178:22-179:4]

(2) The Development Agreement and The Right-of-Way (ROW) Issue

116. The Courtesy facility project was originally situated and conceived in Butte County on approximately 11.3 undeveloped acres with unimproved gravel shoulders and roadside ditches. [Exhs. P-46.009:9-15; R-104.01] The County adopted a mitigated negative declaration[48] and established conditions of approval for Courtesy to follow. [Exh. P-46.009:9-.012.3] Courtesy had to prepare construction documents, building plans, and achieve other conditions imposed by the County before the County would issue a building permit. [*Ibid.*]

117. Before County permits could be obtained, Courtesy had to do a general plan amendment, a rezone of the property, and a lot line adjustment. [RT Vol. I 132:3-12; Exhs. P-46.011:11-20; P-63.064:12-065:3] Mr. Pajouh had gone to the County and "got a lot of legislative actions done," including a specific plan amendment and a rezone, but "they didn't give him entitlement to build and that became a problem upon annexation." [Exh. P-63.101:21-102:15] Courtesy went through a "significant county process," and then the City "snapped up the property through an annexation and that kind of sent him back to the starting gates." [Exh. P-63.012:11-18, 102:12-15, 103.13-.104:1] Courtesy did not apply for permits with the County of Butte prior to the annexation by Chico. [Exhs. P-46.030:20-25; P-63.064:12-22].

118. The November 2017 annexation of the 21 parcels, including the Courtesy dealership and Butte Humane Society properties by the City of Chico, was completed in six months. [RT Vol. III 24:3-14; Exh. P-64] The annexation was "a land speed record," being completed in about one third the usual time. [Exh. P-63.065:4-23] If Courtesy had obtained County permits prior to annexation, the City would have honored those. [Exh. P-63.064:12-22]

119. Part of the City's annexation included an odd-shaped parcel of land near the intersection of Garner Lane and Highway 99 given to Butte County by Caltrans. [Exhs. P-7.001-.003; P-46.015:6-.016:9; P-63.096:4-6] This ROW is adjacent to the property and immediately north of the multi-franchise

[48]A Mitigated Negative Declaration is "a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment." [Public Resources Code section 21064.5]

project land. [Exh. P-46.016:15-20]

120. There were discussions between Courtesy and Butte County about abandonment of the ROW to Courtesy and according to Mr. Stevens, abandonment was "met with concurrence from the county. It wasn't going to do them any good; they were willing to abandon it." [Exhs. P-7.001-.003; P-46.015:6-.016:9; RT Vol. I 153:17-20] Additionally, the Initial Study filed by the County included a notation that the abandonment had been applied for.[49] [RT Vol. III 160:16-23] Mr. Sawley testified that the County was "going down the path of abandonment," and he had no reason to doubt that the County would have abandoned the right-of-way to Courtesy. [RT Vol. III 148:18-149:14, 149:23-150:1; Exhs. P-7.001-.003; P-63.095:12-.096:1, .096:12-.097:3]

121. The City of Chico, however, acquired the ROW through annexation, and wanted to preserve it for a possible interchange.[50] [Exhs. P-46.016:21-.017:4; P-63.093:13-20; R-119.08:6:25]

122. Courtesy's design team approached the City and discussed that during the annexation process when a property is annexed, it is annexed with its entitlements. Courtesy had processed a general plan amendment, a specific plan amendment and a rezone under the County's jurisdiction. [Exh. P-63.012:11-18] At the point of entitlement by the County for the project, the City stepped in and annexed the property. Mr. Stevens explained that there is a period of time that entitlement lasts, typically for two to three years. Initially, the City agreed to allow the project to be built to County standards. [Exhs. P-46.012:6-23; P- 46.029:12-21; R-111.01]. But according to Mr. Stevens, the City "went back on their agreement."[51] [Exhs. P-46.029:12-.030:9; R-102.02; R-119.35] Approximately a year and half after the annexation, the City decided that Courtesy had waited too long, and that Courtesy now had to build to City standards. [Exhs. P-46.029:12-.030:9; R-119.22:7-.23:9] It was at this point that a Development Agreement was suggested. [*Ibid.*]

123. Assistant City Manager Chris Constantin explained it differently in an email dated

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[49] The California Environmental Quality Act requires that the Lead Agency, through its initial study, evaluate the whole of a project's potential environmental impacts. (Title 14, Cal. Code Reg. § 15063)

[50] Mr. Stevens testified that he was surprised when the City's director of public works first mentioned that the City was thinking about the potential for an interchange in the ROW since construction of a large church had already been allowed on the north side of the ROW by the County. [Exhs. P-12.002; R-119.08:17-.09:1]

[51] In the June 25, 2020, letter from Northstar to Courtesy, Mr. Stevens noted "the *significant* work ahead of [Courtesy] due to the City going back on their agreement. . ." (Emphasis added.) [Exhs. R-102.02; Exh. R-119.35]

September 20, 2019, to other City staff related to Courtesy's draft Development Agreement. He stated: "The original understanding was that [the City] would honor the standards in place based on the date [Courtesy] filed. For reasons completely under their control, [Courtesy] missed doing so before the property was annexed."[52] [Exh. R-111.01] Mr. Constantin added that: "Our proposal for delaying the public improvements *benefits the City more than Courtesy* (especially if its built to then [later] standards), but it extended a benefit to Courtesy giving them some of what we discussed with them before annexation." (Emphasis added.) [Exh. R-111.01]

124. In this case, Chico would have required urban frontage improvements (curb, gutter and sidewalk) including reconstruction of the roadway. [Exh P-46.013:11-23] Additionally, the City's typical improvements include storm drainage, sanitary sewer, landscaping, parkstrip and streetlights in order for the project to be permitted and proceed to the construction. [Exhs. R-104.03, Section 2.2; P-63.010:14-11:13] Generally, the City requirements are more burdensome and expensive than the County requirements, creating a more significant financial obligation. [Exhs. P-46.013:6-10; P-63.011:14-23, .110:24-111:4] In the absence of a Development Agreement, Courtesy would have had to include the necessary public improvements in its plans and complete them as part of the construction of the project. [Exhs. P-46.014:6-13; P-63.013:5-.014:23]

125. A Development Agreement is not required by Chico to construct within the City. [Exh. P-63.015:7-18 ; RT Vol. III 113:7-15] Development Agreements under usual circumstances, take months-to-years to process, depending on the terms. [RT Vol. III 12:13-23] However, it was decided a Development Agreement would be used for the Courtesy project because the project plans, developed prior to the annexation, were based on County standards, and would require a significant cost to meet the City's requirements. [RT Vol. I 133:23-134:13; Exhs. P-46.014:4-25; P-62:166:11-21] Mr. Sawley explained, when asked if "most people do a development agreement in this kind of situation," that "[t]here is no 'this kind of situation'" because "[m]ost of the time developers weren't approved for major

[52] There is no testimony from Mr. Constantin. Mr. Sawley testified when asked about the September 2019 email that: "[i]t's really easy to write it in a paragraph, and I'm sure there were important things happening at the time, like they still needed a lot line adjustment from the county to get the property lines out of the way of the building, so there was a similar set of challenges to get it done in the county. And what I don't think comes clear in an email like this is the fact that the city pursued annexation and it was a done deal in like six months, which is a land speed record for annexation. We don't do them that fast. They rarely get done that fast." [Exh. P-63.064:12-.065:12]

things through the County and then annexed before they were able to secure building permits" and caught between County standards and City standards. He did not know of any other situation where a developer was caught this way. [RT Vol. III 17:8-21]

126. A Development Agreement would allow Courtesy to build essentially to County standards and defer the completion of the City public improvements for 20 years. [Exhs. P-46.014:4-25, .029.7-.030:9; P-62.166:11-21; P-63.055:24-.056:3] The amount deferred was "probably a million dollars' worth of infrastructure." [RT Vol. III 85:17-86:5] The parties agreed in the Development Agreement that construction of City standard improvements along the frontage of the property was premature as there were "no urban-level public frontage improvements in the area." [Exh. R-104.03, Section 2.2]

127. Courtesy applied for the Development Agreement on October 24, 2018, and paid a fee of $6,820. [RT Vol. I 138:9-25; Exh. P-42.04] A draft Development Agreement was sent by Mr. Stevens along with the application. [Exh P-63.043:6-12]

128. Four months later, on March 1, 2019, Mr. Sawley sent a response to the Development Agreement, to Mr. Stevens. [RT Vol. III 127:15-19] Mr. Stevens responded and a second City response or "turnaround" to the Development Agreement was completed by Mr. Sawley on or about June 4, 2019, and sent to Mr. Stevens. [Exh. R-175; RT Vol. III, 133:6-24]

129. Courtesy sent a revised draft of the Development Agreement to the City on September 19, 2019, with a deferral of public frontage improvements for 20 years, without any collateral for the City. [Exh. R-111.03] On October 2, 2019, Mr. Sawley sent an email to Mr. Pajouh and Mr. Stevens indicating that abandonment of the ROW by the City was not an option. [Exh R-112.01] Courtesy sent another draft to the City in November 2019. Mr. Sawley acknowledged in an email dated November 21, 2019, that although the draft terms now had sufficient commitment to protect the City's interest, there remained the "sticking point" of abandonment of the ROW, that follows a different legal process and would be challenging to incorporate into the Development Agreement. [Exhs. P-63.040:11-.041:2, .168]

130. Courtesy sent a draft Development Agreement dated December 3, 2019, with four phases to the City. The four phases included: (1) the development of the multi-franchise facilities including dealership buildings and service centers, (2) a pre-owned (used) sales building and an express wash building, (3) a convenience store and a food service building over the ROW and (4) a small retail use

building such as food service or other commercial use in the City's ROW. [Exh. P-63.021:4-.022:16, .042:18-.043:25, .195-.196]

131. Rather than abandonment of the ROW, Assistant City Manager Chris Constantin continued discussions with Courtesy for possible leasing of the right-of-way land, to generate sales tax revenue, including a possible "temporary" gas station. Mr. Sawley testified that "Chris [Constantin] did go quite a bit down the road with [Mr. Pajouh] on negotiating how that [temporary] lease" would work, without abandoning the ROW. [Exh. P-63.093:2-25; .095:4-11] Mr. Sawley explained that "[w]e're not taking away the right-of way but we're going to let something happen on it." [Exh. P-63.095:4-11]

132. In February 2020, Mr. Constantin suggested, as an alternative to the Development Agreement, to finance the public improvement infrastructure costs and development impact fees through the state government's Statewide Community Infrastructure Program ("SCIP"). [Exh. P-63.220] The SCIP option would have covered the City standard improvements, but not all the improvements that were included in the Development Agreement, such as light pole heights, signage requirements, and parking spaces on the property. [Exh. P-63.017:18-25; .097:11-25] Mr. Sawley described it as "government morass programs" that Courtesy would have "to wade into and get money out of." [Exh. P-63.20:5-9]

133. Mr. Sawley testified he did not make the Development Agreement a priority during COVID-19 because it did not require a 30-day turnaround. He testified: "[t]here was a little less heat on getting it processed." [RT Vol. III 11:14-24] Development Agreements were not "the highest priority [during COVID-19]." [Exh. P-63.028:4-9]

134. Mr. Sawley was a less active participant during 2020 in the negotiations of the Development Agreement because of other duties he had related to COVID-19. Chris Constantin became more involved in order to move things forward. [Exh. P-63.024:19-.025:5; .093:2-7, .100:17-.101:6, .110:9-19] There was back and forth between the City and Courtesy during 2020, but relative to earlier responses from the City, there were delays during COVID-19. [Exh. P-63.027:16-.028:2]

135. On August 11, 2020, Mr. Constantin wrote to Mr. Pajouh and sent a redline version of the Development Agreement. [Exh. P-23.001-.002] Mr. Constantin stated "the DA [Development Agreement] should not be a stumbling block for your project as the critical path for the development is the Community Development portions that currently include the ARHPB [Architectural Review and

Historical Preservation Board ("ARHPB" or "ARB")]. Thus, we can continue to refine and finalize this DA." [Exhs. P-23.001; RT Vol. VI 205:10-206:17] Mr. Pajouh testified that Mr. Constantin also verbally assured him that a Development Agreement was not slowing down the process. [RT Vol. VI 202:19-203:9]

136. The ARB approves new construction projects through a public hearing and one that Courtesy had to go through. [RT Vol. VI 92:15-23; Exhs. P-63:101:21-102:21; P-66.002:18-21; R-159.09-.10] The ARB design review approval process is a City requirement that the County does not have. [Exh. P-63.101:25-102:2] Before taking the project to the ARB, Mr. Sawley asked Courtesy to work out a variant of the design of the collision center to make it look more appealing, which caused a delay. [Exh. P-63.102:22-.103:10] The ARB presentation occurred in the fourth quarter of 2020. [RT Vol. I 210:20-24; Vol. II 52:25-53:17]

137. As late as November 2020, Mr. Pajouh and Mr. Constantin, with Mr. Sawley and others present, discussed changing the lease terms for the ROW from 40 to 30 years, with a 10-year grace period to build and the ability to finance over 20 years. [Exh. P-29.004]

138. The City staff returned to work in early 2021 (although the buildings remained closed), which allowed the project to gain some momentum. [Exh. P-62.052:17-.053:9, .083:17-24, .164:11-24] In February 2021, Mr. Sawley said "things seemed to be getting more urgent" with regard to finalizing the Development Agreement. [Exh. P-63.104:16-105:11, 106:23-107:3; 121:2-16] The project had to be approved by the Planning Commission, which was accomplished on or about February 11, 2021. [RT Vol. III 85:17-23, 87:21-88:4, 89:9-24; Exh. P-29.001] It then was reviewed by the City Council for two meetings and approved by the Chico City Council via ordinance, in February 2021. Lastly, 30 days had to elapse for the ordinance to take effect and before it could be recorded. It was approximately a three-month process. [RT Vol. III 87:15-19; Exh. R-150.01]

139. Bruce McClure, the point person with the Building Department, left the City a number of months before the Courtesy permits were issued. After his departure, City staff could not find pertinent documents so "they were trying to piece the puzzle back together" and Mr. Seegert had to submit replacement documents. [RT Vol. II 164:4-18, 165:2-12] Additionally, it took weeks between when Courtesy was told the permit was approved and issuance of the permit due to the City taking a

considerable amount of time to calculate the fees owed. [RT Vol. II 161:15-162:8, 162:24-163:22]

140. Cal Water, a private purveyor, requested that Courtesy and its neighboring businesses make one application for water. [RT Vol. III 92:17-20; Exh. P-46.032:5-12] Courtesy formed an LLC with the Butte Humane Society and another neighboring building owner, Down Range, to bring in the infrastructure, including water, sewer, gas, electricity, and fiber optic cable. [RT Vol. I 177:4-16; Exh. P-46.024:17-.025:3, .033:3-10] An additional demand from the City was that Courtesy and the other two developments extend the City sewer trunk line for connection to the properties and pay for this expense. [RT Vol. I 177:4-16; Exh. P-46.020:20-.021:15, .025:4-.026:4] The City required the sewer extension be built to sufficient capacity (larger than currently needed) for potential future development of other nearby properties that Courtesy and the other members of the LLC did not own. [Exhs. P-25.001-.002; P-46.025:4-.026:9; P-63.122:16-.124:1]

141. The City "haggled" Courtesy over the size of the storm drain pipe, wanting a surge pipe bigger (oversized) than what was needed for the Courtesy development. The City finally agreed to a reimbursement agreement with Courtesy for the higher costs. [Exh. P-63.122:16-.124:8]

142. When asked why the City didn't just reject the proposed use of the ROW by Mr. Pajouh, Mr. Sawley explained that Mr. Constantin's role was "how do we give everybody what they actually need out of the deal." He continued that Mr. Pajouh was trying to salvage the project that was going to be approved by the County with the ROW included and Mr. Constantin was good at exploring "the option of being able to do both." Mr. Pajouh trusted that the City "would be able to work that out in a way that everybody could get onboard with." [Exh. P-63.105:18-106:22] Mr. Constantin left the City in December 2020. [Exh. P-63.016:10-17, 017:8-17]

143. Mr. Sawley believed that Mr. Pajouh "was diligently trying to move the project forward" and was "diligently trying to pursue several things at once, including the main thing which is . . . the new dealership buildings." [Exh. P-63.104:7-15] Mr. Sawley thought Mr. Pajouh "wanted a really sweet deal," but the City needed to balance protection of the public interest and facilitating productive development in the City. [Exh. P-63.111:5-17] Mr. Sawley thought it was "unfortunate that [Mr. Pajouh] couldn't let go of the right-of-way sooner, but we entertained different ideas for trying to keep it in the mix . . ." [Exh. P-63.104:7-12]

144. Mr. Farabee did not recall any discussion that [Courtesy] was not moving forward nor did he have any reason to believe that Courtesy was not diligently working through the plan check process. [Exh. P-52.012:12-20, .016:23-.017:6]

145. The plan check process and Development Agreement negotiations continued into 2021 with Mr. Sawley. The City would not issue the building permits until the Development Agreement was finalized and until the plan check process was complete. [Exh. R-150:01]

146. On January 20, 2021, Mr. Sawley in an email indicated he was available to discuss the ROW lease but indicated that his recollection was that the lease area would be suitable for displaying vehicles, "but not so much for structures that would require building permits." He also noted that "the concern about these improvements in the ROW lease area had been narrowed down to just the underground storage tanks associated with the fuel station." If the underground tank issue could be resolved, Mr. Sawley noted that the parties were "closer to a tentative agreement than previously indicated." [Exh. P-29.003]

147. On January 21, 2020, Mr. Sawley, following a conversation with Mr. Pajouh, sent a draft of the Development Agreement with changes to simplify and streamline the agreement and deleted the ROW. [Exh P-29.001; RT Vol. III 196:2-17] It became apparent to Mr. Pajouh that the Development Agreement would not be recommended for City approval with any reference to the proposed development of the ROW. Mr. Pajouh, in an email to Mr. Sawley on January 25, 2021, agreed to the draft Development Agreement. [Exhs. P-29.001; P-66.002:21-25, 66.021; RT Vol. III 196:2-17, 196:18-23] At this same time, Mr. Pajouh was advised that the plan check process was nearing completion. [Exh. P-66.002:25-26]

148. The City continued to make additional project demands in 2021, which included the requirement Courtesy secure approval for the realignment of the intersection of Esplanade and Garner Lane. [RT Vol. III 82:2-18, 83:22-84:4; Exhs. P-63.119:7-120:12; R-104.24]

149. The City also wanted Courtesy to agree to make frontage improvements on Three Sevens Lane, a private road that borders the project. Mr. Sawley succeeded in getting the public works department to drop the request. [Exh. P-63.124:9-25, .246]

150. The Development Agreement was signed and recorded on April 16, 2021. [Exh R-104.01]

Courtesy agreed to a subordinated deed of trust on the property with the City as a lien holder. [Exhs. P-63.023:1-13, .050:9-16, .056:21-23; R-104.03] The deferral of the improvements under the agreement is until the first of either two triggering events: (1) 20 years or, (2) development of surrounding properties such that infrastructure is already existing on those properties. The term of the agreement is 22 years. [Exh. P-63.055:2-.056:18]

151. Section 4.7 of the Development Agreement provided for "Special Conditions" that allowed Courtesy to use non-City standards for six free-standing signs (25 feet, 6 inches), freestanding light poles (28 feet), and the depth of the standard parking stalls shall be 19 feet and the drive aisle width 25 feet. [Exhs. P-63.097:20-.098:1; R-104.08; RT Vol. I 214:6-23, 215:2-9]

(3) The Letter of Credit (LOC) and the Amended Facility Addendum

152. Mr. Smit testified that SOA put the LOC requirement into the Stipulated Decision because "[i]t's a common financial instrument that [SOA] use[s] for assurance on performance." Mr. Smit could not recall if SOA had ever called a LOC. [RT Vol. VI 34:7-24] Mr. Farabee testified that SOA has the practice of requiring a letter of credit for those retailers that are performing a greenfield facility project such as Courtesy's project. Mr. Farabee explained that SOA does this, not in lieu of the dealer performing the facility project, but as an assurance that a project will get done in a set amount of time or by a certain date. [RT Vol. II 111:25-112:4, 112:10-14, 113:14-17; Vol. IV 143:13-145:20]

153. Mr. Smit was the SOA person most knowledgeable and primary point of contact for Mr. Pajouh. Mr. Farabee testified that "Ray [Smit] was most closely tied with [Mr. Pajouh] on this [letter of credit] process." [Exh. P-52.008:2-9] Mr. Smit, according to Mr. Farabee, was the primary person working with Courtesy "on trying to secure the letter of credit that the Stipulated Decision required." [RT Vol. II 107:15-21]

154. In March 2020, Courtesy's sales operation was shut down (service and parts remained open) by the City of Chico code enforcement and Mr. Pajouh communicated that to Mr. Smit. [RT Vol. VI 62:21-24, 65:10-19; Exh. P-62.079:2-6, .080:3-9, .155:3-4] Mr. Pajouh asked for the return of the $750,000 deposit he had given to SOA (in lieu of a LOC) because of the uncertainty due to COVID-19. [RT Vol. VII 21:9-20]

155. By letter dated April 2, 2020, Mr. Smit responded to Mr. Pajouh that SOA declined to

change the terms of the Stipulated Decision and denied the request for early release of the $750,000. [Exh. R-123.14]

156. After March 2020, Mr. Smit and Mr. Pajouh had a further discussion, and Mr. Smit followed up with an email dated April 29, 2020, stating: "I am following up on our conversation last Tuesday regarding the settlement agreement dates." [Exh. P-16.001] Mr. Smit affirmed that when he referred to "settlement agreement dates" he was referring to the Stipulated Decision. [RT Vol. VI 15:20-16:20] Mr. Smit testified in his deposition that "this noncompliance letter revolves around . . . the Stipulated Decision" and when Mr. Pajouh provided the revised dates, "it was reset."[53] [Exh. P-51.025:17-.026:4]

157. Mr. Smit stated in the April 2020 email that "to even consider exchanging a LOC in lieu [of] your performance deposit," Mr. Pajouh needed to provide revised and definitive dates for permitting, commencing construction, completing construction, and final verification for the permanent facility. Mr. Smit noted "I know you said [that these] dates were unobtainable during our conversation, but we need solid benchmarks." Mr. Pajouh, in his reply email to Mr. Smit on the same date, noted that the $750,000 was intended to only be a bridge to the issuance of the LOC. He proposed new dates, "based upon little more than hopeful optimism." [Exh. P-16.001] Mr. Smit testified in his deposition that: "Like this is ground zero. We're in the middle of shut down. And he gives us dates to hit, revised dates. And, you know, this in the middle of everything being shut down. So, we take them. He makes a promise to us, and we accept it. I would think you build in some slack on these dates for the unexpected."[54] [55] [Exh R-123.09:3-11] Mr. Pajouh testified that Mr. Smit did not discuss with Mr. Pajouh what he meant in his

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[53] Mr. Smit testified that he did not expect the dates that he asked Mr. Pajouh to provide would replace the Settlement Agreement dates because "I mean, the Facility Addendum Amendment and Settlement Agreement are two distinct separate things. They're mutually exclusive." But when asked why he referenced the Settlement Agreement dates in his email, he said "I might have talked to him about the Settlement Agreement," but he could not recall that particular conversation. [Exh. R-123.11:4-14]

[54] Mr. Smit could not recall the names of anyone involved in the decision-making for this email other than it was made at multiple levels and it was a "group decision." [RT Vol. VI 18:7-16, 18:25-19:11, 19:15-20:6]

[55] Despite Mr. Pajouh's description of the dates as (1) optimistic, (2) Mr. Smit testifying that he would have built in some "slack," and, (3) that Mr. Pajouh provided the dates in the "the middle of shut down," Mr. Smit testified he did not discuss the selected dates with Mr. Pajouh; he just accepted the dates. [RT Vol. VI 33:4-34:6] In his deposition, Mr. Smit said he tells "all [his] retailers to build in slack time" and that he had "said that to [Mr. Pajouh] before." [Exh. P-51.021:2-19]

email by "hopeful optimism." Mr. Pajouh felt he had to give them dates to get his cash back in lieu of the LOC. [RT Vol. VI 63:5-24]

158. Mr. Pajouh testified that both parties were optimistic that they could get through the pandemic but did not know how long it would take, and SOA needed dates. Mr. Pajouh thought that they had an understanding that the dates would be reviewed again at a later time. [Exh. P-62.043:2-10]

159. According to Mr. Smit, the purpose of the May 21, 2020, letter was "to update what actually happened" and "actually to help [Mr. Pajouh] with achieving some of the financial instruments needed to continue on with the project."[56] [Exh. R-101; P-51.017:6-13]

160. Mr. Farabee testified that Mr. Pajouh could not secure the letter of credit and the solution was to revise the Facility Addendum. [RT Vol. II 107:18-25, 108:16-20] According to Mr. Farabee, a bank will request the Dealer Agreement when considering a LOC and, in this instance, the Facility Addendum to the Dealer Agreement had benchmarks already missed. Therefore, it was not likely a bank would extend a LOC, so SOA reset the benchmarks for Courtesy. [Exh. R-122.08:6-19]

161. Mr. Graziano testified that SOA helped secure the LOC for Courtesy because SOA "really did try to continue . . . we did try to work with [Mr. Pajouh]. But there was never – our intent was never to extend the date another year. . . . We were hopeful we could move forward. . . . we opted to do what we felt at that point in time was the right thing to do." [RT Vol. V 24:4-19] Mr. Graziano explained that even though SOA sent out the letter in May 2020 with the new dates, SOA believed that they still "could move forward with the dates on the Stipulated Decision." He believed that SOA reserved the right to adhere to the Stipulated Decision dates. [RT Vol. V 28:10-12]

162. An irrevocable standby LOC, with an issuance date of June 22, 2020, was secured from BMO Harris Bank N.A.in the amount of $750,000 "at the request of and for the account of Courtesy Automotive Group . . ." [Exh. J-307.01-.03] The credit was set to expire on December 16, 2021. [Exh. J-307.02] The beneficiary is SOA and the credit "is available against [SOA's] draft drawn at sight on [BMO]" when accompanied by Beneficiary's Certificate stating that "*Courtesy Automotive Group, Inc. has failed to fulfill its obligations pursuant to the Facility Addendum to the Subaru Dealer Agreement*

[56] According to Mr. Smit, the Amended Facility Agreement "remedied any kind of misunderstanding [about the permit date]." [Exh. P-51.017:6-13]

. . ." (Emphasis added.) [Exh. J-307.02] The LOC stated that "[t]his Credit sets forth in full [BMO's] 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 . . ." [Exh. J-307.03] The LOC was issued "to support the obligations of Courtesy Automotive Group, Inc. as outlined in the Facility Addendum to the Subaru Dealer Agreement" and BMO Bank acknowledges that Courtesy Automotive Group, Inc. has "committed" to a Subaru dealership facility, at certain identified parcel numbers in Chico, meeting all Subaru minimum standards, "by January 31, 2022." [*Ibid.*] On July 7, 2020 Amendment No. 1 was sent to the parties, amending the expiry date to July 31, 2022. [Exh. J-307.01]

163. Mr. Smit testified that he thought the trigger date for calling the LOC would be by December 31, 2021 if completion of construction did not happen by that date. He believed Subaru could elect to call it then or sometime thereafter. [RT Vol. VI 34:25-35:11] Mr. Farabee testified that the letter of credit expires July 31, 2022, and requires that Courtesy perform under the Facility Addendum on or before January 31, 2022. In his opinion, Subaru can call the letter of credit on January 31, 2022. [RT Vol. II 113:14-17, 114:8-20, 115:5-10; Vol. IV 144:13-145:20; Exh. J-307.03]

164. The LOC, according to Mr. Pajouh, was assurance for SOA that they would get a new facility in operation. [RT Vol. VII 20:9-21:20] The LOC cost is $7,500 per year. [RT VII 19:22-20:8]

165. By an amendment dated May 21, 2020, and executed on May 22, 2020 ("Amended Facility Amendment"), Courtesy and SOA executed a Facility Addendum to the Dealer Agreement. [Stipulation of Facts, ¶ 10] SOA agreed to amend the Facility Addendum for the dates that Mr. Pajouh provided in his April 29, 2020, email to Mr. Smit as follows:

(1) Obtain final permits by July 31, 2020;

(2) Commence construction September 30, 2020;

(3) Complete construction by December 31, 2021;

(4) Obtain final verification by January 31, 2022.

[Exh. R-101.01-.02]

166. In the Amended Facility Amendment, if subsequent benchmarks were missed, SOA reserved its rights under the Stipulated Decision and other agreements. The provision reads:

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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.* (Emphasis added.) [Exh. R-101.01]

167. Courtesy failed to meet each of the following benchmarks contained in the Amended Facility Addendum:

- "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." [Exh. R-101.02]

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Chart Showing the Differing Benchmarks

168. The following chart compares the four pertinent benchmark dates under the Stipulated Decision with those under the Amended Facility Addendum, the date the deadline was or was not achieved and the number of months of delay.

Benchmark	Stipulated Decision deadline Board Adopted April 9, 2019	Amendment to Facility Addendum to Subaru Dealer Agreement (May 21, 2020)	Achieved deadline
Paragraph 16.b: Secure all government approvals and construction permits	December 1, 2019	July 31, 2020 (8-month extension)	The permit for the Subaru/ Volvo building was issued on April 30, 2021; 9-months late.
Paragraph 16.c: Commence construction	January 30, 2020	September 30, 2020 (8-month extension)	Ground-breaking on June 28, 2021, and construction began shortly thereafter: 9-months late.
16.d: Complete construction of Subaru sales facility	January 31, 2021	December 31, 2021 (11-month extension)	Completion of construction is delayed at least 16-18 months (December 2022) and/or until April 2023.
16.e: Final Review Verification letter	March 1, 2021	January 31, 2022 (11-month extension)	No information in this regard.

[Exhs. J-300.33-.36; J-101; R-101; R-142]

Overview of Courtesy's Permits, Groundbreaking and Construction

169. Courtesy was issued construction permits on April 30, 2021, and obtained all government approvals on May 3, 2021, with the exception of the service building. [Exh. R-142.01] The service building was submitted to the City for plan check and a response was received with a few remaining items. [RT Vol. II 124:22-126:2; Vol. V 108:16-109:7] Mr. Seegert testified that he believed that the permit for the service center building would be issued approximately six weeks from September 15, 2021. The service center building would not delay construction or overall completion of the sales buildings. It would be completed before the sales buildings. [RT Vol. II 126:7-19, 188:11-25]

170. Mr. Seegert explained that each building has its own permit and has to have its own certificate of occupancy. [RT Vol. II 190:11-25] The Subaru/Volvo building will be completed first. Mr. Seegert testified that "it is highly conceivable" that the Subaru/Volvo building could open first, prior to

the other buildings, particularly given its location at the farthest north end of the site. [RT Vol. II 191:1-15]

171. Permits for the infrastructure for water, sewer, electric, gas and fiber optic cable were obtained prior to the permits for the buildings, and construction started on those projects in the first quarter of 2021. [RT Vol. II 55:16-24, 56:2-12] Groundbreaking on the site was June 28, 2021, and construction on the multi-franchise buildings commenced shortly thereafter. [RT Vol. II 189:1-9] At the time Mr. Seegert testified in October 2021, less than 10 percent of the work had been completed and 18 percent had elapsed of the total time allotted for the project.[57] [RT Vol. V 74:22-75:3, 77:19-22] The next task is the footings and pouring of slabs for all three buildings, and structural steel is expected in January 2022. [RT Vol. V 78:12-79:12, 81:1-5]

172. All of the buildings include a prefabricated steel component. According to Mr. Seegert, there is a huge back-up of prefabricated steel components in the industry. [RT Vol. II 126:20-127:23] The dealership buildings include design build, pre-engineered steel joists in the roof system, that only a handful of companies on the west coast make. [*Ibid.*] The service center is a pre-engineered metal building that has the same supply availability issue as noted above. The normal lead time for a metal building is six months; it is now a year or more. [RT Vol. II 127:24-128:9, 129:9-23] Mr. Seegert ordered these items before receiving the permits, some four-to-five months prior to his testimony in September 2021 and anticipates delivery between February and March 2022. [RT Vol. II 128:10-129:4; Vol. V 81:6-9]

173. The original timeframe for completion of construction was 16-18 months (or approximately the end of 2022). However, because of long lead time for steel components, the Subaru/Volvo building will not be completed until April 2023.[58] [RT Vol. II 189:10-18; Exhs. P-45.003; P-62.047:20-25] Mr. Pajouh testified that Mr. Seegert's goal is to have the three sales buildings and the service center obtain a certificate of occupancy by December 31, 2022. [RT Vol. VII 18:15-20, 45:1-22]

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[57] Mr. Seegert explained that the total time for the project from June 28, 2021, to March 20, 2023, is 438 workdays. At the time of his testimony, on October 19, 2021, 80 workdays had elapsed, and there were 358 workdays left. [RT Vol. V 74:4-20, 75:1-3]

[58] Mr. Seegert said he is 90% certain of the project closeout date of April 2023. [RT Vol. V 109:14-110:3]

The Impact on Courtesy's Multi-Franchise Project if its Subaru Franchise is Terminated

174. It would be catastrophic, according to Mr. Pajouh, if Subaru was not part of Courtesy's project. [RT Vol. VI 216:20-23] The project would proceed "to the extent it can" if the Subaru franchise was terminated because of the obligations to the other businesses. However, Mr. Pajouh explained that Subaru, being its biggest volume, accounts for over 40 percent of unit sales in generating cash flow, and is thus, an integral part of Courtesy's business. [RT Vol. VI 216:24-218:25; Vol. VII 8:1-11]

175. According to Mr. Pajouh, losing the Subaru franchise would "put a financial burden on the whole organization of the volume that we do, the gross profit, the cash flow, the number of employees . . . . [it] would put financial constraint on the organization because now we have the carrying cost of something that's not producing -- generating revenues, gross profit, and everything that it takes for us to continue with [the] total project." [RT Vol. VI 219:1-220:18] Mr. Pajouh testified that "I don't know how the bank would behave with the revenues being lost and not having the franchise . . . . the bank has that as part of their calculation of them approving the financing." [RT Vol. VII 8:1-11] Termination of the Subaru franchise would impact the funding of the entire project because "the funding is based on the whole package, which is all the franchises and the total revenue and gross profit . . ." [RT Vol. VI 232:7-15]

176. Courtesy's cost for the remodeling of its current location was approximately $225,000-$250,000. [RT Vol. VI 61:25-62:3] The construction cost for the single Subaru/Volvo building is shown on the permit as approximately $2.5 million. [Exh. R-142.01] As of April 2021, Courtesy had spent $5,990,632 on the project. [Exh. P-42.005] From April until the time of Mr. Pajouh's testimony in October 2021, Courtesy spent approximately another $500,000. [RT Vol. VII 6:13-21, 7:2-13] Courtesy's investment in acquisition of the site was $2.8 million. [RT Vol. VI 52:5-7] The $6.5 million in upfront costs plus the purchase price of the property constitutes 20 percent participation by Courtesy in the total cost, apart from furniture, fixtures and equipment ("FF&E"). FF&E costs are estimated to be $4 million for a total cost of the project at $34 million. [RT Vol. VII 43:16-44:16] Mr. Pajouh has a construction loan of $23.5 million and obtained the latest loan approval in May 2020. [RT Vol. VI 50:13-19, 214:10-12, 214:25-215:18; Vol. VII 22:1-2] Mr. Pajouh testified that the delay in having the multi-franchise facility built is costing Courtesy in the tens of thousands of dollars in property carrying costs and

insurance every month that it is not completed. [Exh. P-62.046:22-.047:3]

177. Courtesy spent approximately $7.6 million to purchase all of the dealerships, including goodwill and hard assets. Mr. Pajouh estimated that the Subaru franchise portion of that cost is about 40 percent or approximately $3 million. [RT Vol. VII 11:3-12:2] Should Mr. Pajouh's franchise be terminated, he would lose not only the investments made in the temporary facility, and 40 percent of the $6.5 million, but also the $3 million investment made in purchasing the Subaru dealership. [RT Vol. VII 10:18-11:2]

Subaru's Damages

178. Mr. Smit testified that he searched in August 2021 on a local commercial real estate website for properties that might be available in Chico for a replacement dealer. He identified 2522 and 2520 Cohasset Road as for sale, the properties that Courtesy is currently occupying with its other franchises.[59] [RT Vol. VI 6: 2-20, 7:8-15, 10:8-11:6] Mr. Sawley, the senior City planner, knew of no other vacant locations in Chico that could be used as a location for a dealership, other than where Courtesy is currently located. [RT Vol. III 208:1-19] Mr. Graziano did not know of any vacant dealership properties in Chico. [RT Vol. IV 187:4-6]

179. According to Mr. Smit and Mr. Graziano, it would be acceptable to SOA to move another dealer into the East Avenue site currently occupied by Courtesy, which is, according to SOA, deficient and unacceptable. [RT Vol. VI 8:1-13; Vol. IV 219:1-9] Mr. Graziano testified he had a high level of certainty that SOA could find a qualified dealer to replace Courtesy and his estimate is that it would take approximately 90 days to find one. [RT Vol. IV 186:8-18, 214:23-215:4] SOA would have at least a 90-day disruption of sales and service during that time. [RT Vol. IV 187:12-21, 188:6-17]

180. The search for another Subaru candidate to operate in Chico involves the process of vetting candidates' applications-including their capital, management, and ability to find an acceptable facility solution. A review of the plans for a permanent location by Feltus Hawkins would be required, but SOA could go forward with a facility design intent and an addendum under a sales and service agreement that the new facility would be built within a certain time. [RT Vol. IV 214:23-215:4, 218:17-

[59] These premises are under lease to Courtesy and Mr. Pajouh is negotiating an addendum to the lease to extend the lease until December 2022. [RT Vol. VI 224:8-10; Vol. VII 15:10-17]

219:19; Vol. V 41:1-13, 47:14-48:3, 48:4-21] Mr. Graziano indicated that although SOA is not excited about Courtesy's current location, SOA could continue selling cars there by taking over the existing Courtesy lease, and "figure out a way to handle service." [RT Vol. IV 187:4-188:5; Vol. V 20:12-21:1, 51:10-17] Mr. Graziano noted it is difficult to estimate how long it would take to get another Subaru dealership up and running, but something less than a year. [RT Vol. IV 220:3-8; Vol. V 32:8-21]

181. SOA is frustrated that Subaru owners' car repair services are not being provided in a Subaru facility, which impacts retaining repeat Subaru customers. [60] [RT Vol. IV 80:17-81:21] From a frequency of "customer touch," service is 15 to 20 times more frequent compared to sales. [RT Vol. IV 116:2-20] A metric used for measuring customer experience is the "Net Promoter Score" based on a survey. Courtesy's scores for both sales and service are historically the bottom ninth or tenth out of 10 stores in their zone, which encompasses the area of Sacramento to Redding.[61] [RT Vol. IV 81:15-21; Exh. R-178.20, .23, .26, .30] According to SOA, it is harmed by service being done at a non-Subaru-branded service department and a sales facility that does not have appropriate parking. These impact "the customer experience" and, according to Mr. Graziano, are "long term impacts for this brand." [RT Vol. IV 158:6-24] Mr. Farabee and Mr. Graziano both agreed that those damages are hard to quantify. [RT Vol. IV 81:1-9, 81:23-82:10, 117:8-13, 159:2-9] Mr. Graziano testified there is no dollar amount to compensate SOA. He noted that SOA is not looking for money – that the LOC is really more of an insurance policy and "not in lieu of a retailer doing what is required." [RT Vol. IV 176:24-177:8]

182. SOA asserts that COVID-19 was not an impediment to Courtesy building their multi-franchise facility nor did the wildfires have anything to do with Courtesy's failure to meet the benchmarks. [RT Vol. IV 185:13-17, 228:4-11, 231:15-23] Mr. Graziano pointed out that 30-plus Subaru dealership facilities are being built in the region during COVID-19 and 10-13 facilities were completed. [RT Vol. IV 180:17-181:6] Mr. Smit testified that there are approximately six greenfield projects in the San Francisco zone. [RT Vol. V 177:10-20; Vol. IV 205:2-13] Of all these other pending SOA projects,

[60] SOA witnesses testified that service is more important than selling cars to SOA, and yet there is no indication that there is any place available in Chico for servicing vehicles if SOA awards a franchise to another dealer in Courtesy's place.

[61] Some of the comments in the survey relate to the location (ease of access to the facility, waiting area and availability of parking) and some relate to servicing of the vehicle (responsiveness to needs and cleanliness of the vehicle on return). [Exh. R-178.04, .10, .14, .23]

the only project that is somewhat similar to Courtesy's project is One Subaru in Hayward, California, which is scheduled to be completed in the Spring of 2022. [RT Vol. II 111:13-14; Vol. III 229:18-230:5; Vol. VI 45:13-24] One Subaru, like Courtesy, is being built on completely vacant land. However, Mr. Farabee did not know whether it was totally undeveloped land with no utilities running to it, as is the case with Courtesy's property. [RT Vol. III 227: 20-25, 229:18-230:5] One Subaru is being built at a cost of approximately $42 million, including $3 million for earthquake remediation. Mr. Smit did not know how much of that total cost was for purchase of the land. [RT Vol. III 228:25-229:3; Vol. VI 36:5-9, 41:6-17] According to Mr. Smit "substantial construction" started in 2020 on that project in the form of foundations poured and installation of earthquake mitigation systems. [RT Vol. VI 42:25-43:11]

ANALYSIS

183. This case is very difficult because of the important and significant public policy supporting settlement agreements and enforcement of the Board's Stipulated Decision and Order. However, that public policy is not inviolate, and in the proper circumstances, where there are other competing public policies, there must be a balancing. Enforcement of the agreement may have to give way to other public policy concerns. In the related contexts of enforcement of settlements under Code of Civil Procedure section 664.6, the California Supreme Court has ruled that Section 664.6[62] does allow a court to enforce a provision in a settlement agreement or stipulation which is illegal, contrary to public policy, or unjust. [See *California State Auto Assn. Inter-Ins. Bureau* v. *Superior Court* (1990) 50 Cal.3d 658, 664]

184. Along the same lines, "[t]he case law uniformly treats a settlement agreement as a contract subject to all the [usual and] normal legal and statutory contractual requirements." [*Timney* v. *Lin* (2003) 106 Cal.App.4th 1121, 1127] "A settlement agreement is in the nature of a contract and is therefore governed by the same legal principles applicable to contracts generally." [*In re Marriage of Hasso* (1991) 229 Cal.App.3d 1174, 1180-1181] The validity of this Stipulated Decision and Order must be judged by

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[62] Code of Civil Procedure section 664.6(a) provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. 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."

the same legal principles applicable to contracts generally. [*Weddington Productions Inc.* v. *Flick* (1998) 60 Cal.App.4th 793, 810-811] There is a strong public policy favoring settlement of litigation, but that "policy does not excuse a contractual clause that is otherwise illegal or unjust." [*Timney* v. *Lin, supra,* 106 Cal.App.4th at 1127]

185. SOA's counsel noted at the hearing that nothing in Code of Civil Procedure section 664.6 authorizes "a judge to create the material terms of the settlement [agreement]" citing *Hernandez* v. *Board of Education* (2004) 126 Cal.App. 4th 1161, 1176. [RT Vol. I 21:15-18] The court in *Hernandez* notes that when enforcing settlement agreements, the court "is powerless to impose on the parties *more restrictive or less restrictive or different terms* than those contained in their settlement agreement." (Emphasis added.) [*Ibid* at p. 1176] However, no different terms or more restrictive terms are being imposed here. The terms of the agreement were set by the parties and they are "material failure to comply."

186. There are the understandable frustrations endured by SOA because of the delays, along with the real-life complications for Courtesy initially being in the County's jurisdiction, and then, suddenly thrust into the City's more onerous and complex jurisdiction following a "land speed record" annexation. Then, the devastating Camp Fire occurred in 2018, with its attendant ramifications on Chico and, consequently, on Courtesy during 2019. Next, a worldwide pandemic occurs in March 2020 and the State of California issues the COVID-19 stay-at-home order. The consequences of the order included business disruption impacts and restrictions generally, and specifically resulted in difficulties imposed on City staff to timely process the Development Agreement and plan check reviews. The City told Mr. Pajouh that they would not abandon the ROW as part of the Development Agreement, but they entertained the option of a lease on the ROW until at least mid-January 2021. [Exh. P-29.003-.004; RT. Vol. III 202:21-25, 204:11-22; Vol. VI 82:16-19, 84:1-7] The pandemic restrictions and City negotiations delayed the permits being issued to Courtesy, with its attendant consequences on Courtesy's inability to complete its facility under the original benchmarks. Once Mr. Sawley told Mr. Pajouh he needed to abandon the development of the ROW, the necessary hearings were held and the permits issued. Lastly, there are the enduring disruptions from the now two-year global pandemic which continue to wreak havoc on the project, with supply chain issues related to materials and supplies.

187. SOA asserts that the wording of the Stipulated Decision eliminates the need for any balancing of factors by the ALJ. However, as noted above, the Stipulated Decision does not provide that good cause existed at that time of the execution of the Confidential Agreement for the termination of the Protestant's franchise, but rather, the parties agreed that Courtesy's *failure to comply with any of the conditions in the Stipulated Decision* shall constitute good cause to terminate the SOA Dealer Agreement between them under Sections 3060 and 3061. [Exh. J-301.18:11-13] The conditions outlined in the Stipulated Decision are whether the Protestant *materially failed* to comply.

Incorporation by Reference

188. The Stipulated Decision and the Facility Addendum had the same benchmarks for the Courtesy facility project and the Stipulated Decision was incorporated by reference into the Facility Addendum. [Exhs. J-301.13 ¶16; J-300.34 ¶4] Incorporation by reference is almost universally held "to mean the inclusion, within a body of a document, of text which, although physically separate from the document, becomes as much a part of the document as if it had been typed in directly. [*Republic Bank* v. *Marine Nat. Bank* (1996) 45 Cal.App.4th 919, 922] Black's Law Dictionary (11th ed. 2019) page 916, defines the phrase to mean "[a] method of making a secondary document part of a primary document by including in the primary document a statement that the *secondary document should be treated as if it were contained within the primary one*." (Emphasis added.) "A written agreement may, by reference expressly made thereto, incorporate other written agreements; and in the event such incorporation is made, the original agreement and those referred to must be considered and construed as one." (Citations omitted.) [*Republic Bank, supra,* 45 Cal.App.4th at 923][63]

189. The Stipulated Decision and Facility Addendum must be considered and construed as *one document*. The Stipulated Decision is as much a part of the Facility Addendum as if its terms "were recited verbatim." [*Republic Bank, supra,* 45 Cal.App.4th at 921] When SOA executed the Amended

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[63] In *Republic Bank* the master lease, which had an attorney's fees clause, was incorporated by reference into the sublease. There were provisions in the master lease that differed from or even were inconsistent with the sublease and the master lease had an integration clause. The subleasee argued that due to those differences, the parties did not intend the relationship to be governed by the master lease. The court rejected that argument and held that just because there were overlapping or inconsistent provisions, does not mean "that the parties *necessarily* intended that *no* provisions of the master lease *could possibly* be incorporated into the sublease." (Emphasis in original) [*Republic Bank, supra,* 45 Cal.App.4th at 924-925]

Facility Addendum, it amended the Stipulated Decision also and new benchmarks for both were set. Those new dates are the dates by which Courtesy's actions must be reviewed.

190. Further, SOA's argument that the integration clause in the Stipulated Decision, which provides that the agreement is not modified or affected by any other agreement between the parties, is not applicable because integration clauses only discharge prior agreements or contemporaneous oral agreements. Integration clauses do not affect subsequent amendments.[64]

Promissory Estoppel

191. An additional basis for the holding that the Amended Facility Addendum also changed the dates as to the Stipulated Decision, is the doctrine of promissory estoppel. The execution of the May 2020 Amended Facility Addendum by SOA is relevant to these proceedings because it induced reliance by Courtesy. SOA essentially authorized Courtesy additional time to secure permits and commence construction beyond the dates set forth in the Stipulated Decision and the Facility Addendum, and Courtesy continued with the project in reliance on those extensions.

192. Courtesy provided to SOA a $750,000 cash deposit which was a bridge to the issuance of the LOC provided for in the Stipulated Decision. [RT Vol. VI 56:2-6; Vol VII 21:9-20] In March 2020, Mr. Pajouh asked for the return of the $750,000 deposit he had given to SOA, in lieu of a LOC, because of the uncertainty due to COVID-19. [RT Vol. IV 58:21-59:2, 125:3-12; V 22:19-25; VI 62:19-63:15, 65:10-25; VII 21:9-20] On April 29, 2020, Mr. Pajouh again requested the cash deposit be released to him upon issuance of the LOC. Mr. Pajouh said to Mr. Smit: "SOA is well aware of the size and scope of [the] facility project. We did not anticipate having $750,000 in cash locked up for the duration of the project. . . . My builder and architect are doing all they can to expedite final approval . . . " [Exh. P-16.001]

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[64] See California Code of Civil Procedure section 1856(a): "[t]erms set forth in a writing intended by the parties as a final expression of their agreement with respect to the terms included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement." Subsection (h) of section 1856 provides that "agreement" includes contracts. See also Uniform Commercial Code (UCC) section 2202: "[t]erms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented." A franchise includes sale of vehicles so a franchise is a transaction in goods and thus, within the UCC Division 2 – Sale of Goods.

193. SOA argues that the Amended Facility Addendum benchmarks were for the sole purpose of permitting Courtesy to get its money back and secure a $750,000 LOC in its place. SOA claims it always intended to hold Courtesy responsible for the admittedly unachievable timelines, containing benchmarks already missed, set forth in the Stipulated Decision. If SOA's claim is true, SOA possibly mislead the bank by issuing the Amended Facility Addendum with knowledge and expectation the bank would rely on this document in making the determination to issue the LOC. SOA tried to keep the Amended Facility Addendum and the Stipulated Decision separate, as well as the different benchmarks. However, there is sufficient evidence (separate and apart from the fact that the Facility Addendum incorporated the Stipulated Decision, making them one) that Mr. Smit believed that the new agreed dates also changed or reset the Stipulated Decision benchmarks and conveyed that to Mr. Pajouh. [Exh. P-16.001-16.002]

194. SOA's assertion that the Amended Facility Addendum has no effect on the benchmarks in the Stipulated Decision must fail. According to Mr. Graziano, SOA wanted to continue the project and work with Mr. Pajouh. This was done certainly with the expectation that Courtesy would rely on that extension and would attempt to comply with the dates in the Amended Facility Addendum, continue to expend funds, and start construction of the facility, which it has done.

195. The Amended Facility Addendum was completed so the bank would issue the LOC, since the dates in the Facility Addendum (which incorporates the Stipulated Decision) had expired. Mr. Smit testified that the new dates were to "make him [Mr. Pajouh] *comply with what was going on with COVID, take that into account*. And I think it was really to help him establish a letter of credit." (Emphasis added.) [Exh. R-123.10:13-24] The Amended Facility Agreement was "to update what actually happened, and . . . to help [Mr. Pajouh] with achieving some of the financial instruments needed to continue on with the project." [Exh. P-51.017:6-13] Courtesy's bank issued the LOC noting that Courtesy had committed to a Subaru dealership in Chico "meeting all [SOA] minimum standards . . . by January 31, 2022" which is the date agreed to for final verification by Feltus Hawkins. [Exh. J-307.03] Thus, the LOC was issued in reliance on the amended dates and Mr. Pajouh continued the project also based on that reliance.

196. The April 2020 email from Mr. Smit, the SOA person closest to the project, asking for

new benchmarks to be included in the 2020 Facility Addendum specifically states: "I'm following up on our conversation last Tuesday *regarding the settlement agreement dates*. At this point, to even consider exchanging a LOC in lieu of your performance deposit we need revised and definitive dates for the [permits, commencement of construction, completion of construction and final verification] benchmarks." (Emphasis added.) [Exh. P-16.001] Mr. Smit even testified the letter of noncompliance revolves around the Stipulated Decision and when Mr. Pajouh provided the revised dates "it was reset." SOA issued the Amended Facility Addendum with the expectation that Courtesy would continue its efforts to perform by complying with the amended benchmarks and construct the facility as agreed.[65] This conclusion is supported by the fact that, although the Letter of Non-Compliance referenced the missed benchmark dates from the Stipulated Decision, it was not sent until August 24, 2020, after Courtesy missed the new date of July 31, 2020 for obtaining its permit. [Exh. J-303.01]

197. Without the LOC, the project probably could not continue since Mr. Pajouh needed his $750,000 returned to continue the project. It seems unlikely that the bank would have issued a LOC to support the construction performance and completion by Courtesy in this instance if it knew there were other dates that SOA could rely on to terminate the dealership. It is simply not credible to think the bank would have issued the LOC had it known that SOA would use the Stipulated Decision with dates different from, and older than, those in the Amended Facility Addendum to affect the rights of Courtesy so drastically as to terminate its Subaru dealership. It is unclear if the bank was even aware of the existence of the Stipulated Decision.

198. California has adopted the Restatement Second of Contracts § 90 doctrine of promissory estoppel: "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee . . . and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." [*Kajima/Ray Wilson* v. *Los Angeles County Metropolitan*

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[65] Mr. Smit's contradictory testimony that the LOC had nothing to do with the Stipulated Decision is not credible. When asked if the dates he was asking Mr. Pajouh to provide would replace the settlement agreement dates, Mr. Smit stated that "[a]bsolutely not. I mean the Facility Addendum Amendment and Settlement Agreement are two distinct separate things. They're mutually exclusive." But when asked why he referenced the settlement agreement in his email, Mr. Smit said: "I might have talked to him about the Settlement Agreement. I can't recall that particular conversation. . . . [w]e were trying to get him so he could get his letter of credit and *comply with the financial instrument required by the Stipulated [Decision]*." (Emphasis added.) [Exh. R-123.11:4-24]

Transportation Authority (2000) 23 Cal.4th 305, 310, citing Rest. 2d Contracts, § 90] Promissory estoppel binds a promisor "when he should reasonably expect a change of position, either by act or forbearance, in reliance on his promise, if injustice can be avoided only by its enforcement." (Citation omitted.) [*Jones* v. *Wachovia Bank* (2014) 230 Cal.App.4th 935, 944]

199. The elements needed for application of promissory estoppel are:

(1) A promise clear and unambiguous in its terms;

(2) Reliance by the party to whom the promise is made;

(3) The reliance must be both reasonable and foreseeable; and

(4) The party asserting the estoppel must be injured by his or her reliance [detrimental reliance]. [*Granadino* v. *Wells Fargo Bank, N.A.* (2015) 236 Cal. App. 4th 411, 416]

200. A "promise" is "a person's assurance that the person will or will not do something." [Black's Law Dict. (11th ed. 2019) p. 1466] A promise to employees that if they continued to work for a company until it was sold, they would be paid a bonus from the sale proceeds that would be sufficient for them to retire, was enforceable under the doctrine of promissory estoppel when the employees turned down other offers of employment because they did not want to lose the retirement allowance. [*Moncada* v. *West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768]

201. Promissory estoppel binds a promisor "when he should reasonably expect a substantial change of position, either by act or forbearance, in reliance on his promise, if injustice can be avoided only by its enforcement." [*Garcia* v. *World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1041, quoting *Youngman* v. *Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 249] The court of appeal in *Garcia* explained that "[t]he vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted. (Citations omitted)." [*Ibid.*] Because promissory estoppel is an equitable doctrine, "courts are given wide discretion in its application." [*U.S. Ecology, Inc.* v. *State of California* (2005) 129 Cal.App.4th 887, 902]

202. As noted above, the April 29, 2020, email from Mr. Smit demanded revised and definitive dates from Mr. Pajouh for the benchmarks. According to Mr. Farabee, Mr. Smit was the SOA person most knowledgeable and primary point of contact for Mr. Pajouh. "Ray [Smit] was most closely tied with

[Mr. Pajouh] on this process." [Exh. P-52.008:2-9] Mr. Smit testified the letter of noncompliance revolved around the Stipulated Decision, stating when Mr. Pajouh provided the revised dates, he confirmed that: "I mean, this noncompliance letter revolves around, you know, the Stipulated Decision. It just – he [Mr. Pajouh] gave me the dates. It was reset." [Exh. P-51.025:23-.026:1] When Mr. Smit followed up and asked for the permit that he thought Courtesy had obtained in November 2019, and it could not be produced, he said: "[s]o, we had to correct [the dates]." [Exh. P-51.013:5-10]

203. Additionally, the Amended Facility Addendum itself notes that "[t]his 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." (Emphasis added.) [Exh. R-101.01] The letter does not say this is the final amendment to the Facility Addendum – it says it is the final amendment to the *facility benchmarks*. There is little doubt that the new benchmarks are applicable to both documents. Both had the same initial benchmarks for the permanent facility.[66] Both the testimony of Mr. Smit (the person most familiar with the project and the person others at SOA deferred to) and his contemporaneous email referencing the Stipulated Decision connect the resetting of the benchmarks to the Stipulated Decision.

204. SOA knew Courtesy would act upon such an extension and Courtesy did so act by continuing to send in numerous revised plans and to negotiate the Development Agreement with the City so Courtesy could get the necessary permits and start construction. In *Wade* v. *Markwell & Co.* (1953) 118 Cal.App.2d 410 the court found detrimental reliance where a coat owner, who had given her coat as security for a loan, was prepared to redeem her coat, but was induced by the lender to forbear from immediately redeeming the coat under the assurance that it would be held for a week. She refrained from exercising her right to redeem for the extra week in reliance on the lender's oral representations, only to have the coat sold. Mr. Pajouh's discussions with Mr. Smit that the dates had been "reset" induced him to believe the extension applied to the Stipulated Decision, as well as the Amended Facility Amendment. Mr. Pajouh's reliance was reasonable and foreseeable given the key role of Mr. Smit. Further, it makes

[66] The Facility Addendum set specific dates for the provision of the LOC (July 14, 2019) and for when the inspection of the leased premises was to be completed by SOA (July 18, 2019). [J-Exh. 301.33-34]

no sense to have two different deadlines for the same events. The execution of the Amended Facility Addendum induced reliance that SOA authorized Courtesy additional time to secure permits and commence construction, beyond the dates set forth in the Stipulated Decision. SOA understood that it could not seek termination before the newly set permit issuance date of July 31, 2020, which is supported by the non-compliance letter not being sent until August 24, 2020.

205. The fourth element of promissory estoppel of injury, sometimes described as "injustice can be avoided only by enforcement of the promise," is substantively the same principle as the requirement of unconscionable injury. [*Munoz* v. *Kaiser Steel Corp.* (1984) 156 Cal.App.3d 965, 974, distinguished on other grounds in *Dalkilic v. Titan Corp.* (S.D. Ca 2007) 516 F. Supp. 2d 1177, 1194] Unconscionable injury results from denying enforcement of an agreement (or a provision of an agreement) after one party is induced by another party to seriously change position relying upon the agreement. [*Siam Numhong Prods. Co.* v. *Eastimpex* (N.D. Cal. 1994) 866 F. Supp. 445, 448; Rest.2d Contracts, § 139]

206. The dates were reset due to COVID-19 and to secure the LOC. Courtesy changed its position in reliance on the new dates and relied on those dates to its injury, in not only the expense of the LOC, but also in continuing to expend time, effort, and money to get the plans approved, the permits issued, and the buildings constructed. It would be unconscionable for SOA to deny it did not modify the deadlines outlined in the Stipulated Decision by entering into the Amended Facility Addendum with Courtesy and agreeing to those dates set forth as the revised (reset) applicable dates for the project. To assert that the change only applies to the Amended Facility Addendum and to subject Courtesy to termination based on the earlier dates would be an unconscionable injury.

Conditions Versus Promises

207. In the Stipulated Decision, the terms "conditions," "deadlines," "benchmarks," and "milestones" seem to be used interchangeably. Section 1436 of the California Civil Code defines a condition precedent as one "which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed." Although the Restatement avoids the terms "condition precedent" and "condition subsequent," preferring the word "condition" alone to define the former concept (see Rest.2d Contracts, § 224, com. e), the definition it provides is essentially the same for

purposes of the issue in this case: "A condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due." [Rest.2d, Contracts, § 224]

208. "The existence of a condition precedent normally depends upon the intent of the parties as determined from the words they" use in a contract. [*JMR Construction Corp.* v. *Environmental Assessment & Remediation Management, Inc.* (2015) 243 Cal.App.4th 571, 593-594, modified and rehearing denied January 2016] But "'stipulations in an agreement are not to be construed as conditions precedent unless such construction is required by clear, unambiguous language; and particularly so where a forfeiture would be involved or inequitable consequences would result. [Citations.]'" [*Alpha Beta Food Markets* v. *Retail Clerks* (1955) 45 Cal.2d 764, 771, cert. denied, 350 U.S. 996 (1956); see *Rubin* v. *Fuchs* (1969) 1 Cal.3d 50, 53 citing the rule that contract provisions are not "construed as conditions precedent in the absence of language plainly requiring such construction."] Because "'such conditions are not favored by the law, [they] are to be strictly construed against one seeking to avail [it]self of them. [Citations.]'" [*Antonelle* v. *Kennedy & Shaw Lumber Co.* (1903) 140 Cal. 309, 315; *JMR Construction Corp.* v. *Environmental Assessment & Remediation Management, Inc., supra,* 243 Cal.App.4th at 594; See also *Effects Associates Inc.* v. *Cohen* (9th Cir. 1990) 908 F.2d 555, 559 n.7 "Conditions precedent are disfavored and will not be read into a contract unless required by plain, unambiguous language."] See also *Richardson v. Hislop* (1930) 109 Cal.App. 440, 449, quoting Williston on Contracts, section 671, page 1294, that "[c]ourts are disinclined to construe the stipulations of a contract as conditions precedent . . . [because] such a construction prevents the court from dealing out justice to the parties according to the equities of the case."

209. In *Pacific Allied* v. *Century Steel Products* (1958) 162 Cal.App.2d 70 the defendant, Century, agreed to fabricate and sell steel forms to the plaintiff, Pacific, for the purpose of using them to install storm drains. [*Id.* at p. 72] Century also guaranteed that Pacific's labor costs, through its use of Century's steel forms, would not exceed four cents per square foot. Further, Century would, upon completion of the job and Pacific's submission of an itemized cost breakdown, pay Pacific's labor costs in excess of 4 cents per square foot. [*Id.* at p. 73] Pacific agreed to keep a detailed account of labor costs and give Century a "continuous report." [*Ibid.*] Pacific kept Century apprised of costs during the project

and gave it periodic oral reports, but it did not provide a detailed cost breakdown upon the project's completion. [*Id.* at p. 78] The court rejected Century's contention that Pacific was required to provide a detailed cost breakdown as a condition precedent to its recovery under the contract. [*Id.* at pp. 79-80] The appellate court held that (1) conditions precedent are not favored in the law; (2) neither the express terms of the contract nor a reasonable implication drawn from them compelled a finding that providing the cost breakdown was a condition precedent to Pacific's recovery; and (3) the interpretation advanced by Century was particularly disfavored because it would result in a forfeiture. [*Id.* at pp. 79-80]

210. Paragraph 9 of the Stipulated Decision begins with "[s]ubject to its full and timely compliance with the conditions specified below." However, "the conditions specified below" are that Courtesy "*agrees* to remodel the facility (¶14); that Courtesy *agrees* to execute a new Subaru Dealer Agreement which shall include a Facility Addendum with certain provisions which Courtesy agrees to do related to the lease (¶15); and that the Dealer Agreement will include benchmarks for completion of the permanent facility, including dates, *inter alia*, for when Courtesy will submit construction drawings, obtain governmental approvals, and commence and complete construction (¶¶ 15 and 16). Further, the parties *agree* that compliance with the terms of the Stipulated Decision and *execution* of the Dealer Agreement containing the *milestones* are each separately required (¶17). (Emphasis added.) [Exh. J-301] Additionally, there is the language in Paragraph 28 in two places that the ALJ must determine whether there has been a *material failure to comply* with the any of the conditions by Courtesy, which certainly implies a promise which is either materially or non-materially breached. [Exh. J-301:020-.021]

211. It is questionable whether there is a basis here for a construction that the agreement contains language that Courtesy's right to continue its franchise is a condition. The language, which is to be construed against finding a condition here, is ambiguous and does not necessarily purport to declare a condition precedent. The language of the Stipulated Decision is that Courtesy agrees or promises to do certain things by certain deadlines, and agrees to include certain provisions in another document. The language, like that in *Pacific Allied,* does not compel a finding that obtaining permitting, beginning construction, and completing construction are a condition precedent to Courtesy retaining its franchise. Further, the plain language used by the parties is "material breach" of terms that are promises and conditions. Thus, the terms should not be construed as express conditions requiring full and complete

performance. As noted above, conditions precedent are not favored and will not be read into an agreement.

212. Further, if the interpretation is that the language (material breach) is a condition, it would here, as in *Allied Pacific*, result in a disproportionate forfeiture being inflicted on Courtesy as Courtesy has spent considerable money, time and effort in completing the project, albeit late, only to lose its Subaru franchise. Thus, the fact that there has not been full occurrence of a condition, if it is a condition, must be excused.

213. Promises are undertakings that something will or will not happen in the future; that is, someone has made a commitment to do or refrain from doing something in the future. Promises may be breached with the level of breach being either a "material breach" (major breach) or "non-material breach" (minor breach). If there is a material breach, the other party may terminate the contract and recover damages or seek some other remedy. If the breach is only minor, the other party must continue to perform and can recover damages only for the minor breach. (Rest. 2d Contracts, § 241)

214. As noted above, the Stipulated Decision does not provide that good cause existed at the time of the execution of the Confidential Agreement for the termination of the Protestant's Subaru franchise. Rather, the parties agreed that Courtesy's failure to comply with *any of the conditions* in the Stipulated Decision shall "constitute good cause to terminate the SOA Dealer Agreement between them under sections 3060 and 3061." The condition for review here is whether there is *material failure to comply by Courtesy*. (Emphasis added.) [Exh. J-301.18:11-13, .20]

215. The parties here have used the vocabulary "material breach" regarding the non-compliance with the benchmarks. The parties provided the standard here to be "material failure to comply." Therefore, the occurrence of the conditions here should be measured by whether they have "substantially occurred" or have been "substantially performed" – the same standard that applies to whether there is a "material breach of promise," as the conditions here are also promises.

No Material Failure to Comply with the New Dates --- Courtesy's Substantial Compliance

216. Based either upon incorporation by reference or promissory estoppel, the new dates in the Amended Facility Addendum (and by incorporation, the Stipulated Decision) apply and materiality will be assessed using those dates. The sole failure to meet those dates does not equal materiality. If it did,

there would be no need for the words "material failure" or "materially complied" in the Stipulated Decision. However, unlike the characterization of this matter by Respondent that the ALJ is simply to make a determination of whether Protestant has or has not complied with the provisions of the Stipulated Decision, the determination to be made is whether Protestant has or has not *materially* complied. (Emphasis added.) [Exh. J-300.20, ¶28]

217. Material compliance requires evaluation under the factors articulated in *Sackett* v. *Spindler* (1967) 248 Cal.App.2d 220. "In determining the materiality of a failure to fully perform a promise the following factors are to be considered: (1) The extent to which the injured party will obtain the substantial benefit which he could have reasonably anticipated; (2) the extent to which the injured party may be adequately compensated in damages for lack of complete performance; (3) the extent to which the party failing to perform has already partly performed or made preparations for performance; (4) the greater or less hardship on the party failing to perform in terminating the contract; (5) the wilful [*sic*], negligent, or innocent behavior of the party failing to perform; and (6) the greater or less uncertainty that the party failing to perform will perform the remainder of the contract." [*Id.* at 229] Material compliance requires evaluation under the factors articulated above and analysis under Restatement of Contracts, Second § 241. [See also Rest. Contracts, § 275]

218. Although Respondent asserts that the only determination left in the Stipulated Decision is whether Protestant timely complied or did not timely comply and by how much, "materialness is only timeliness," this statement oversimplifies the legal definition of materiality. [RT Vol. IV 20:15-23] As explained above, the Stipulated Decision is a settlement agreement that is a contract subject to all the usual and normal legal and statutory contractual requirements. Because the legal determination of materiality requires consideration of whether Respondent suffered any injury or could be adequately compensated for such harm, the parties did intend by their language for the Board to make findings concerning legal materiality.

219. Respondent asserts that because the parties have already stipulated to good cause to terminate under Section 3061, the factors in *Sackett* have no application to this matter and that case is not determinative. However, as noted above, the parties in the Stipulated Decision did not stipulate that good cause existed at the time of the execution of the agreement, but rather that Courtesy's failure to comply

with the conditions in the agreement shall constitute good cause. [Exh. J-301.18 ¶ 25(c)] Thus, the need for determining materiality.

220. Further, Respondent asserts that because good cause has already been agreed to that essentially the good cause factors in Section 3060 are the same as the *Sackett* factors. Requiring Respondent to show any alleged non-compliance be material is not the same as showing good cause to terminate pursuant to Sections 3060 and 3061. The parties were not litigating the *Sackett* factors in 2018 and they are not litigating the good cause factors in this dispute. Respondent argued in its Motion in Limine that the Board should refrain from considering evidence necessary to determine materiality because the "parties stipulated to good cause for the failure to meet any condition for good reason, to avert this exact balancing of the existing circumstances." [Respondent's Motion in Limine No. 1, p. 3, lines 13-14] Reviewing the evidence regarding the materiality factors is not the same as determining "existing circumstances" under the good cause factors. It is to do a full evaluation of the *Sackett* factors regarding material breach.[67]

221. Allowing introduction of this evidence of what SOA's damages are, if any, is not tantamount to imposing further conditions to unlawfully continue the franchise relationship in direct contravention of both the Board's retention of jurisdiction and statutory mandate.

Material Compliance Factors

(1) The Extent to which the Injured Party will Obtain the Substantial Benefit

222. The first requirement is the extent to which the injured party will obtain the substantial benefit which he could have reasonably anticipated. The substantial benefit contracted for by SOA is a new facility. The facility project was delayed, with construction commencing on June 28, 2021, some nine months after the time agreed to under the Amended Facility Addendum. The Subaru/Volvo building is expected to be the first building completed and it is expected to be by April 2023, if not sooner. Realistically, the soonest SOA could get another Subaru dealership in operation is approximately a year.

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[67] However, how circumstances have changed may be important in determining the *Sackett* factors. Paragraph 30 of the Stipulated Decision provides that Protestant agrees that the remodeling of the facility at the temporary facility and the construction of a new facility as contemplated under the Stipulated Decision "are each reasonable in light of all existing circumstances, including economic conditions. . . ." [Exh. J-301.22] Arguably, this language allows consideration of how circumstances have changed, which they clearly have.

SOA witnesses testified that they would attempt to use the current sales location for the new dealer's sales office, but there is currently no facility available in Chico for service.[68] Although Mr. Smit testified that Courtesy's current service location on Cohasset is for sale, Mr. Pajouh testified that he is negotiating leases of his other dealerships' buildings through December 2022. [RT Vol. VI 224:8-10, 229:13-15; Vol. VII 15:10-17] It is highly unlikely that a new Subaru dealer could have a sales and service location by March of 2023, which is approximately when the Subaru/Volvo building should be completed.

(2) The Extent the Injured Party is Adequately Compensated by Damages

223. The next requirement is the extent to which the injured party may be adequately compensated in damages for lack of complete performance. Respondent contends that evidence of harm and/or damages is not relevant to the determination of the issues because the Stipulated Decision does not provide for damages in the event of non-compliance and the Board is not authorized to award damages or grant any other relief in this matter.[69]

224. Nothing in the Stipulated Decision provides any statement that damages would be inadequate to address any alleged breach of the Stipulated Decision.[70] Respondent's assertion that damages for failure to timely perform are inadequate is contradicted by the fact a LOC was required by SOA as *assurance for performance*. SOA witnesses testified that the LOC was requested as an assurance of performance. Mr. Farabee testified that the LOC was "an assurance that a project will get done in a set amount of time or by a date certain." He explained that SOA would have a discussion regarding the LOC after the last date in January 2022 (Feltus Hawkins verification) is missed. [RT Vol. IV 144:13-145:20] The May 2020 Amended Facility Addendum states "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*." (Emphasis added.) [R-101.01] If there are damages for lack of timely performance, the LOC for $750,000, which SOA believed it could call as soon as January 31, 2022, should be seen as adequate since that is what the parties agreed to.

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[68] SOA seems to assume that a new dealer could secure a lease for the current Courtesy premises. Mr. Pajouh has a lease on the 896 East Avenue location until December 2022, with a month-to-month extension for three months through March 2023. [RT Vol. VII 14:16-15:9]

[69] In this Decision, the Administrative Law Judge is not awarding damages nor amending the Stipulated Decision.

[70] We cannot assume, as SOA asserts, that delay automatically equals damages.

225. Letters of credit are governed by Division 5 of the California Uniform Commercial Code. Uniform Commercial Code Section 5102(a)(10) defines a LOC as "a definite undertaking that satisfies the requirements of Section 5104 by an issuer to a beneficiary at the request or for the account of an applicant . . . to honor a documentary presentation by payment or delivery of an item of value."[71] In *San Diego Gas & Electric Co. v. Bank Leumi*, (1996) Cal.App.4th 928, the court explained that in recent years, "the use of the letter of credit has expanded to include guaranteeing or securing a bank's customer's promised performance to a third party in a variety of situations. This use is referred to as a standby letter of credit." [*Id.* at 933] The liability of the issuer of a letter of credit to the letter's beneficiary is direct and independent of the underlying transaction between the beneficiary and the issuer's customer. [*San Diego Gas & Electric Co.* v. *Bank Leumi*, supra, 42 Cal.App.4th at pp. 933-934] A letter of credit is not a form of guaranty or a surety obligation.[72] The issuer of a letter of credit cannot refuse to pay based on extraneous defenses that might have been available to its customer. [See Uniform Commercial Code section 5108(f)][73]

226. SOA will receive the full benefit of a newly constructed Subaru facility in Chico, albeit on a delayed timeframe. The current Subaru facility may be deficient, but Mr. Pajouh said it is better than any of his other facilities. And further, it is the exact location where SOA witnesses testified that SOA would put another dealership if Courtesy were terminated (apparently assuming the new franchisee could lease the location).

227. Mr. Pajouh testified that Courtesy had a great year selling Subaru vehicles. Mr. Farabee testified that Courtesy's sales were up 19% compared to the national average of 6%. There was no

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[71] Uniform Commercial Code section 5104 provides that "[a] letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in subdivision (e) of Section 5108."

[72] Civil Code section 2787 provides that "[a] letter of credit is not a form of suretyship obligation."

[73] Uniform Commercial Code Section 5108(f) provides that "[a]n issuer is not responsible for: (1) the performance or nonperformance of the underlying contract, arrangement, or transaction, (2) an act or omission of others, or (3) observance or knowledge of the usage of a particular trade other than the standard practice referred to in subdivision (e)." Subdivision (e) provides that "[a]n issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice."

evidence presented that showed any decline or loss in sales by Courtesy by failing to complete the new sales facility in accordance with the schedule. Consequently, there are no damages to SOA for lack of performance in sales. SOA asserts that it is damaged because service is more important than sales and the location where the service is performed on Subaru vehicles is at Courtesy's Buick/GMC location. But that is exactly what SOA agreed to under the original Dealer Agreement, although service has continued there longer than anticipated. Additionally, the new multi-franchise facility will have a new service facility and a separate express service center exclusively for Subaru vehicles which should allay any service concerns.

(3) The Extent to which the Party Failing to Perform has Already Partly Performed or Made Preparations for Performance

228. Courtesy's performance was hindered by annexation, and similar delay requests by the City due to the Camp Fire and COVID-19 impacts on Chico. It was extremely difficult to get everyone in the City together and the additional burdens were tremendous. Mr. Sawley told Mr. Stevens and Mr. Pajouh that he may not be able to give the project his immediate attention. SOA witnesses testified that Courtesy's ongoing performance in getting the project built has been steady and uninterrupted, despite the pandemic. No one from SOA testified that Courtesy was not moving forward – instead the testimony was that Mr. Pajouh was "doing everything he could." The import of the email about Courtesy's people not getting back to the City was conflicting. It appears that the delay referenced in the email was probably about delays related to Modern Builder's subcontractors who were working "in the field" not showing up for work related to COVID-19, unrelated to the Courtesy project. The "ball was in Courtesy's court" in July 2020 to respond to the City's plan check comments, but there was no testimony that Courtesy delayed in responding to the City. Mr. Sawley testified that Modern Building was checking in frequently ("[Mr. Seegert] was being the pest that he said he didn't want to be") and they were moving forward on all fronts "in the pursuit of trying to get to the end result faster." [RT Vol. III 182:19-184:7]

229. Courtesy has made many preparations for performance and has spent at least $6.5 million thus far in design and start of construction for the multi-franchise facility. Courtesy has made major investments in acquisition of $2.8 million along with acquiring a construction loan of $23.5 million. As noted above, Subaru sales and service accounted for over 40 percent of Courtesy's unit sales in

generating cash flow. Subaru is Courtesy's biggest generator of revenues based on volume. [RT Vol. VII 7:21-8:25; 29:16-30:3] Although Courtesy will not lose all of these expended amounts if the Subaru franchise is terminated, the Subaru dealership is arguably approximately 40 percent of that expenditure, which is substantial. The bank loan is also potentially threatened if Mr. Pajouh loses the Subaru franchise since funding the loan was based on the entire project. [RT Vol. VI 232:7-15; Vol. VII 8:6-11, 10:24-11:2]

(4) The Greater or Less Hardship on the Party Failing to Perform in Terminating the Contract

230. The next factor to consider is the degree of harm to the breaching party, in particular, the possibility that the party will suffer inequitable and disproportionate forfeiture if the contract is terminated. Termination would cause substantial hardship to Courtesy and will result in a forfeiture. Mr. Pajouh testified that Subaru is an integral part of the business of Courtesy Automotive Center and is its biggest volume. As noted above, Courtesy has spent approximately $6.5 million thus far apart from the purchase of the property, and has made major investments in acquisition, design, and start of construction. Mr. Pajouh has incurred a construction loan of $23.5 million. As explained by Mr. Pajouh, losing the Subaru franchise would "put a financial burden on the whole organization of the volume that we do, the gross profit, the cash flow, the number of employees that we have . . ." [RT Vol. VI 220:1-4] To complete the Volvo/Subaru dealership building without the Subaru franchise "would put [a] financial constraint on the organization because now [Courtesy has] the carrying cost of something that's not producing -- generating revenues, gross profit, and everything that it takes to continue with [the] total project." [RT Vol. VI 220:7-18] If the Subaru franchise were to be terminated, Mr. Pajouh testified it would cause an issue with the funding of the entire project because funding is based on the whole project.[74] [RT Vol. VI 232:7-15; Vol. VII 7:16-8:25]

(5) The Willful, Negligent, or Innocent Behavior of the Party Failing to Perform

231. Courtesy used commercially reasonable best efforts and encountered delays beyond its

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[74] There was no testimony as to how likely or unlikely it would be to obtain another franchisee to replace the SOA franchise in Chico or the willingness or likelihood of another franchisor to award a franchise to a dealer that had been terminated.

control, including the City's rapid annexation, and Camp Fire and COVID-19 impacts on the City and Courtesy's team. Commercially reasonable best efforts as explained in *California Pines Property Owner Ass'n.* v. *Pedotti* (2012) 206 Cal.App.4th 384, 394 do "not require the promisor to ignore its own interests, spend itself into bankruptcy, or incur substantial losses to perform its contractual obligations." The court explained that where the contract does not define the phrase best efforts, "the promisor must use the diligence of a reasonable person under comparable circumstances." (Citations omitted.) [*Id.* at p. 394] Best efforts requires a person to use "such efforts as are reasonable in light of that party's ability and means at its disposal and of the other party's *justifiable expectations*. . . ." (Emphasis added [*Id.* at pp. 394-395] SOA did not have justifiable expectations that this huge multi-franchise project could get plan check approval, permit approval and the Development Agreement done during COVID-19, especially with all the added requirements from the City. Additionally, the extended dates of the Amended Facility Addendum were not reasonable such that SOA could rely on them. The time to obtain the permit was extended from May 22, 2020, to July 31, 2020, approximately six weeks. Mr. Pajouh told Mr. Smit the dates were unobtainable and optimistic, and Mr. Smit said he would have built in slack. [Exhs. P-16.001; R-123.09:3-11]

232. Courtesy was not unreasonable in trying to get the ROW development/lease issue resolved in its favor. Basically, the County had made assurances to Courtesy that it would abandon the ROW. The County allowed a church to be built in the ROW, complicating any use of it as an interchange (see footnote 49, *supra*). It took over two years from late October 2018 to January 2021 to reach agreement. However, the Camp Fire occurred in November 2018 and impacted the City of Chico for many months. Mr. Sawley was working on residential needs of the City until June 2020. Mr. Sawley sent his first response to Mr. Stevens in March 2019, a delay of four months. Mr. Sawley asked Courtesy for relief from reviewing the Development Agreement during the aftermath of the Camp Fire and during COVID-19, given his other significant duties. Mr. Pajouh did not have to ignore his own interest in the ROW, and reasonably pursued his negotiations for the lease option as long as the City continued discussions, which Mr. Constantin did, and while the plan check was not complete.

233. The Development Agreement was not a priority for the City. In March 2020 when COVID-19 hit and the City closed its offices, Mr. Sawley testified because the agreement did not have a

30-day turnaround time, it was not a priority for him. He also testified that he and other City departments delayed plan check review because the Development Agreement was not complete. [RT Vol. III 169:19-170:9] Although Mr. Sawley said he and others did not review the plans given the outstanding Development Agreement, it is not clear that other City departments did so, given the building department's official indicating it was a priority. BV, the primary building reviewer, timely did their review. [RT Vol. V 144:20-145:4, Vol. III 21:16-25, 169:12-18] Further, Mr. Pajouh said he was not aware that Mr. Sawley was not reviewing the plans because of the incomplete Development Agreement, which should have been explained to him. Mr. Pajouh thought the plan check and the Development Agreement were "two ships sailing alongside of each other." [RT Vol. VI 86:13-23, 87:21-88:5]

234. Mr. Graziano testified Courtesy delayed the multi-franchise project because Mr. Pajouh wanted to build a gas station in the ROW but was having difficulty getting the City to agree. Courtesy, in his opinion, did not move forward with the Subaru facility because it was held up getting the larger project, including the ROW, done at that location. Completing the Subaru facility by a specific date "was not as relevant for [Mr. Pajouh]." [RT Vol. IV 198:2-8, 199:5-17] However, Mr. Sawley said the City was willing to explore options of being able to do both – what the City needed and what Courtesy needed. Chris Constantin continued to negotiate the terms of a lease with Courtesy until late 2020. [Exh. P-29.003-.004] Mr. Sawley explained that "[w]ell [the City] can't give up the [ROW] long term so [the City is] not going to abandon it" and "Chris [Constantin] is really good at saying '[h]ey, let's explore the option of being able to do both." Courtesy "trusted that [the City] would be able to work that out in a way everybody could get onboard with." [Exh. P-63.106:16-22]

235. Mr. Graziano testified that he thought Mr. Pajouh "willfully did not meet the agreement, because it appears agreements just don't mean that much," citing Mr. Pajouh's repeated failure to complete agreements back to 2015, including the "willful" move to an unauthorized relocation.[75] [RT Vol. IV 179:8-21, 185:4-17] It is difficult to believe Mr. Graziano's testimony about his belief that Mr.

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[75] SOA witnesses testified that the history of broken promises in their dealings with Courtesy go back to 2015, and their belief that Mr. Pajouh had not been honest and forthright in their dealings influenced their decision to send the Notice of Non-Compliance. [RT Vol. IV 109:6-15, 110:14-25, 185: 4-17] Although it is understandable that history may have played a part in SOA's lack of trust and decision to send the notice, for purposes of this Decision only the facts surrounding the Stipulated Decision and events following thereafter are relevant.

Pajouh was "willful" given that SOA extended the benchmark dates via the Amended Facility Addendum and in effect, as found here, extended the time for Courtesy to complete the project. [RT Vol. V 21:8-22:15] Mr. Graziano tried to explain that the extension did not extend the Stipulated Decision, but if one believes that a partner is *willfully* not completing agreements, no extension of any kind should have been given. Mr. Graziano's explanation that it was "just about the LOC" is not credible because giving new dates for the LOC extended the dates for the project or, at the very least, there was the risk that an adjudicator would not agree with SOA that the extension was so limited. [RT Vol. V 22:10-15] Additionally, it is difficult to find willfulness here on the part of Courtesy when Mr. Pajouh testified that the delay in having the multi-franchise facility built is costing Courtesy in the tens of thousands of dollars in expense every month. It is simply not reasonable that someone in this situation could be found to be willfully delaying getting these buildings built.

236. Mr. Graziano pointed out that 30-plus Subaru dealership facilities are being built during COVID-19 and 10-13 facilities were completed, supporting SOA's position that the pandemic did not stop other projects. [RT Vol. IV 180:17-181:6] Although he agreed that there was a pandemic and wildfires near Chico, Mr. Graziano simply does not believe those "extenuating circumstances" inhibited Courtesy from moving forward. [RT Vol. IV 185:12-17] However, as noted above, only One Subaru in Hayward, of all of those other projects, is similar to Courtesy's, and it may have started construction in 2019.[76] Additionally, the location was not impacted by the Camp Fire and its aftermath.

237. The project received ARB approval in October 2020 after delays by the City, and Mr. Constantin continued to negotiate with Mr. Pajouh. Not until Mr. Sawley, in January 2021, told Mr. Pajouh that he needed to drop the ROW in order to obtain the permit, did things move, and even then, the City had more requests of Courtesy, such as reconfiguring the intersection of Garner and Esplanade. [RT Vol. I 174:17-175:2, 176:9-177:2; Vol. II 23:4-15]

238. Moreover, there is repeated testimony that Mr. Pajouh was diligent, and there is no evidence that Courtesy had any intention of doing anything other than build the facility as soon as it possibly could. [Exh. P-63.104:7-15.] Mr. Pajouh asked Mr. Seegert to make the Subaru/Volvo building

[76] Mr. Smit hedged as to whether construction at One Subaru started in 2019, testifying only that "substantial construction" began in 2020. [RT Vol.VI 42:19-43:11, 44:1-19]

a priority and the City acknowledged to Mr. Seegert that Courtesy's plan check was "a priority project." [Exh. P-17.003]

(6) The Greater or Less Uncertainty that the Party Failing to Perform will Perform the Remainder of the Contract

239. Mr. Graziano testified that he had a "low level of certainty" that Courtesy will perform the remainder of the settlement agreement. [RT Vol. IV 185:22-186:7] At this point, there is no evidence to support any genuine concern the facility will not be constructed. Courtesy has made a major investment already and has carrying costs associated with both the construction loan and the expense of the leased buildings at the same time. None of Courtesy's other franchisors (Cadillac, Buick/GMC, BMW, Mercedes-Benz and Volvo) have sought to terminate their franchises. Construction has started and at the time of the hearing was approximately 10 percent complete.

240. SOA asserts in its reply brief that *Sackett* supports a finding of material breach in favor of SOA because of the uncertainty of the completion of construction. In *Sackett*, the plaintiff, Sackett, sued for breach of contract after he entered into an agreement with defendant Spindler whereby Sackett agreed to purchase Spindler's outstanding shares in a newspaper corporation. The contract called for a purchase price of $85,000 to be paid by Sackett in installments by specific deadlines. Sackett paid the first payment timely, most of his second payment late, and the third check bounced after being paid a month late. After Spindler reclaimed the shares of the company he had placed in escrow, Sackett telegrammed Spindler that he was ready, willing and eager to transfer the remaining funds. Spindler told Sackett that if he did not pay the balance within 10 days, he would cancel the agreement. Sackett failed to make the payment due. Sackett subsequently agreed to pay the outstanding balance, and Spindler gave him another week. Sackett did not pay, but informed Spindler that he could set up a financing agreement because his assets had been freed due the termination of his divorce proceedings. Spindler responded that he was cancelling the contract as a result of Sackett's delay. Sackett sued for breach of contract and the question before the court was whether Spindler's duty to perform was discharged by Sackett's conduct and whether Spindler was justified in cancelling the contract. The court found that Spindler was justified in terminating the contract for non-payment despite Sackett's subsequent offers and promises to perform. The court held that "despite Sackett's 'offers' to perform and his assurances to Spindler that he would

perform, it was extremely uncertain as to whether in fact Sackett intended to complete the contract." [*Sackett, supra,* 248 Cal.App.2d at 230] The court noted that although Sackett never repudiated the contract and expressed willingness to perform, the evidence was sufficient to warrant the inference that he did not intend to perform. [*Id.* at p. 231]

241. Courtesy has expended a considerable amount of time and investment to get the project to the point that it is at currently. Much of the delay was due to the City of Chico's actions or non-actions. The majority of the permits have been obtained and grading is complete, and construction has begun. It is not extremely uncertain that the project will not get built nor does Courtesy want an "open-ended" timeframe to perform, since any delay is costing it in terms of time and money.

Time is of the Essence Provision

242. A time is of the essence provision in a contract equals materiality in California except when it doesn't. The traditional rule has been tempered so that the provision in a contract does not always make untimely performance a breach. [*Magic Carpet Ride LLC* ("MCR") v. *Rugger Investment Group, LLC* ("Rugger") (2019) 41 Cal. App. 5th 357, 367] "[A]n unqualified rule enforcing time is of the essence provisions and permitting default is at odds with prior and subsequent developments in California law." (Citation omitted.) [*Ibid.*]

243. *Magic Carpet Ride* involved a contract by Mr. Rugger to sell an airplane to Mr. Jennings for $610,000. The aircraft was to be released free and clear of all liens and encumbrances. A lien was filed against the aircraft. An amendment was entered into identifying MCR instead of Jennings as the buyer and gave Rugger 90 days from the date of closing in which to show the lien had been released. Rugger agreed to hold back $90,000 in escrow for that 90-day period. If Rugger did not provide evidence that the lien had been released within those 90 days, then the $90,000 would be given to the buyer, MCR. The aircraft bill of sale passed title to the plane to MCR on the date of closing. Rugger paid $38,000 for a lien release eight days after the expiration of the 90 days, and delivered it to escrow. MCR refused to release the $90,000 in escrow to Rugger. Rugger contended it substantially performed, but the trial court held for MCR.

244. The court of appeal concluded that a time is of the essence provision does not automatically make untimely performance a breach of contract where there are triable issues regarding

the scope of that provision and whether its enforcement would result in a forfeiture. The court held that "a time is of the essence provision will not automatically be enforced if doing so would work a forfeiture." [*Magic Carpet Ride LLC, supra,* 41 Cal.App. 5th at 367, citing *Galdjie* v. *Darwish* (2003) 113 Cal.App.4th 1331, 1341] The court, quoting Corbin on Contracts, stated: "If the enforcement of an express provision causes an excessive penalty or an unjust forfeiture, *equity will prevent enforcement.* Thus, equity limits our power to determine our own contractual rights and duties." (Emphasis added; citation omitted.) [*Magic Carpet Ride LLC, supra,* 41 Cal.App. 5th at 368] The court noted that inequitably Rugger would lose the money he paid for the lien release, would lose the $90,000 holdback, in effect a price reduction, and MCR would receive an aircraft free and clear of liens. There was no evidence of any damages suffered by MCR caused by the delay, and if there is any, MCR could be compensated for it. The appellate court sent the case back to the lower court to determine the triable issue of fact as to substantial performance and whether Rugger faced a risk of forfeiture if strict compliance were required. [*Magic Carpet Ride LLC, supra,* 41 Cal.App. 5th at pp. 366-367]

245. SOA asserts that *Magic Carpet Ride* is distinguishable because this case is not a simple breach of contract or a "mere" settlement agreement, but rather involves a carefully negotiated Stipulated Decision and Order which was approved by the Board. All contracts and settlement agreements are arguably carefully negotiated and crafted. And, as noted above, a settlement agreement, or in this case, a Stipulated Decision does not have a higher value than a contract. It must be judged by the same legal principles applicable to contracts generally. [*Weddington Productions Inc.* v. *Flick* (1998) 60 Cal.App.4th 793, 810-811] It is a Board order, but that fact alone is not a distinction that would make *Magic Carpet Ride*'s holding inapplicable.

246. Further, SOA argues that Courtesy has not missed deadlines by just a few days (as was the case in *Magic Carpet Ride*) but by one year, seven months and counting. However, given the application of the doctrine of promissory estoppel here, the missed deadline for government approvals and commencement of construction is nine months. *Magic Carpet Ride* does require time and date conditions be reasonably met. [*Magic Carpet Ride LLC,* supra, 41 Cal.App. 5th at p. 364] To resolve whether reasonable adherence has been met, the court in *Magic Carpet Ride* looked at substantial performance and would the enforcement of the provision work a forfeiture. [*Id.* at 367]

247. The court noted in *Magic Carpet Ride* that the evidence submitted showed that Rugger did not willfully depart from the terms of the contract and diligently sought to obtain the release. [*Id.* at 364] Likewise, Mr. Pajouh did not willfully depart from the terms of the contract and diligently sought to get the project permitted and constructed. The evidence from Mr. Sawley was that Mr. Pajouh was diligently trying to move the project forward, and that he did not sense any sort of desire to delay anything at all by Courtesy. Mr. Farabee testified that he did not recall any discussion that Courtesy was not moving forward.

248. Nine months delay for the start of construction in this case is adherence to time and date conditions being reasonably met. Given the kind and scope of the project, the benchmarks were reasonably met to the extent possible. The construction of the multi-franchise project was complex, with seven different franchises. In addition, there was the change by the City from allowing County versus City requirements, and the attendant need for figuring out how the different improvements plus the higher cost would be resolved, which necessitated extended discussions with the City over the Development Agreement. Furthermore, there was the need to extend water, sewer and other utility services to the site with other property owners. Mr. Constantin articulated in an email that the completio of the Development Agreement did not delay the project. However, the City continued to delay the project, asking for more improvements, even after the permit was approved. The new dates agreed to in the Amended Facility Addendum were described as "optimistic." SOA was not justified in relying on them given the impact of COVID-19, especially given Mr. Pajouh telling Mr. Smit the dates were "unobtainable," and Mr. Smit's comments that Courtesy should have built in some slack in the dates since "[l]ike this is ground zero. We're in the middle of shut down" due to COVID-19. The pandemic continues to impact business nationwide, and certainly the achievement of deadlines in this case to date. To strictly enforce the provision of time is of the essence here would result in the exact kind of forfeiture for Courtesy that *Magic Carpet Ride* explains should be avoided.

249. There is no evidence of any damages suffered by SOA caused by the delay. Courtesy is selling as many cars as it can and three times more than the national average. SOA is frustrated that servicing of its customers' vehicles are not being provided in a Subaru facility, which impacts retaining repeat Subaru customers. [RT Vol. IV 80:17-81:21] According to SOA, the Subaru brand is being

"poorly" represented because of the deficient temporary location and servicing cars in a shared location. [RT Vol. IV 77:6-78:5] SOA witnesses agreed that those damages are hard to quantify. [RT Vol. IV 81:23-82:10, 117:8-13] According to SOA witnesses, the LOC was to provide assurance that Courtesy would perform and Courtesy has not performed as SOA expected. The intent of the amended dates was "to secure the LOC" and "get the building complete." [RT Vol. IV 124:8-21] If there is any harm to SOA because of the delay in performance, SOA can be compensated for it by calling the LOC.

Protestant's Excuse Based on Paragraphs 18 and 19 of the Stipulated Decision

250. Paragraph 18 of the Stipulated Decision provides that "[i]f, notwithstanding [Courtesy's] commercially reasonable best efforts, the necessary approval of a governmental entity cannot be obtained in order to timely satisfy the deadlines [], *solely* for reasons beyond the control of" Courtesy, Courtesy "shall, upon learning of the delay, immediately notify SOA's SFO Zone representative in writing, and shall request the minimum extension of time necessary to complete the actions" set forth in the Stipulated Decision. (Emphasis added.) [Exh. J-301.13:24-14:1] Paragraph 19 of the Stipulated Decision provides that "[i]f SOA verifies that the delay is caused by a governmental entity and not by [Courtesy], SOA shall agree to extend the affected deadlines [] on a weekly basis, until the governmental-caused delay is not a factor. Courtesy "shall provide weekly reports to SOA regarding the status of any governmental delay and the progress, if any, being made on the elimination of the delay and expected duration of the remaining delay." If SOA determines that all or part of the delay is caused by Courtesy or its vendors or employees, or if Courtesy fails or refuses to promptly provide either the initial notice of the governmental delay or the weekly reports to SOA, or does "not allow SOA to verify such facts directly with any governmental entity representative, then SOA shall not grant any extension (or any further extension), and the deadlines (either as set forth [in the Stipulated Decision] or as previously extended by SOA) shall remain in place." [Exh. J-301.5:14] In other words, if Courtesy was at all responsible for any of the delay in permitting and obtaining the other benchmarks, Courtesy has no excuse for its non-performance under these provisions.

(1) Delay by Courtesy while in the County's Jurisdiction

251. There is the conflicting testimony that Courtesy should have moved more quickly between the time of its County application, negotiations, and the annexation.

252. SOA asserts based on the email from Mr. Constantin that County permits were not obtained prior to annexation due to Courtesy's delay. The email from Mr. Constantin is in conflict with the testimony from Mr. Sawley and Mr. Stevens. Mr. Stevens testified that the City changed its mind and reneged on the agreement to use County requirements. Mr. Sawley testified that Courtesy worked diligently during that year and a half. This testimony supports that Courtesy did not delay getting permits from the County prior to the annexation by the City which would have allowed the City to honor the County standards for the property and no Development Agreement would have been necessary. Mr. Sawley described substantial amounts of work by Courtesy in the County, trying to get the entitlements. Chico moved in such an expeditious way and/or changed its mind as to what was agreed upon that there was not sufficient time for Courtesy to obtain County permits prior to annexation. Given the number of things Courtesy needed to accomplish in the County prior to the annexation, and the speed of the annexation, Mr. Constantin's email comment about Courtesy's delay is rejected.[77]

(2) Courtesy's Billing Disagreement with Northstar

253. Courtesy had issues with Northstar Design Solutions starting in 2019, and Courtesy paid the full agreed-upon amount to Northstar after the June 25, 2020, letter Northstar sent to Mr. Pajouh. Courtesy was later advised additional services were required and that Northstar's prior involvement would be beneficial, so Courtesy authorized Modern Building to contract directly with Northstar in August 2019. There was a delay of approximately six weeks between June 25, 2020, and August 4, 2020, when Mr. Stevens was not working on the project. However, the two items for which Northstar was engaged to perform previously and which had not been completed were not required prior to permitting, and thus did not delay the project. Therefore, there is no delay attributable to the dispute with Northstar.

(3) The Conflicting Testimony about the July 2020 Email and Delay by Courtesy's Subcontractors

254. There was testimony that in July 2020, Mr. Pajouh acknowledged to Scott Farabee for the first time that delays in obtaining permits were also caused by his contractors not providing information

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[77] Mr. Constantin noted in that email that the Development Agreement benefited the City more than Courtesy since the improvements would be built to standards 20 years later when, presumably, the improvements made would be of a higher quality. [Exh. R-111.01]

needed by Chico to process the permits. [Exh. R-122.12:5-13:12, 14:8-18:14] Mr. Pajouh's Declaration claims Mr. Farabee's testimony was incorrect regarding Mr. Pajouh's alleged statements that his subcontractors had contracted COVID-19 and were unable to work. Mr. Seegert confirmed that the delays he and Mr. Pajouh discussed were not on the Courtesy project. Mr. Seegert did not have an on the ground "crew" working on the Courtesy project at the time of the email. The email statement is not very clear as to who is referenced and it appears to be a misinterpretation by Mr. Farabee of the import of the email regarding delay by Courtesy's contractors due to COVID-19. The only clear statement is that the City had sent the plan check documents back to Mr. Seegert and the "ball was in Courtesy's court" to respond. Mr. Seegert clearly testified that Modern Building did not have any issues with subcontractors on the Courtesy project due to COVID-19 or anything else in July 2020 and there is no evidence that Modern Building responded other than timely to the comments on the plan checks from the City.

(4) The Development Agreement

255. It was commercially reasonable for Courtesy to seek the deferral of the City-required improvements through the Development Agreement. Moreover, testimony from Mr. Stevens indicates the City changed directions on Courtesy.

256. SOA did not have justifiable expectations that this huge project could get approved and built under the old benchmarks or the new ones during COVID-19 (optimistic dates) with all the added requirements of the City versus the County.

257. Moreover, it is unclear that the negotiations on the Development Agreement did delay the permitting. There is conflicting testimony. Mr. Sawley said that the negotiations delayed the plan check review. The two emails from Mr. Lindsey with the building department stating that the project is a priority and that he would *urge* the others' reviews does not substantiate or comport with the position that reviews by other City departments were being delayed pending the Development Agreement.

258. Mr. Constantin said "the DA [Development Agreement] should not be a stumbling block for your project as the critical path for the development is the Community Development portions that currently include the ARHPB [Architectural Review and Historical Preservation Board]. Thus, we can continue to refine and finalize this DA." [Exh. P-23.001] Arguably, Courtesy used commercially reasonable best efforts. It is allowable for Mr. Pajouh to look out for his own best interests regarding the

ROW, although given the deadlines he was under, it may not have been the wisest decision.

259. The delays in getting the Development Agreement and permitting completed and construction started were mostly attributable to the governmental agencies, but not solely. There were various delays on both sides.

260. There is no evidence that Courtesy notified SOA in writing of the government delay nor did it obtain weekly extensions. Since Courtesy did not provide written notice on a weekly basis to SOA as required, Courtesy did not establish an excuse for its non-compliance under the language of Paragraphs 18 and 19 of the Stipulated Decision.

Protestant's Excuse Based on Paragraph 21 -- Force Majeure

261. Paragraph 21 provides that "neither party shall be in default or liable for any delay or failure of compliance" with the Stipulated Decision "to the extent due to any future event which is beyond the control of the defaulting party. . ." Paragraph 21 continues, "including, without limitation," listing force majeure types of occurrences, including the one event in contention which is "an unforeseeable intervention of any government authority (excluding delays in obtaining permits and licenses), but excluding transport difficulties or strike, lock out or other labor disputes of [Courtesy] or third parties, provided the party suffering such delay or failure of compliance immediately notifies the other party of such delay or failure of compliance." [Exh. J-300.14:22-.15:1]

(1) The Camp Fire

262. The Camp Fire may have been "contained" on November 25, 2018, but the consequences of the "deadliest and most destructive fire in California history," which reached the eastern portion of Chico, were obviously long-term to the communities directly impacted, including the City of Chico. [See Paragraphs 79 and 80, *supra*]

263. Although the Camp Fire came months before the Stipulated Decision was signed, it still can be deemed an "intervening" event that was "unforeseeable." This was one of the largest fires in California history. The nearby City of Paradise was significantly impacted, the town being "decimated within 12 hours." [See Paragraph 79, *supra*] The impact and consequences on Chico and the permitting delay to the project were unforeseeable. Mr. Sawley testified that the consequences of the fire are still impacting Chico. The City's attention was diverted from Protestant's project. Mr. Sawley delayed

working on the Development Agreement until approximately March 2019 and was as diligent as he could be, returning the agreement back to Courtesy, but simultaneously he asked Mr. Stevens if it could be delayed. Commercial properties in Chico were not afforded any priority given the pressing need for housing through mid-2020.

(2) The COVID-19 Pandemic

264. The doctrine of *force majeure* is set forth in California Civil Code section 3526: "No man is responsible for that which no man can control." Paragraph 2 of California Civil code section 1511 states that non-performance of an obligation or any delay therein "is excused . . . [w]hen it is prevented or delayed by an irresistible, superhuman cause . . ." *Force majeure* is not necessarily limited to the equivalent of an act of God, but the test is whether under the particular circumstances there was such an insuperable interference occurring without the parties' intervention as could not have been prevented by prudence, diligence and care. (*Pacific Vegetable Oil Corp. v. C. S. T., Ltd.* (1946) 29 Cal.2d 228, 238]

265. The nature and spread of the COVID-19 global pandemic are unprecedented or at least have not occurred in 100 years. There were further COVID-19 related delays from the various state orders regarding shutdowns and substantial interruptions to businesses and governments from shelter-in-place orders. SOA itself was impacted as was the world.

266. Additionally, the consequences of the pandemic were not an "intervention" here, but rather resulted in a delay or non-action because of government shutdowns/substantial interruptions and shelter-in-place orders. If the Shelter-in-Place Order restricted the City and its employees from operating or performing their duties, then the non-performing party is not "in default or liable for any delay or failure of performance" (Paragraph 21 of the Stipulated Decision) so long as they can trace their delay or inability to perform (get permits) to the City of Chico's inabilities or delay in performance.

267. The City of Chico was open during COVID-19, and although Mr. Sawley and others kept working, there were delays. Mr. Sawley explained: "I think the record will show that there was back and forth at various times throughout 2020. I think it would also be true that relative to earlier responses from the city, it was delayed during Covid because it was much harder to get meetings . . . during Covid it was extra difficult. . . ." [Exh. P-63.27:16-28:2] Mr. Sawley testified that Development Agreements do not require a 30-day turnaround that most of their other applications do, so he did not "typically promote

them to the highest priority." [Exh. P-63.28:6-9, .112:2-14]

268. Therefore, the *force majeure* provisions apply and the Protestant is excused from timely performance of the benchmarks in the Amended Facility Addendum until the City reopened in April 2021. Courtesy notified SOA about the difficulties related to COVID-19. In March 2020, Courtesy's sales operation was shut down by the City of Chico code enforcement and Mr. Pajouh communicated that to Mr. Smit. In any event, arguably no notice was required or it would have been superfluous, since these events were well known to SOA.[78]

DETERMINATION OF ISSUES

269. SOA failed to prove that Courtesy is in material breach of the Stipulated Decision and Order of the Board.

270. The delays in performance by Courtesy are excused as they are due to circumstances beyond its control.

CONCLUSION

Based on the evidence presented and the findings herein, IT IS HEREBY ORDERED THAT SOA's request for an order of termination of Courtesy's Subaru Dealer Agreement is denied without prejudice. SOA is not permitted to terminate the Subaru franchise of Courtesy at this time.

SO ORDERED.

DATED: March 24, 2022

NEW MOTOR VEHICLE BOARD

By Evelyn I Matteucci
EVELYN I. MATTEUCCI
Administrative Law Judge

Attachments: as stated

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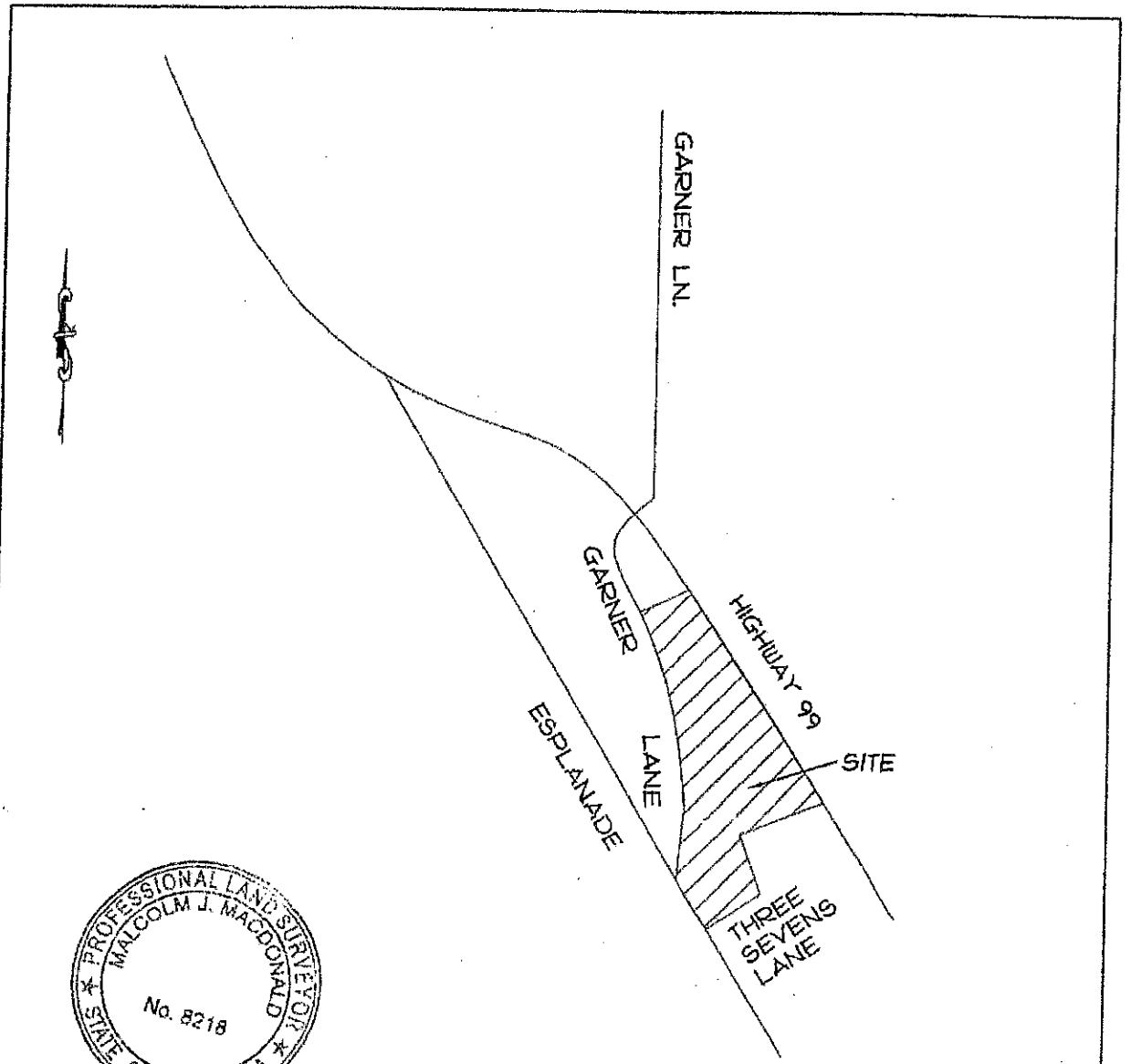
[78] As Mr. Graziano testified, the COVID-19 pandemic "impacted the world." [Exh. P-61.006:23-.007:4]



PROFESSIONAL LAND SURVEYOR
MALCOLM J. MACDONALD
No. 8218
STATE OF CALIFORNIA

February 3, 2021

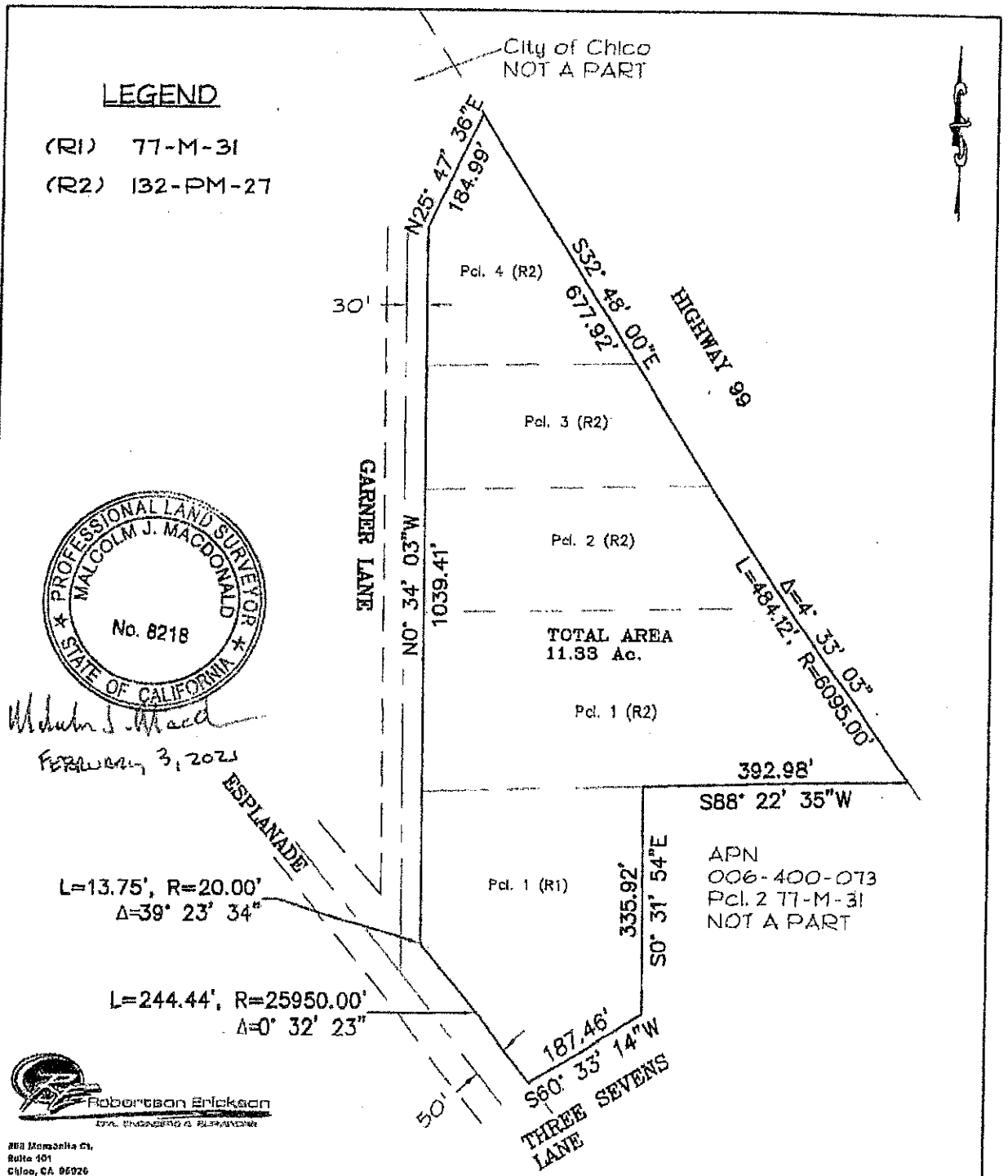
Robertson Ericksen
Civil Engineers & Surveyors

886 Mangonita Ct.
Suite 101
Chico, CA 95926
530-864-3900 Fax 530-894-8615
robertsonericksen.com

VICINITY MAP
CITY OF CHICO, CA
NOT TO SCALE

CITY OF CHICO	PUBLIC WORKS DEPARTMENT	
DRAWN BY lcm DATE 1/29/2021 CHECKED MJ SCALE NTS APPROVED for PUBLIC WORKS DIRECTOR	DEVELOPMENT AGREEMENT City of Chico/JP Real Estate Investments LLC (DA 18-01)	EXHIBIT A SHEET 3 OF 4

ATTACHMENT 1



ATTACHMENT 2

RESPONDENT HEARING EXHIBIT R-104.18

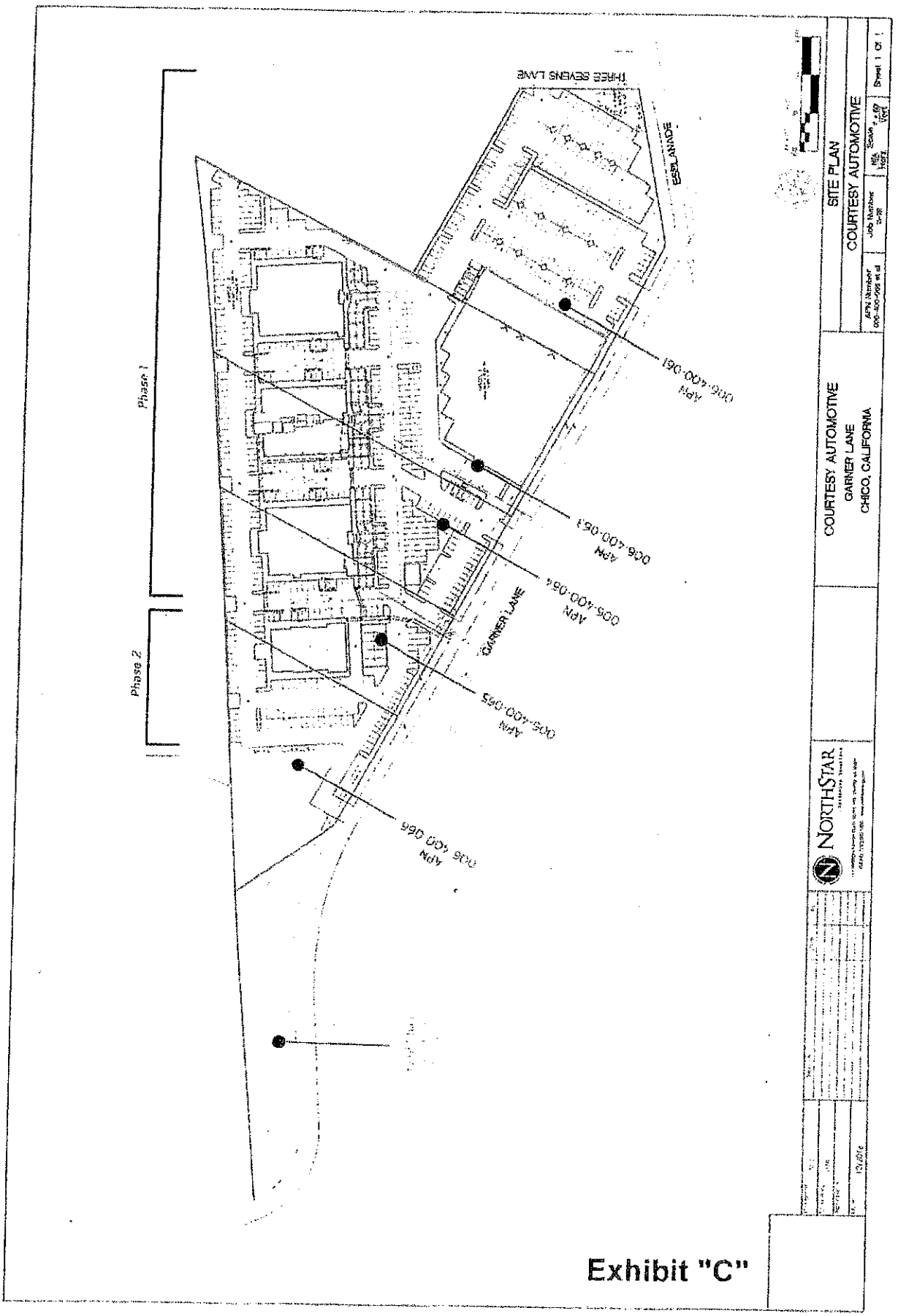


Exhibit "C"

ATTACHMENT 3

RESPONDENT HEARING EXHIBIT R-104.20

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>
Mon 4/4/2022 5:14 PM

To: Smit, Ray <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

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

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

• BUILDING • TOMORROW • TOGETHER

Website | Facebook

On Apr 4, 2022, at 5:14 PM, Jerry Pajouh <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

EXHIBIT 4

RE: Sign Request -- Chico

Lisa Gibson <lisa.gibson@nelsonmullins.com>

Tue 5/10/2022 1:22 PM

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

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

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

19191 SOUTH VERMONT AVENUE | SUITE 301

TORRANCE, CA 90502

T 424.221.7405 M 310.989.3130 F 424.221.7499

NELSONMULLINS.COM VCARD VIEW BIO

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

19191 SOUTH VERMONT AVENUE | SUITE 301

TORRANCE, CA 90502

T 424.221.7405 M 310.989.3130 F 424.221.7499

NELSONMULLINS.COM VCARD VIEW BIO

From: Lisa Gibson
Sent: Friday, July 30, 2021 9:07 AM
To: Gavin M. Hughes (gavin@hughesdealerlaw.com) <gavin@hughesdealerlaw.com>
Cc: Amy Toboco <amy.toboco@nelsonmullins.com>; Robert Mayville <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 specification.

Best regards,

Lisa

LISA M. GIBSON PARTNER

lisa.gibson@nelsonmullins.com

19191 SOUTH VERMONT AVENUE | SUITE 900

TORRANCE, CA 90502

T 424.221.7405 M 310.989.3130 F 424.221.7499

NELSONMULLINS.COM VCARD VIEW BIO

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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

NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

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

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

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

DECLARATION OF SERVICE BY US AND ELECTRONIC MAIL

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

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

[UNREDACTED] PETITION

Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico
v.
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 A. Mayville, Jr.

23N1L17078
Subaru of America Inc.

EVIDENCE 11

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

Courtesy Subaru

Gavin M. Hughes <gavin@hughesdealerlaw.com>

Thu 3/10/2022 10:14 AM

To:Parker, Robin P.@NMVB <robin.parker@nmvb.ca.gov>;Phomsopha, Danielle R.@NMVB <Danielle.Phomsopha@nmvb.ca.gov>

Cc:Robert Mayville <mayville@hughesdealerlaw.com>;Amy Toboco <amy.toboco@nelsonmullins.com>;Lisa Gibson <lisa.gibson@nelsonmullins.com>

Bcc:Jerry Pajouh <jpajouh@me.com>;GM Diane Pajouh <pajouh@me.com>

Robin and Danielle-

Courtesy Subaru invoked the Board's jurisdiction in response to SOA's efforts to terminate the Courtesy Subaru franchise pursuant to the Confidential Situated Decision and Order. The hearing was before ALJ Matteucci and the parties are awaiting her honor's decision.

We recently learned SOA is demanding payment from BMO Harris Bank concerning the letter of credit ("LOC") that Courtesy Subaru was required to secure as set forth in Exhibit 1 to Confidential Stipulated Decision. SOA refuses to provide a copy of the demand sent to BMO and we cannot confirm on what basis SOA claims it is entitled to receive the $750,000 secured by the LOC. Protestant assumes SOA alleges the failure to achieve the benchmarks set forth in the June 22, 2020 LOC as well as the May 21, 2020 Facility Addendum Amendment provide the basis of SOA's demand, but we are unable to confirm this.

The LOC, Joint Exhibit 307, provides the following: "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, APN 006-400-65 and APN 006-400-066 Chico, CA meeting all Subaru minimum standards, as approved by Beneficiary, by January 31, 2022."

SOA's efforts to collect the funds secured by the LOC will in no way support completion of the Courtesy facility project. SOA would not direct these funds toward the facility project. Moreover, as SOA is well aware, the project is rapidly approaching completion and is fully funded through existing BMO Harris funding. Both BMO Harris and Courtesy are at loss to understand why SOA would now seek to draw on the LOC when the project is in progress and already fully funded by BMO Harris.

By letter dated February 17, 2022, Protestant requested SOA refrain from taking further threatened punitive action against Courtesy until at least the Board has issued its decision concerning whether there has been a material breach of the Stipulated Decision and whether any such breach is excused. On March 8, 2022, Protestant learned SOA made its demand to BMO Harris. By letter dated March 9, 2022, Protestant requested SOA rescind its demand to BMO Harris.

Because the questions of whether there has been a material breach of the conditions of the Stipulated Decision and whether any such breach is excused are already before the Board's jurisdiction, Protestant believes the Board's jurisdiction extends to the issue of whether SOA should be permitted to seek to collect the LOC secured funds, which was required as a condition of the Stipulated Decision. Protestant requests the Board issue and order instructing SOA it is prohibited from exercising any and all remedies for the alleged breach of the Stipulated Decision unless the Board issues a decision finding Courtey has failed to materially comply with the conditions of the Stipulated Decision and this failure is not excused.

In the alternative, Protestant requests an opportunity to discuss this issue with ALJ Matteucci or Board staff. Protestant is also prepared to brief this issue if necessary.

-Gavin

Law Offices of Gavin M. Hughes
www.hughesdealerlaw.com
3436 American River Drive, Suite 10
Sacramento, CA 95864
gavin@hughesdealerlaw.com
cell (925) 457-2028
office (916) 900-8022

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23N1L17078
Subaru of America Inc.

EVIDENCE 12

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

Fwd: Subarunet Inactive Users - Subaru of Chico

Jerry Pajouh <jpajouh@me.com>
Tue 12/13/2022 11:56 AM

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

Cc:Diane Pajouh <pajouh@me.com>

Gavin,

Please see Ray's response below just for your records. I know it hasn't been addressed yet by their council. I need this resolved if we want to place the signes on order and going through the DMV licensing for the move.

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

Begin forwarded message:

From: "Smit, Ray" <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>
Cc: "Farabee, Scott" <sfarab@subaru.com>, "Hinkle, Beth" <bhin@subaru.com>, Lisa Gibson <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

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

From: Jerry Pajouh <jpajouh@me.com>
Sent: Tuesday, December 13, 2022 11:30 AM
To: Smit, Ray <rsmi@subaru.com>
Cc: Farabee, Scott <sfarab@subaru.com>; Hinkle, Beth <bhin@subaru.com>; Lisa Gibson <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

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

Good morning, Jerry.

I'll investigate this and get back with you.

Thanks,

Ray

From: Jerry Pajouh <jpajouh@me.com>
Sent: Tuesday, October 25, 2022 2:21 PM
To: Smit, Ray <rsmi@subaru.com>
Cc: Farabee, Scott <sfarab@subaru.com>; Hinkle, Beth <bhin@subaru.com>; Lisa Gibson <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> 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

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>
Sent: Friday, September 30, 2022 5:59 AM
To: Smit, Ray <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> wrote:

Hi Jerry,

I'm looking into this.

Thanks,

Ray

From: Jerry Pajouh <jpajouh@me.com>
Sent: Saturday, July 30, 2022 1:50 PM
To: Smit, Ray <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

On Jul 27, 2022, at 4:25 PM, Smit, Ray <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 (Remo
cbra2703	Chrystina	Braught	080	03	03	401763	COURTESY SUBARU OF CHICO	Remo
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	Remo
kmag0285	Kimberly	Magee	080	03	03	401763	COURTESY SUBARU OF CHICO	Remo
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

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

<image001.jpg>

23N1L17078
Subaru of America Inc.

EVIDENCE 13

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

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

Gavin M. Hughes
Robert A. Mayville, Jr.

cc Amy Toboco, Esq.
Jerry Mihanpajouh

Law Offices of
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HughesDealerLaw.com

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gavin@hughesdealerlaw.com
(916) 900-8022

March 28, 2022

Al Salazar, Esq.
Assistant General Counsel
Subaru of America, Inc.
One Subaru Drive
Camden, NJ 08103

Via U.S. Mail and email
asal@subaru.com

Re: *Demand of Courtesy Automotive Group, Inc. dba Courtesy Subaru as prevailing party in PR 2570-18.*

Al:

This letter serves as Courtesy Automotive Group, Inc., dba Courtesy Subaru's ("Courtesy"), demand for attorneys' fees and costs as the prevailing party in PR 2570-18 before the California New Motor Vehicle Board ("NMVB").

Subaru of America, Inc. ("SOA") and Courtesy are parties to a confidential stipulated decision, which provided the Board ongoing jurisdiction over the enforcement of the terms set forth in Exhibit 1 to the stipulated decision. By letter dated August 24, 2020, SOA advised Courtesy it would seek to terminate the Courtesy Subaru franchise. Courtesy invoked the Board's continuing jurisdiction to determine whether SOA should be permitted to terminate. The Board issued its Confidential Decision Resolving Stipulated Decision and Order Dispute ("Decision") yesterday, March 25, 2022. The Decision determined SOA is not permitted to terminate the Courtesy Subaru Franchise. As a result, Courtesy is the prevailing party. The Decision is final and non-appealable.

Pursuant to paragraph 38 of the Stipulated Decision as set forth below:

> 38. Enforcement of Confidential Agreement. Should it become necessary for any Party to this Confidential Agreement to commence a legal proceeding for the purpose of enforcing or interpreting the terms of this Confidential Agreement, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs incurred in prosecuting or defending that action.

Courtesy is the prevailing party. Courtesy incurred attorneys' fees and costs in the Board proceeding enforcing and interpreting the Confidential Agreement ("Exhibit 1 to the Stipulated

Decision"). From the time period of August 24, 2020 through present, Courtesy has incurred $189,806.50 in attorneys' fees and $23,896.84 in costs. These amounts will continue to increase should Courtesy incur further costs and fees associated with collecting the amounts do it as prevailing party.

Please confirm SOA's understanding Courtesy is the prevailing party and entitled to its reasonable attorneys' fees and costs associated with the Board proceedings. If SOA does not dispute Courtesy's right to payment of fees and costs as prevailing party, our office will provide an accounting of fees and costs for SOA's review.

In addition, the Stipulated Decision required Courtesy provide a Letter of Credit ("LOC") in the amount of $750,000 to ensure completion of the SOA approved Courtesy Subaru facility. SOA recently called the LOC. Because the Decision finds SOA may not terminate the Courtesy Subaru franchise and the project remains ongoing, we request SOA agree to return the $750,000 payment to BMO Harris Bank N.A. ("BMO"). Courtesy agrees to secure or restore the $750,000 LOC through BMO, until the completion of the Subaru facility.

We require a response from SOA concerning Courtesy' demand for fees and costs as prevailing party within five business days from the date of this letter, April 1, 2022. Similarly, we require a response to our request SOA return the LOC funds to BMO within five business days of the date of this letter, April 1, 2022. SOA's failure to timely respond will require Courtesy pursue its remedies in the appropriate forum.

Thank you for your anticipated courtesy and cooperation.

Sincerely,

Law Offices of Gavin M. Hughes

Gavin M. Hughes

cc Lisa Gibson, Esq.

Subaru of Chico

Jerry Pajouh <jpajouh@me.com>
Thu 5/11/2023 12:10 PM

To:Beth Hinkle <bhin@subaru.com>

Cc:cris@subaru.com <cris@subaru.com>

Good afternoon Beth, It was great speaking with you a few days ago.

I am reaching out to check on the timing of getting started on the Relocation Package, DBA name change and receiving the Sign Package. You'd made a mention we can do all this paperwork simultaneously so just wondering when we can start. Please let me know.

Thank you in 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

Courtesy Subaru

Gavin M. Hughes <gavin@hughesdealerlaw.com>

Thu 3/10/2022 10:14 AM

To:Parker, Robin P.@NMVB <robin.parker@nmvb.ca.gov>;Phomsopha, Danielle R.@NMVB <Danielle.Phomsopha@nmvb.ca.gov>

Cc:Robert Mayville <mayville@hughesdealerlaw.com>;Amy Toboco <amy.toboco@nelsonmullins.com>;Lisa Gibson <lisa.gibson@nelsonmullins.com>

Bcc:Jerry Pajouh <jpajouh@me.com>;GM Diane Pajouh <pajouh@me.com>

Robin and Danielle-

Courtesy Subaru invoked the Board's jurisdiction in response to SOA's efforts to terminate the Courtesy Subaru franchise pursuant to the Confidential Situated Decision and Order. The hearing was before ALJ Matteucci and the parties are awaiting her honor's decision.

We recently learned SOA is demanding payment from BMO Harris Bank concerning the letter of credit ("LOC") that Courtesy Subaru was required to secure as set forth in Exhibit 1 to Confidential Stipulated Decision. SOA refuses to provide a copy of the demand sent to BMO and we cannot confirm on what basis SOA claims it is entitled to receive the $750,000 secured by the LOC. Protestant assumes SOA alleges the failure to achieve the benchmarks set forth in the June 22, 2020 LOC as well as the May 21, 2020 Facility Addendum Amendment provide the basis of SOA's demand, but we are unable to confirm this.

The LOC, Joint Exhibit 307, provides the following: "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, APN 006-400-65 and APN 006-400-066 Chico, CA meeting all Subaru minimum standards, as approved by Beneficiary, by January 31, 2022."

SOA's efforts to collect the funds secured by the LOC will in no way support completion of the Courtesy facility project. SOA would not direct these funds toward the facility project. Moreover, as SOA is well aware, the project is rapidly approaching completion and is fully funded through existing BMO Harris funding. Both BMO Harris and Courtesy are at loss to understand why SOA would now seek to draw on the LOC when the project is in progress and already fully funded by BMO Harris.

By letter dated February 17, 2022, Protestant requested SOA refrain from taking further threatened punitive action against Courtesy until at least the Board has issued its decision concerning whether there has been a material breach of the Stipulated Decision and whether any such breach is excused. On March 8, 2022, Protestant learned SOA made its demand to BMO Harris. By letter dated March 9, 2022, Protestant requested SOA rescind its demand to BMO Harris.

Because the questions of whether there has been a material breach of the conditions of the Stipulated Decision and whether any such breach is excused are already before the Board's jurisdiction, Protestant believes the Board's jurisdiction extends to the issue of whether SOA should be permitted to seek to collect the LOC secured funds, which was required as a condition of the Stipulated Decision. Protestant requests the Board issue and order instructing SOA it is prohibited from exercising any and all remedies for the alleged breach of the Stipulated Decision unless the Board issues a decision finding Courtey has failed to materially comply with the conditions of the Stipulated Decision and this failure is not excused.

In the alternative, Protestant requests an opportunity to discuss this issue with ALJ Matteucci or Board staff. Protestant is also prepared to brief this issue if necessary.

-Gavin

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(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

Gavin M. Hughes
Robert A. Mayville, Jr.

cc Amy Toboco, Esq.
Jerry Mihanpajouh

NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

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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 7th 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.

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,

Lisa M. Gibson

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Gavin M. Hughes

HughesDealerLaw.com

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March 2, 2023

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 of Chico Permanent Facility and Sign Package*

Lisa:

I am following up regarding Courtesy Subaru of Chico's ("Courtesy") requested DBA name change dropping "Courtesy" and becoming "Subaru of Chico." Approval of the DBA change is necessary to order signage and file the DMV licensing documentation for the permanent location under construction.

We are aware SOA previously refused to approve the DBA change. However, no explanation was provided for why SOA refused to approve the proposed change. I've attached the email string between Jerry Pajouh and Ray Smit concerning the requested DBA name change. The final communication from Mr. Smit occurred December 13, 2022, and indicates SOA's counsel was to provide a response. It is my understanding you advised SOA was under no obligation to approve the DBA change, but provided no reason why SOA is refusing to approve the proposed change.

We again request SOA consent to the proposed DBA change. If SOA has a legitimate concern regarding the proposed change, we request SOA provide an explanation of such. This would provide Courtesy a reasonable opportunity to address any SOA concern and hopefully put this issue to rest.

SOA's refusal to approval the DBA change is one of the issues the DMV investigation will consider. It makes no sense for SOA to continue in its refusal to approve the DBA change if no legitimate concern exists.

I have also attached Courtesy's FBN filings showing Courtesy has registered the DBA "Subaru of Chico". I am happy to provide any additional documentation or information that may be necessary for SOA's consideration.

Thank you for your consideration.

Sincerely,

Law Offices of Gavin M. Hughes

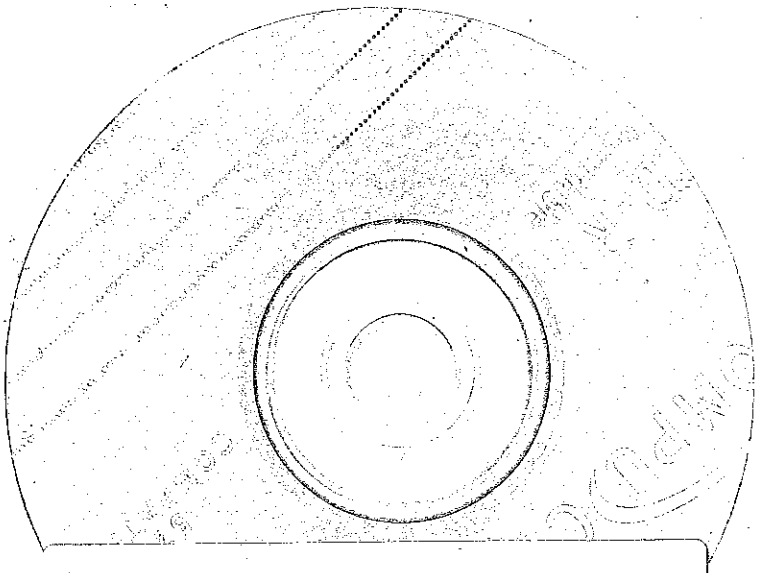
Gavin M. Hughes
Robert A. Mayville, Jr.

Enclosures
cc Amy Toboco, Esq.
Jerry Mihanpajouh

23N1L17078
Subaru of America Inc.

EVIDENCE 14

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560



Subaru of America
Interview 09/15/2023

23N1L17078
Subaru of America Inc.

EVIDENCE 15

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

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

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

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

23N1L17078
Subaru of America Inc.

EVIDENCE 16

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

NELSON MULLINS

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ATTORNEYS AND COUNSELORS AT LAW

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lisa.gibson@nelsonmullins.com

October 6, 2023

Via E-mail

Brian Rasmussen, Sergeant
Carlos Cabrera
California Department of Motor Vehicles
brian.rasmussen@dmv.ca.gov
carlos.cabrera@dmv.ca.gov

RE: P-463-22 Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc. - Formal Request for Investigation

Dear Brian Rasmussen and Carlos Cabrera:

Thank you for taking the time to interview Subaru of America's ("SOA") representative, Scott Farabee. As we indicated in the interview, SOA takes this investigation very seriously and wishes to provide you with its full cooperation. We also hope that the investigation can be resolved in the near future. As we expressed to you, it is SOA's sincere belief that it has done nothing wrong and nothing to delay or interfere with Courtesy Automotive Group, Inc., dba Courtesy of Subaru of Chico's ("Courtesy") dealership operations.

Per your request, I am forwarding the correspondence from the administrative record that would represent written communications between SOA and Courtesy about the specific benchmarks in the Stipulated Decision. I am providing correspondence from three exhibits that were admitted into the record: P14, R159 and R132.06.

In an effort to provide you with the chronological sequence of events (which appear in more of an ad hoc order in the exhibits themselves), I have also attached a summary of the correspondence with the date, sender, recipient and a brief description. Because you were also interested in the frequency of correspondence specifically emanating from Courtesy to SOA with updates about the benchmarks or any delays, I have highlighted in yellow the contacts made by Courtesy to SOA (without solicitation from SOA) providing status updates.

In total, there were five times during the period from October, 2019 to August, 2020 that we have written correspondence from Courtesy with unsolicited updates. These five times occurred in November 2019, January 2020, February 2020, April 2020, and July 2020 (although this last correspondence was after the amendment to the facility addendum was executed.)

I hope this is helpful to the investigation. Do not hesitate to contact me with any further questions.

Very truly yours,

Lisa M. Gibson

CORRESPONDENCE TIMELINE

	Exhibit R159 (in chronological order)	
	Sender/Recipient	Description
10/29/19	Ray Smit to Jerry Pajouh	Ray writes to Jerry asking about permitting status with respect to benchmark of 12/1/2019, construction start benchmark of 1/31/20 and completion of certain items at temporary facility
	Jerry Pajouh to Ray Smit	Jerry writes back to Ray stating that they should "submit" permits by 12/1 and should start construction by the benchmark of 1/31/20.
11/4/19	Ray Smit to Jerry Pajouh	Ray writes to Jerry to inform him that his planned facility will not qualify for Market Development Fund program because service facility will not be exclusive
	Scott Farabee to Ray Smit	Scott asks Ray to also call Jerry about the program ineligibility.
On or around 11/26/19	Jerry Pajouh to Ray Smit (not in Exhibit R159, but appears in Exhibit R132.06)	See Forwarded email with 1/19/20 email from Exhibit R132.06 below. Email states that submittal for permitting project is completed.
1/2/20	Ray Smit to Jerry Pajouh	Ray writes to Jerry asking about status of meeting construction start benchmark of 1/31/20
	Jerry Pajouh to Ray Smit	Jerry writes to Ray that he's requested his GC to meet with the City the week of 1/6, City was closed for a week over the holidays, will provide update
	Ray Smit to Jerry Pajouh	Ray thanks Jerry and asks if he's obtained permit yet
	Jerry Pajouh to Ray Smit	Jerry writes back to Ray that meeting with City is about permits, will update Ray soon
1/8/20	Ray Smit to Jerry Pajouh	Ray writes to Jerry and asks about meeting with City. He also asks about timing for meeting construction start benchmark of 1/31/20.
	Jerry Pajouh to Ray Smit	Jerry writes to Ray that he met with his GC, but the GC did not meet with the City yet. He will let Ray know once GC meets with City.
	Ray Smit to Jerry Pajouh	Ray asks whether Jerry believes that he will meet the construction start benchmark of 1/31/2020.
	Jerry Pajouh to Ray Smit	Jerry responds that he will know better after GC meeting with City, he will provide timelines afterwards

CORRESPONDENCE TIMELINE

	Ray Smit to Jerry Pajouh	Ray asks Jerry to please make it a priority to meet the timelines as referenced in the settlement agreement
	Jerry Pajouh to Ray Smit	Jerry responds that he's 100% committed to project and timelines. He has a financial commitment and it costs him money every day he's not in the new facility
1/19/20	**Exhibit R132.06 (picking it up in chronological order)**	
	Sender/Recipient	Description
	Jerry Pajouh to Ray Smit	Jerry writes in response to Ray's email of a week ago, and says that he's waiting on response from GC He also forwards his understanding of progress by forwarding two prior emails he had written to Ray.
	Forwarded email from Jerry Pajouh to Ray Smit, it is dated 1/8/20 but email is missing from the chain in Exhibit R159	He applied for a permit in 11/2019, City has plans and all documents they need to issue permit. There are many departments at City, permitting is a process. There's a business development plan being reviewed by City's attorneys because of annexation. He will keep Ray posted, it's a different process than one he did in Fresno.
	Additional forwarded email from Jerry Pajouh to Ray Smit, it must be dated sometime after 11/26/19 (the filing date of the permit application) and before Thanksgiving 2019	Jerry writes to Ray that the submittal for permitting the project is completed
1/30/20	Ray Smit to Jerry Pajouh	Ray writes a letter to Jerry. Based on the email (above) that he received before Thanksgiving, Ray indicates that the permit benchmark is "achieved". There's a typo on the date of the settlement agreement which was adopted by the Board on April 9, 2019 not April 9, 2020. Ray indicates that the construction start date of 1/31/20 is not achieved. He urges Jerry to meet the next benchmark for the completion date of 1/31/21.
2/13/20	Ray Smit to Jerry Pajouh	Ray writes a follow up letter to Jerry. He confirms that the construction start benchmark was missed, Reminds Jerry of the legal remedies for missing benchmarks in the settlement agreement, urges him to

CORRESPONDENCE TIMELINE

		meet the completion benchmark of 1/31/21. Letter erroneously again states that permit benchmark was achieved based on Ray's interpretation of Thanksgiving email as it having been "completed".
2/17/20	**Exhibit R159 (picking it back up in chronological order)**	
	Sender/Recipient	Description
	Jerry Pajouh to Ray Smit	Jerry writes to Ray forwarding an email from his GC.
	Forwarded email from James Seegart (GC) to Jerry Pajouh dated 2/17/20	GC writes to Jerry that his personal circumstances prevented him from meeting with the City, but that he will meet with the City and update Jerry
2/17/20	Ray Smit to Jerry Pajoh, copies Scott Farabee	Ray thanks Jerry for the update and asks for him to circle back with him by 2/21/20.
3/2/20	Jerry Pajouh to Ray Smit	Jerry writes to Ray in response to Ray's 2/13/20 letter. He tells Ray that he's two weeks away from completion of the plan check. Required changes will need to be submitted before permits are issued. He will provide regular updates.
4/8/20	**Exhibit P14 (inserting it to continue chronological order)**	
	Sender/Recipient	Description
	Jerry Pajouh to Ray Smit	Jerry writes to Ray forwarding an email from his GC.
	Forwarded email from James Stevens (subcontractor works for GC) to Jerry Pajouh dated March 31, 2020	James Stevens writes to Jerry to say that the City has completed the plan check process on the building, he is still waiting on responses from some other departments. The plan check includes corrections that need to be made on building
6/19/20	Ray Smit to Jerry Pajouh	Ray writes to Jerry and asks for status on permits and starting construction. Ray also asks for status on LOC.

CORRESPONDENCE TIMELINE

	Jerry Pajouh to Ray Smit	Jerry responds to Ray that City is working remotely but that "we're not idle". Responses from City are due back to his GC on 6/26, the architectural review board is reviewing building at same time, he hopes to know more from his GC once items are resubmitted to the city. Also indicates that the LOC will be submitted to SOA early next week.
7/1/20	Ray Smit to Jerry Pajouh	Ray asks Jerry how the plan check responses went. He indicates that benchmark for permit is now July 31, 2020. He also includes a summary of revised benchmarks from the amended facility addendum.
7/3/20	Jerry Pajouh to Ray Smit	Jerry responds that he's asked his GC to provide revised timelines. He also says that GC tells him that it's been difficult working with the City because they are working remotely.
7/15/20	**Exhibit R159 (picking it back up in chronological order)**	
	Sender/Recipient	Description
	Jerry Pajouh to Ray Smit	Jerry writes to Ray forwarding an email from his GC.
	Forwarded email from James Seegart (GC) to Jerry Pajouh	GC writes to Jerry and tells him that they are working through the permit process with the City, it typically takes 6-8 weeks, permits should be issued in 2 months
8/1/20	**Exhibit R132.06 (picking it up in chronological order)**	
	Sender/Recipient	Description
	Ray Smit to Jerry Pajouh	Ray writes a letter to Jerry summarizing the benchmarks in the amendment to the facility addendum, Indicates that the permit benchmark of 7/31/20 has been missed. He reserves all rights and remedies and urges him to meet the benchmarks, with the next one being 9/30/20.

Respondent's Exhibit
R-159
Protest No. PR-2570-18

From: Jerry Pajouh <jpajouh@me.com>
Sent time: 01/08/2020 10:34:52 AM
To: Smit, Ray
Subject: Re: Meeting update with City

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.

Ray,

I have been a 100% committed to this project and it's completion timelines. Also have financial interest as every day we are not in the new facility it costs our company major dollars.

I will keep you posted as we progress.

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

On Jan 8, 2020, at 10:28 AM, Smit, Ray <rsmi@subaru.com> wrote:

Jerry,

Please continue to make it a priority to hit benchmarks. Please reference the agreed upon stipulations in executed settlement agreement when the benchmarks are not attained. Best to keep prioritizing achieving the agreed upon timelines.

Please let me know if you have any questions.

Thanks,

Ray

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, January 08, 2020 10:19 AM
To: Smit, Ray <rsmi@subaru.com>
Subject: Re: Meeting update with Ci

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.

I can answer that question better after the GC's meeting with the city. I hope to provide timelines at that time as I need to know myself.

Jerry Pajouh
CEO / Dealer Principal
Courtesy Automotive Center
BMW Buick Cadillac GMC Mercedes-Benz Subaru Volvo
Sales Service Parts Collision

Exhibit

2520 Cohasset Road
Chico, CA 95973
o (530) 345-9444
c (559) 824-2026
jpajouh@me.com

On Jan 8, 2020, at 10:12 AM, Smit, Ray <rsmi@subaru.com> wrote:

Thanks Jerry.

What is timeframe for starting construction. Do you expect to be able to hit the Jan 31 start of construction benchmark?

Sincerely,

Ray

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, January 08, 2020 10:08 AM
To: Smit, Ray <rsmi@subaru.com>
Subject: Re: Meeting update with City

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,

As per below email I met with the GC yesterday for an update on the progress of the project which they provided. The status update was mainly around the actual project such as Bids, Subs, etc.. . He has requested a meeting with the city to provide an update on permitting and he's waiting to hear back on a date. I will let you know as soon as I hear from the.

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

On Jan 8, 2020, at 9:26 AM, Smit, Ray <rsmi@subaru.com> wrote:

Hi Jerry,

How was the meeting with the City on Monday? What is the timeframe for starting construction? The benchmark remains at Jan 31, 2020.

Please advise.

Thanks,

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

Subaru: Most trusted brand 5 years in a row | Consumer Reports best overall brand | ALG highest residual value

Hi Jerry. Thanks for the update. Did you obtain permitting yet?

From: Jerry Pajouh <jpajouh@me.com>
Sent: Thursday, January 02, 2020 10:13 AM
To: Smit, Ray <rsmi@subaru.com>
Cc: Farabee, Scott <sfarab@subaru.com>; Hinkle, Beth <bhin@subaru.com>
Subject: Re: Status Update for 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 hope you had a great Holiday Season as well.

I have requested a meeting with the contractor for the week of 6th for an update and waiting for their response. The City of Chico was shut down for the holidays as of the 24th of December. I will provide you an update as soon as we have our meeting.

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

On Jan 2, 2020, at 9:42 AM, Smit, Ray <rsmi@subaru.com> wrote:

Hi Jerry,

I hope you had a good new year. This is a reminder of your upcoming 1/31/20 benchmark to break ground for the new facility. Please advise status on hitting the benchmark.

Thanks,

Ray

From:	Jerry Pajouh <jpajouh@me.com>
Sent time:	01/02/2020 10:37:36 AM
To:	Smit, Ray
Subject:	Re: Status Update for 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, The meeting I have requested is about the status of the permitting as the city has the construction drawings and the plans for Subaru. I'll update you as soon as I have this meeting.

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

On Jan 2, 2020, at 10:34 AM, Smit, Ray <rsmi@subaru.com> wrote:

Hi Jerry. Thanks for the update. Did you obtain permitting yet?

From: Jerry Pajouh <jpajouh@me.com>
Sent: Thursday, January 02, 2020 10:13 AM
To: Smit, Ray <rsmi@subaru.com>
Cc: Farabee, Scott <sfarab@subaru.com>; Hinkle, Beth <bhin@subaru.com>
Subject: Re: Status Update for Chico

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Good morning Ray, I hope you had a great Holiday Season as well.

I have requested a meeting with the contractor for the week of 6th for an update and waiting for their response. The City of Chico was shut down for the holidays as of the 24th of December. I will provide you an update as soon as we have our meeting.

Thank you,

Jerry Pajouh
CEO / Dealer Principal
Courtesy Automotive Center
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o (530) 345-9444
c (559) 824-2026
jpajouh@me.com

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Hi Jerry,

I hope you had a good new year. This is a reminder of your upcoming 1/31/20 benchmark to break ground for the new facility. Please advise status on hitting the benchmark.

Thanks,

Ray

RESPONDENT HEARING EXHIBIT R-159.05

From:	Smit, Ray
Sent time:	02/17/2020 12:10:00 PM
To:	Jerry Pajouh <jpajouh@me.com>
Cc:	Farabee, Scott
Subject:	RE: City permitting follow-up - Courtesy Auto Center

Thanks Jerry. We appreciate the update. Please circle back with me this Friday (2-21-20) for a status check.

Sincerely,

Ray

From: Jerry Pajouh <jpajouh@me.com>
Sent: Monday, February 17, 2020 11:38 AM
To: Smit, Ray <rsmi@subaru.com>
Subject: Fwd: City permitting follow-up - Courtesy Auto Center

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 just received this email so wanted to keep you in the loop. I will provide an update as soon as I receive it mid week.

Thank you and feel free to contact me with any questions.

Jerry

Sent from my iPhone

Begin forwarded message:

> **From:** James Seegert <James@Modernbuildinginc.com>
> **Date:** February 17, 2020 at 11:29:07 AM PST
> **To:** Jerry Pajouh <jpajouh@me.com>
> **Subject: City permitting follow-up - Courtesy Auto Center**
>
> Good morning, Jerry –
>
> Just a quick follow from last week – Due to some unforeseen personal circumstances, I was unable to connect with the City for an update on the project. And, unfortunately with President's Day, they are closed today, as well. However, I will be connecting with the City tomorrow and anticipate being able to provide an update not later than Wednesday –
>
> Let me know of any questions in the meantime –
>
> 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

MODERN • BUILDING • TOMORROW • TOGETHER

Website | Facebook

COURTESY
Automotive Center

Ph (530) 345-9444

2520 Cohasset Rd
Chico, CA 95973

ChicoCourtesy.com

March 2, 2020

Ray Smit
Zone Retailer Development Manager
SFO Zone
Subaru of America, Inc.
5000 Hopyard Road
Suite 125
Pleasanton, CA 94588

Dear Ray,

Thank you for your February 13, 2020 letter. I've already forwarded you the most recent email regarding the status of the City's plan check process. It looks like we are about two weeks out from completion of the plan check. Required changes, if any, will then need to be submitted before final permits are issued and we can commence construction.

I will endeavor to provide regular updates on all progress. I'm doing everything in my power to expedite the process with the City by continuing to working closely with our general contractor in that regard.

Thank you for your courtesy and cooperation.

Jerry Pejouh
CEO / President
Courtesy Automotive Group

From:	Farabee, Scott
Sent time:	01/20/2021 02:46:45 PM
To:	Smit, Ray
Subject:	FW: Courtesy Auto - Permit Status

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, July 15, 2020 5:41 PM
To: Smit, Ray <rsmi@subaru.com>
Cc: Hinkle, Beth <bhin@subaru.com>; Farabee, Scott <sfarab@subaru.com>
Subject: Re: Courtesy Auto - Permit Status

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.

I understand Ray. In our meeting last week James Seegert mentioned they are having difficulties not just with the City Officials but also with their subcontractors and field crew as some have contracted the virus so the rest of the group don't show up for work. We keep pushing forward.

We have not received the check from SOA yet as of today. I would appreciate an update when 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

On Jul 15, 2020, at 5:24 PM, Smit, Ray <rsmi@subaru.com> wrote:

Hello Jerry,

Thanks for the update. I'll still need to document the missed benchmark if permitting is not obtained by July 31st 2020 per the addendum extension. Below are the agreed upon benchmarks provided by you for the project.

- 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

Please confirm you received the check from SOA.

Sincerely,

Ray

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, July 15, 2020 5:19 PM
To: Smit, Ray <rsmi@subaru.com>
Subject: Fwd: Courtesy Auto - Permit Status

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're staying safe and being well.

I have been in series of meetings with our General Contractor regarding the permitting process. Please see email below regarding this topic.

I will continue to keep you posted as I receive more information on the progress of our project.

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

Begin forwarded message:

From: James Seegert <James@Modernbuildinginc.com>
Subject: Courtesy Auto - Permit Status
Date: July 15, 2020 at 5:07:49 PM PDT
To: Jerry Pajouh <jpajouh@me.com>

Hi Jerry –

We have been diligently working through the permit process with the City of Chico. With the last pieces of information being finalized in the next couple days, the landscape plan should be able to be finalized and submitted to the City for the Architectural Review Board process. This process typically takes about 6 – 8 weeks. Within this timeframe, we should be able to finalize the remaining details on the rest of the plan check corrections required by the City. So, at this time, I would target approximately 2 months to complete the permit process for the dealership buildings.

Let me know if you have any further questions along the way...

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

<image001.png>

Website | Facebook

From:	Farabee, Scott
Sent time:	11/04/2019 05:06:56 PM
To:	Smit, Ray
Subject:	Re: Subaru of Chico Funding

Please call Jerry on this to discuss. It deserves a phone call.

Scott

From: Smit, Ray <rsmi@subaru.com>
Sent: Monday, November 4, 2019 5:00:20 PM
To: Jerry Pajouh <jpajouh@me.com>
Cc: Farabee, Scott <sfarab@subaru.com>
Subject: Subaru of Chico Funding

Hi Jerry,

I want to let you know that the 2020 facility funding program is for retailers with exclusive facilities (see attached program stipulation #10 on the 2020 Market Development Funding Request).

At this point, your facility service center is not exclusive as defined by Subaru and is not eligible for funding. Your facility needs to have completely separate service stalls (separated with walls from other makes) and completely separate customer experiences in service.

I strongly urge you to amend the plans to provide full exclusivity.

Please let me know if you have any questions.

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

Subaru: Most trusted brand 5 years in a row | Consumer Reports best overall brand | ALG highest residual value

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, October 30, 2019 2:57 PM
To: Smit, Ray <rsmi@subaru.com>
Cc: Farabee, Scott <sfarab@subaru.com>
Subject: Re: Status Update for 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,

1) Based on what I am being told by the architect we should be able to submit for permitting by December 1st. The architectural and site grading plans are complete. Some questions have come up on structural engineering that they are sorting out amongst themselves.

2) Once the permits are issued, The GC will start the grading process and we should achieve Jan 31,2020 timeline.

3) The new toilet have been installed and the additional wall graphics have been ordered. Please see attached.

Thank you and let me know if there are any additional information you need,

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

Order Details

Name	Description	Options	Quantity	Order Price
Fabric Panels - Two Dogs	Horizontal Image - Size: 48"W x 36" Graphic: $125.00 Graphic w/Frame: $225.00 Ground Shipping: $20.80	Order Options: Fabric Graphic & Frame	1	$225.00

Name	Description	Options	Quantity	Order Price
Fabric Panels - Riverside Camping	Horizontal Image - Size: 48"W x 36"H Graphic: $125.00 Graphic w/Frame: $225.00 Ground Shipping: $20.80	Order Options: Fabric Graphic & Frame	1	$225.00

Subtotal:	$450.00
Shipping And Handling:	$41.60
Sales Tax:	$30.50
Order Total:	$522.10 (USD)

Billing Information

On Oct 29, 2019, at 10:06 AM, Smit, Ray <rsmi@subaru.com> wrote:

Jerry,

Please advise of status on the following:

1. Obtaining permitting for the new facility. Per the stipulated agreement, your timeline for obtaining permitting is Dec 1, 2019. Please advise if this is still on track for completion.
2. Starting construction for new facility by Jan 31st, 2020. Is this still on track?
3. Status of sales operation of temporary facility.
    a. New toilets installed successfully?
    b. Additional wall graphics ordered for the F&I offices?

Thanks,

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

Subaru: Most trusted brand 5 years in a row | Consumer Reports best overall brand | ALG highest residual value

From:	Jerry Pajouh <jpajouh@me.com>
Sent time:	01/19/2020 05:13:49 PM
To:	Smit, Ray
Cc:	Farabee, Scott
Subject:	Fwd: Meeting update with City
Attachments:	City of Chico Plan Check Receipt - 11.26.19.pdf

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.

Hi Ray,

This is in response to your email of Friday. Below was my last understanding of the progress and as we discussed in our meeting in Vegas last week I am waiting for the GC's response. I am expecting a response from him this week hopefully early. I will contact you as soon as I hear with an update.

Thank you,

Jerry

Begin forwarded message:

> **From:** Jerry Pajouh <jpajouh@me.com>
> **Date:** January 8, 2020 at 6:58:27 PM PST
> **To:** "Smit, Ray" <rsmi@subaru.com>
> **Subject: Re: Meeting update with City**
>
> Hi Ray,
>
> We applied for plan check and permitting in November. Please see below email referenced. The City has the construction drawings along with site plan and all the documents they need to proceed with permitting. I am being told there are different departments within the City that need to review the plans such as Engineering, Environmental Health, etc.. I was told this by the GC during our meeting yesterday. There is also a Development agreement between the City of Chico and Courtesy that is currently being reviewed by the City Attorneys office before it's passed on to the City Council for approval as the City of Chico is in the process of annexing the area where our property is located. Permitting a project is a process and that is why the GC is going to the City for a meeting to get an update on this process. I hope I am articulating it well enough so you can get a feel for the process. I will keep you posted every step of the way as I don't do this every day and the process up here is certainly different than what I experienced in Fresno a few years back.
>
> 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
>
> Hello Ray,
>
> The submittal for permitting our project has been complete and I have attached the Plan Check receipt for your records.

EXHIBIT

RESPONDENT HEARING EXHIBIT R-132.06

Thank you and Happy Thanksgiving to you and your family.

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

On Jan 8, 2020, at 6:43 PM, Smit, Ray <rsmi@subaru.com> wrote:

Thanks for the update Jerry. Can you please verify you've obtained permitting?

Thanks,

Ray

Raymond Smit
Zone Retailer Development Manager-SFO Zone
rsmi@subaru.com | C: 678.517.1163
Subaru of America, Inc. | 5000 Hopyard Road, Suite 125 | Pleasanton, CA 94588

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, January 8, 2020 10:34:52 AM
To: Smit, Ray <rsmi@subaru.com>
Subject: Re: Meeting update with City

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.

Ray,

I have been a 100% committed to this project and it's completion timelines. Also have financial interest as every day we are not in the new facility it costs our company major dollars.

I will keep you posted as we progress.

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

On Jan 8, 2020, at 10:28 AM, Smit, Ray <rsmi@subaru.com> wrote:

Jerry,

Please continue to make it a priority to hit benchmarks. Please reference the agreed upon stipulations in executed settlement agreement when the benchmarks are not attained. Best to keep prioritizing achieving the agreed upon timelines.

Please let me know if you have any questions.

Thanks,

Ray

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, January 08, 2020 10:19 AM
To: Smit, Ray <rsmi@subaru.com>
Subject: Re: Meeting update with Ci

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.

I can answer that question better after the GC's meeting with the city. I hope to provide timelines at that time as I need to know myself.

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

On Jan 8, 2020, at 10:12 AM, Smit, Ray <rsmi@subaru.com> wrote:

Thanks Jerry.

What is timeframe for starting construction. Do you expect to be able to hit the Jan 31 start of construction benchmark?

Sincerely,

Ray

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, January 08, 2020 10:08 AM

RESPONDENT HEARING EXHIBIT R-132.08

To: Smit, Ray <rsmi@subaru.com>
Subject: Re: Meeting update with City

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,

As per below email I met with the GC yesterday for an update on the progress of the project which they provided. The status update was mainly around the actual project such as Bids, Subs, etc.. . He has requested a meeting with the city to provide an update on permitting and he's waiting to hear back on a date. I will let you know as soon as I hear from the.

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

> On Jan 8, 2020, at 9:26 AM, Smit, Ray <rsmi@subaru.com> wrote:
>
> Hi Jerry,
>
> How was the meeting with the City on Monday? What is the timeframe for starting construction? The benchmark remains at Jan 31, 2020.
>
> Please advise.
>
> Thanks,
>
> 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
>
> Subaru: Most trusted brand 5 years in a row | Consumer Reports best overall brand | ALG highest residual value

Hi Jerry. Thanks for the update. Did you obtain permitting yet?

From: Jerry Pajouh <jpajouh@me.com>
Sent: Thursday, January 02, 2020 10:13 AM
To: Smit, Ray <rsmi@subaru.com>
Cc: Farabee, Scott <sfarab@subaru.com>; Hinkle, Beth <bhin@subaru.com>
Subject: Re: Status Update for 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 hope you had a great Holiday Season as well.

I have requested a meeting with the contractor for the week of 6th for an update and waiting for their response. The City of Chico was shut down for the holidays as of the 24th of December. I will provide you an update as soon as we have our meeting.

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

> On Jan 2, 2020, at 9:42 AM, Smit, Ray <rsmi@subaru.com> wrote:
>
> Hi Jerry,
>
> I hope you had a good new year. This is a reminder of your upcoming 1/31/20 benchmark to break ground for the new facility. Please advise status on hitting the benchmark.
>
> Thanks,
>
> Ray

January 30, 2020

Mr. Shahram Mihanpajouh
Courtesy Subaru of Chico
2520 Cohasset Road
Chico, CA 95973

Mr. Mihanpajouh,

This letter is a follow up regarding our correspondence pertaining to your facility project status on 1-17-20. Based on your email, achieving the agreed upon benchmark of 1-31-20 for beginning of construction, will be missed.

Your Subaru Settlement Agreement and release dated 04/09/20 includes agreed upon benchmarks applicable to the construction Courtesy Subaru of Chico. At this point, you have missed six (6) benchmarks as noted below.

Courtesy Subaru of Chico Benchmarks		
	Due Date	
Complete Construction Drawings	6/1/2019	Achieved
Obtain zoning and permits	12/1/2019	Achieved
Commence Construction	1/31/2020	Not achieved
Complete Construction	1/31/2021	
Obtain final verification from Feltus Hawkins	3/1/2021	

I strongly urge you to continue to focus on achieving your benchmarks by pursing an aggressive construction schedule. The next benchmark is to complete construction on the Sales Facility by 1/31/2021

Sincerely,

Raymond M. Smit
Zone Retailer Development Manager
cc: B. Hinkle, C. Farnell, S. Farabee, L. Jakiel

Subaru of America, Inc.
Western Region – San Francisco Zone
5000 Hopyard Road Suite 125
Pleasanton, CA 94588
www.subaru.com

February 13, 2020

Mr. Shahram Mihanpajouh
Executive Manager
Courtesy Subaru of Chico
2520 Cohasset Road
Chico, CA 95973

Mr. Mihanpajouh,

This letter is a follow-up regarding our correspondence pertaining to your facility project status on 1/17/20. Based on your email, achieving the agreed upon benchmark of 1-31-20 for beginning of construction was missed. Missing a legally binding benchmark per our Settlement Agreement is significant by Subaru standards and should be by you as well.

The Settlement Agreement with Subaru of America, Inc. (SOA) dated 4/9/19 includes agreed upon benchmarks applicable to the construction at Courtesy Subaru of Chico. At this point, you have missed one (1) benchmark as noted below.

Courtesy Subaru of Chico Benchmarks		
	Due Date	
Complete Construction Drawings	6/1/2019	Achieved
Obtain zoning and permits	12/1/2019	Achieved
Commence Construction	1/31/2020	Not achieved
Complete Construction	1/31/2021	
Obtain final verification from Feltus Hawkins	3/1/2021	

Despite not performing on your agreed upon benchmarks from your settlement agreement, SOA continues to show restraint in exercising its full legal rights including and up to redemption of your facility performance funds and initiation of termination of your Subaru franchise.

I strongly urge you to continue to focus on achieving your benchmarks by pursuing an aggressive construction schedule while maintaining a robust communication cadence with myself. I expect a progress report on commencing construction within 14 days. The next benchmark is to complete construction on the Sales Facility by 1/31/21.

Sincerely,

Raymond M. Smit
Zone Retailer Development Manager
cc: B. Hinkle, C. Farnell, S. Farabee

CONFIDENTIAL SUB00047

RESPONDENT HEARING EXHIBIT R-132.12

Subaru of America, Inc.
Western Region – San Francisco Zone
5000 Hopyard Road Suite 125
Pleasanton, CA 94588
www.subaru.com

August 1, 2020

Mr. Shahram Mihanpajouh
Courtesy Subaru of Chico
2520 Cohasset Road
Chico, CA 95973

Mr. Mihanpajouh,

This letter is a follow up regarding our correspondence pertaining to your facility project status on 7-22-20. Based on your email, achieving the agreed upon benchmark of on 7-31-2020 for obtaining zoning and permits will be missed.

Your final Subaru facility addenda amendment fully executed on 05-22-2020 includes agreed upon benchmarks applicable to the construction Courtesy Subaru of Chico. At this point, you have missed the initial agreed upon benchmark Obtain zoning and permits as noted below.

Courtesy Subaru of Chico Benchmarks		
	Due Date	
Obtain zoning and permits	**7/31/2020**	**Not Achieved**
Commence Vertical Construction	**9/30/2020**	
Complete Construction	**12/31/2021**	
Obtain final verification from Feltus Hawkins	**1/31/2022**	

Be advised, 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.

I strongly urge you to continue to focus on achieving your benchmarks by pursing an aggressive construction schedule. The next benchmark is to commence vertical construction by 09-30-2020.

Sincerely,

Raymond M. Smit
Zone Retailer Development Manager
cc: B. Hinkle, C. Farnell, S. Farabee,

CONFIDENTIAL SUB00484

RESPONDENT HEARING EXHIBIT R-132.13

From: Jerry Pajouh
Subject: Re: Partial Plan Check Corrections for B19-00481 Subaru/Volvo
Date: July 3, 2020 at 1:18 PM
To: Smit, Ray
Cc: Beth Hinkle, Diane Pajouh

Good afternoon Ray, I hope you're doing good as well and staying safe

Sorry for the delayed response due to month end and all the good things that goes along with it. I had a meeting with the contractor earlier this week regarding the progress and asked him to create a timeline chart with the outstaying items and expected completion timeframes. He is to provide that information sometime late next week which I will share with you once I receive them. He also reminded me that it has been difficult working with the City Officials as their building is still closed and most are woking from remote locations with limited access

I hope you enjoy the 4th of July Holiday

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

[redacted]

Hi Jerry,

I hope you are staying safe. This is a follow up to the project status below. How did the responses go for the plan check? Also, this is a courtesy reminder that your next benchmark for obtaining permitting is on July 31st, 2020.

I've included the full set of benchmarks below as well.

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 Pelus Hawkins for compliance upon completion of the remodeling, which Verification shall be provided by Pelus Hawkins by January 31, 2022

Thanks

Ray

[redacted]

Exh. P-14.001

From: Jerry Papouh <jpapouh@me.com>
Sent: Friday, June 19, 2020 12:53 PM
To: Smit, Ray <rsmi@subaru.com>
Subject: Re: Partial Plan Check Corrections for 819-00421 Subaru/Volvo

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're doing Well.

According to GC most of the city folks are still working remotely from home with limited access to their systems. Good news is we are not idle. The responses to plan check comments from the Architect, Civil Engineer, and major subs are due back to the GC by the 26th of this month. The City is also reviewing the Architectural Review Board items and will be working along side of plan check in conjunction to the interest of time. This is the latest update I have, hoping to get more information once the responses to the plan check items have been resubmitted to the city by the GC.

The LOC will be completed early next week and ready for submittal to Chone which I will copy you on when I send it. Can you tell me the turnaround time once the LOC has been submitted to SOA? Please let me know.

Thank you for the follow up and let me know if you need anything else.

Jerry Papouh
CEO / Dealer Principal
Courtesy Automotive Center
BMW Buick Cadillac GMC Mercedes-Benz Subaru Volvo
Select Service Parts Division
2520 Carlisle Road
Chico, CA 95973
o (530) 345-9444
c (559) 824-2026
jpapouh@me.com

On Jun 19, 2020, at 11:49 AM, Smit, Ray <rsmi@subaru.com> wrote:

Hi Jerry,

I hope all is well on your side. Where do we stand on permitting and construction?

Also, I haven't seen an update on the LOC--maybe I missed it. Please advise.

Exh. P-14.002

Thanks.

Raymond Smit
Zone Retailer Development Manager-SFO Zone
rsmi@subaru.com | C: 678.517.1163
Subaru of America, Inc. | 5000 Hopyard Road, Suite 125 | Pleasanton, CA 94588

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, April 8, 2020 5:56:51 PM
To: Smit, Ray <rsmi@subaru.com>
Subject: Fwd: Partial Plan Check Corrections for 819-00481 Subaru/Volvo

CAUTION: This email was 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,

Please see below regarding the City of Chico's Plan Check responses received by the GC.

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) 345-9441
c (559) 824-2028
jpajouh@me.com

Begin forwarded message:

From: James Seegert <James@Modernbuildinginc.com>
Subject: FW: Partial Plan Check Corrections for 819-00481 Subaru/Volvo
Date: March 31, 2020 at 10:58:33 AM PDT
To: Fritz <fritz@marletteassociates.com>, Dan Dobbie <dandobbie1@gmail.com>, Jeremy Carlson <jeremy@ceschico.com>, Bryan Gray <Bryangray@JESSEEHEATINGANDAIR.COM>, Joe Imes

Exh. P-14.003

<jmesplumbing@gmail.com>, Nicole Ledford <nledford@northstareng.com>, Jim Stevens <jstevens@northstareng.com>
Cc: Jerry Pajouh <jpajouh@me.com>

And here are the PARTIAL plan check comment list for the Subaru/Isuzu Dealership building. This includes the plan check corrections received from the outside plan check group, Bureau Veritas, on the buildings themselves. We are still awaiting additional response from the other internal City department, e.g. Planning, Engineering, Public Works, etc., but these building related comments from Bureau Veritas should be pretty inclusive for the building itself.

Please let me know of any questions.

Thanks,

James

From: bruce.mcclure@Chicoca.gov [mailto:bruce.mcclure@Chicoca.gov]
Sent: Tuesday, March 31, 2009 9:52 AM
To: Inspectors; James Seegert; Tony Wolkoff
Subject: Partial Plan Check Corrections for 619-08-MJ Subaru/Isuzu

Exh. P-14.004

23N1L17078
Subaru of America Inc.

EVIDENCE 17

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

Public Restrooms
Open

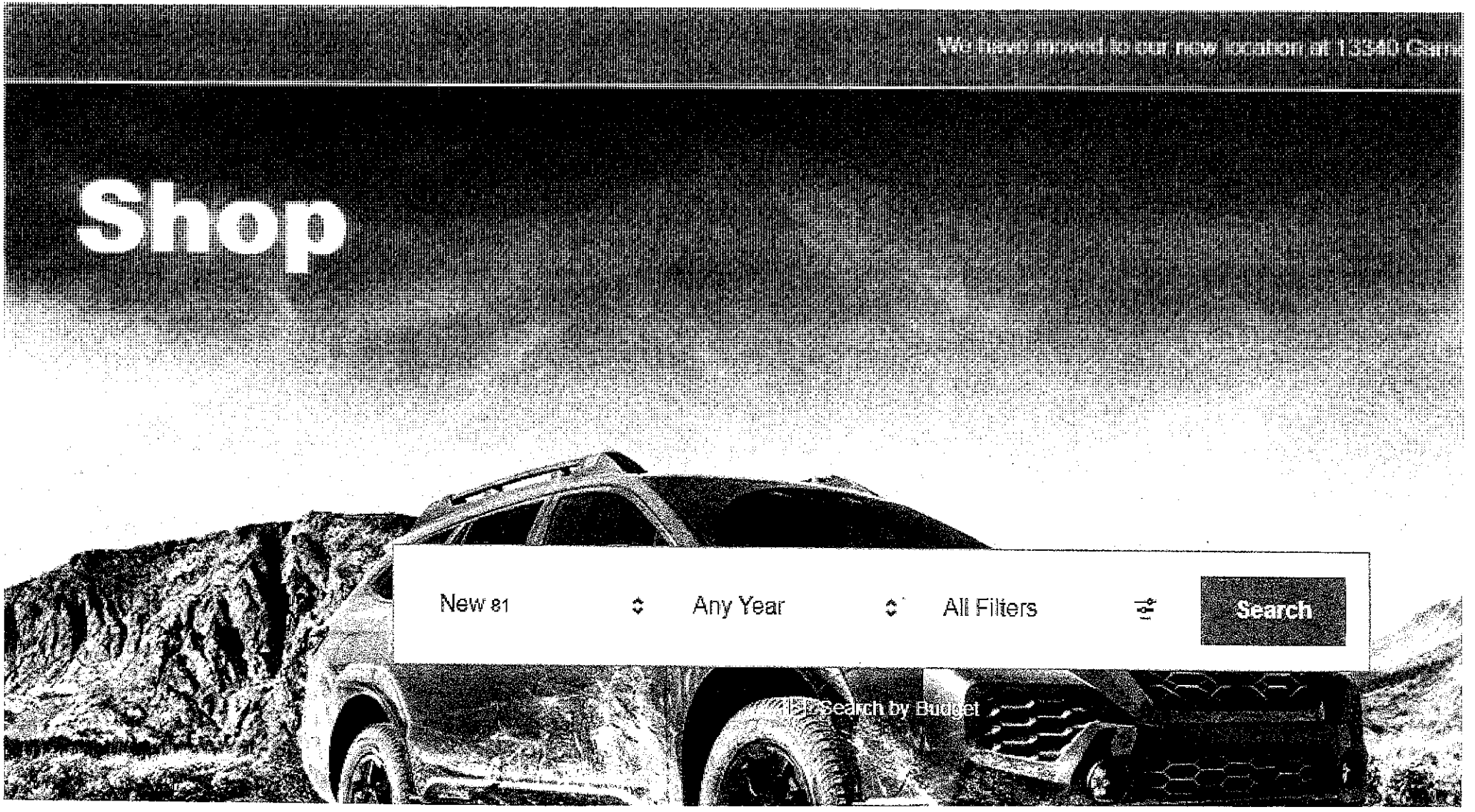
SUBARU

Subaru of Chico

13340 Garner Lane
Chico, CA 95973

Now Locally Owned and Operated

NEW SUBARU | CPO/USED VEHICLES | FINANCE & SPECIALS | SERVICE & PARTS | RESEARCH | SUBARU TRADE-IN



STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
A Public Service Agency

FOR DMV USE ONLY	
OL NUMBER	DATE APPLICATION RECEIVED
ACR NUMBER	DATE PERMIT ISSUED
NVMB FEE	DATE PERMIT EXPIRES
OTHER FEE	REGION CC
TOTAL FEE	INSPECTOR NAME/ID NUMBER
SUSPENSE RECEIPT NUMBER	

APPLICATION FOR MODIFICATIONS TO AN OCCUPATIONAL LICENSE

(Submit a separate form for each business location)

Instructions: Complete online or print and complete by hand using black or blue ink.

SECTION 1 — CURRENTLY LICENSED AS *Check one box.*

- [x] Dealer - *Complete information on right side.*
- [ ] Dismantler
- [ ] Lessor-Retailer
- [ ] Transporter
- [ ] Distributor
- [ ] Manufacturer
- [ ] Remanufacturer

FOR DEALERS ONLY (Business Model) – Check one box in each section.

Type of Dealer	Autobroker Endorsement
[x] Retail New	[ ] Yes [ ] No
[ ] Retail Used	NOTE: Wholesale only dealers are not eligible for an Autobroker endorsement.
[ ] Wholesale	

SECTION 2 — REASON FOR SUBMISSION *Check all that apply and complete the sections indicated.*

	COMPLETE SECTIONS								COMPLETE SECTIONS						
[x] Add Branch Location	3	5			9	10	11	[ ] Change Branch Location	3	4	5		9	10	11
[ ] Add Dismantler Location	3			8		10	11	[ ] Change Corporate Name	3	4					11
[ ] Add Business Name	3						11	[ ] Change Business Address	3	4	5		9	10	11
[ ] Add or Delete Make or Line	3		7				11	[ ] Change Business Name	3	4					11
[ ] Add or Delete Catagory	3		7				11	[ ] Dealer Type License Change	3		5	6			11
[ ] Add Autobroker	3						11	[ ] Delete Autobroker	3						11

SECTION 3 — BUSINESS INFORMATION

TRUE FULL NAME OF SOLE OWNER, ALL PARTNERS, CORPORATION, LIMITED LIABILITY COMPANY, OR ASSOCIATION	OL NUMBER
Courtesy Automotive Group, Inc.	87811
BUSINESS NAME *(IF CHANGING OR ADDING NAME, LIST NEW NAME)*	TELEPHONE NUMBER
Subaru of Chico	(530) 345-9444
BUSINESS ADDRESS *(IF CHANGING ADDRESS OR ADDING BRANCH, LIST NEW ADDRESS)* CITY	STATE ZIP CODE
13340 Garner Ln. Chico	CA 95973

SECTION 4 — FORMER NAME OR ADDRESS

FORMER NAME

FORMER ADDRESS

SECTION 5 — CHECK THE VEHICLES TO BE SOLD, MANUFACTURED OR DISTRIBUTED AT THIS LOCATION

NEW	[x] Automobile/Commercial*	[ ] Motorcycle* *(including Off-Highway)*	[ ] All-Terrain Vehicle*	[ ] Motorhome*
	[ ] Recreational Trailer*	[ ] Trailer+	[ ] Snowmobile*	
	**OL 124 required.*	*+Letter of Authorization required.*		
USED	[x] Automobile/Commercial	[ ] Motorcycle *(including Off-Highway)*	[ ] All-Terrain Vehicle	[ ] Motorhome
	[ ] Recreational Trailer	[ ] Trailer	[ ] Snowmobile	

SECTION 6 — DEALER ONLY *Type of license change.*

CHANGING FROM	[ ] Retail New	[ ] Retail Used	[ ] No Retail Sales (CVC §1671)	[ ] Wholesale Only
CHANGING TO	[ ] Retail New	[ ] Retail Used	[ ] No Retail Sales (CVC §1671)	[ ] Wholesale Only

I, Carlos Cabrera INV# 860
HEREBY CERTIFY THAT THIS
DOCUMENT IS A CORRECT COPY
OF THE ORIGINAL TAKEN FROM
DMV DATABASE
SIGNATURE [signature] DATE 12/5/23

OL NUMBER	
NAME	

SECTION 7 — ADD OR DELETE MAKE OR LINE	ADD OR DELETE CATEGORY
EXAMPLE: New dealer adding a new make or line	*EXAMPLE: Authorized to sell autos/commercials and adding motorcycles.*
ADDING	ADDING
DELETING	DELETING

SECTION 8 — DISMANTLER ONLY

ALL PLATES ACQUIRED FROM VEHICLES WILL BE: ☐ DESTROYED ☐ TURNED INTO THE DEPARTMENT

1. Is a storm water permit required for this location? ☐ YES ☐ NO
2. Has an application been filed to obtain a storm water permit for this location? ☐ YES ☐ NO
3. Has a hazardous materials business plan been filed for this location? ☐ YES ☐ NO
4. Is a hazardous materials business plan required for this location? ☐ YES ☐ NO
5. Does location meet all city and county zoning requirements? ☐ YES ☐ NO

If yes, attach the Zoning Verification for Vehicle Dismantler's License, form OL 62 completed by an official responsible for this location.

SECTION 9 — PROPERTY USE APPROVAL

Must be completed by applicant. Excludes out-of-state Manufacturers and Distributors.

Does location meet all city and county property use requirements? ☒ YES ☐ NO

SECTION 10 — PROPERTY DATA

PROPERTY IS: *(Check one box.)* ☒ Leased ☐ Rented ☐ Owned

	APPROXIMATE SQUARE FEET			
LEASE OR RENTAL PERIOD	Office Area	Building Area	Display Area	Total Area
10/21/23 - 12/31/28	700	5,000	4,200	9,900

PROPERTY OWNER'S FULL NAME		TELEPHONE NUMBER	
JP Real Estate Investments, LLC		(559) 824-2026	
PROPERTY OWNER'S ADDRESS	**CITY**	**STATE**	**ZIP CODE**
PO BOX 7468	Chico	CA	95973

SECTION 11 — APPLICANT CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

PRINTED NAME OF SOLE OWNER, ALL PARTNERS, CORPORATE OFFICER, LLC MEMBER, OR ASSOCIATION REPRESENTATIVE	TITLE
Shahram Mihanpajouh	CEO / President
SIGNATURE OF SOLE OWNER, ALL PARTNERS, CORPORATE OFFICER, LLC MEMBER, OR ASSOCIATION REPRESENTATIVE	**DATE**
X	10/31/2023

I, Carlos Cabrera INV# 360
HEREBY CERTIFY THAT THIS
DOCUMENT IS A CORRECT COPY
OF THE ORIGINAL TAKEN FROM
DMV DATABASE
SIGNATURE Carlos Cabrera DATE 12/5/23

A Public Service Agency

LICENSING OPERATIONS DIVISION

CERTIFICATE OF PROPOSED FRANCHISE

DMV USE ONLY
DEALER LICENSE NUMBER

Instructions:

- This form must be completed by a licensed Manufacturer or Distributor.
- The licensed dealer is responsible for submitting this form to the Department of Motor Vehicles with the appropriate application form(s).
- This form will ***NOT*** be accepted if modified or altered and must contain an original signature.

The location is a ☑ Permanent Location

☐ Temporary Branch Location (must be 30 days or less)

Date(s) of Event: From: _____ To: _____

I/We

MANUFACTURER/DISTRIBUTOR NAME	LICENSE NUMBER
Subaru of America, Inc.	18593

hereby certify that:

☑ Written notification to the New Motor Vehicle Board and each franchisee is not required pursuant to Vehicle Code section 3062(b) or 3072(b), or there are no other franchised dealers within the same line-make located within the relevant market area.

☐ Written notification has been provided to the Board and each franchisee of this line-make of the intent to establish an additional motor vehicle dealership or relocate an existing motor vehicle dealership within the relevant market area, and no protests have been filed. (A change in ownership of an existing established location shall not be construed as establishing an additional location.) Enter date of notification below.

MAKE OF VEHICLE(S), MOTORHOME(S), OR RECREATIONAL TRAILER(S)

Subaru

DATE THE NEW MOTOR VEHICLE BOARD AND DEALER(S) WERE NOTIFIED, IF APPLICABLE

09/15/2023

PROPOSED FRANCHISEE NAME (AS IT APPEARS ON LICENSE OR APPLICATION FOR LICENSE)		DEALER LICENSE NUMBER (IF APPLICABLE)	
Courtesy Automotive Group, Inc., dba Subaru of Chico		87911	
ADDRESS (AS SHOWN ON LICENSE OR APPLICATION FOR LICENSE)	CITY	STATE	ZIP CODE
13340 Garner Lane	Chico	CA	95973
AUTHORIZED SIGNATURE (OWNER OF RECORD OR LICENSED REPRESENTATIVE)		DATE	
Anthony J. Graziano		08/01/2023	
PRINT OR TYPE NAME		OWNER OR REPRESENTATIVE LICENSE NUMBER	
Anthony J. Graziano, Vice President-Western Region		RD382451	

CALIFORNIA VEHICLE CODE (CVC) - Sections 3062 or 3072*, states in part:

Establishing or Relocating Dealerships

3062. (a) (1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area. Within 20 days of receiving that notice or within 20 days after the end of any appeal procedure provided by the franchisor, any such franchisee may file with the board a protest to the establishing or relocating of the dealership. If, within this time a franchisee files with the board a request for additional time to file a protest, the board or its Executive Director, upon a showing of good cause, may grant an additional 10 days to file the protest. When such a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor shall not establish or relocate the proposed dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(b) Subdivision (a) does not apply to either of the following:

(1) The relocation of an existing dealership to any location that is both within the same city as, and is within one mile from, the existing dealership location.

(2) The establishment at any location that is both within the same city as, and is within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.

*Section 3072, pertaining to Recreational Vehicles, contains virtually identical provisions, however, there are additional exemptions not listed above. Recreational Vehicle Manufacturers are encouraged to review the entire California Vehicle Code Section.

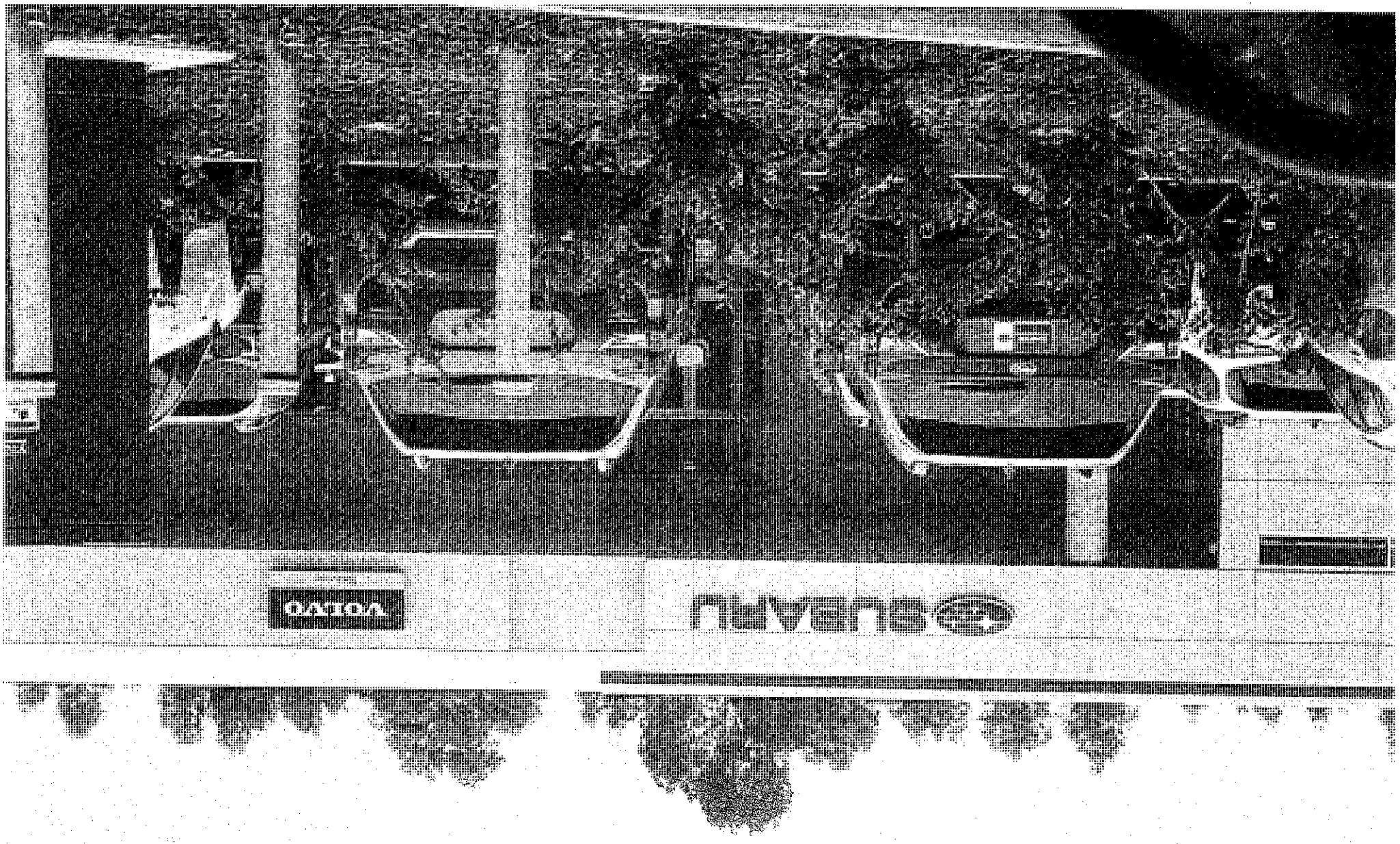
I, CARLOS CABRERA INV# 560
HEREBY CERTIFY THAT THIS
DOCUMENT IS A CORRECT COPY
OF THE ORIGINAL TAKEN FROM
DMV DATABASE
SIGNATURE [signature] DATE 12/5/23

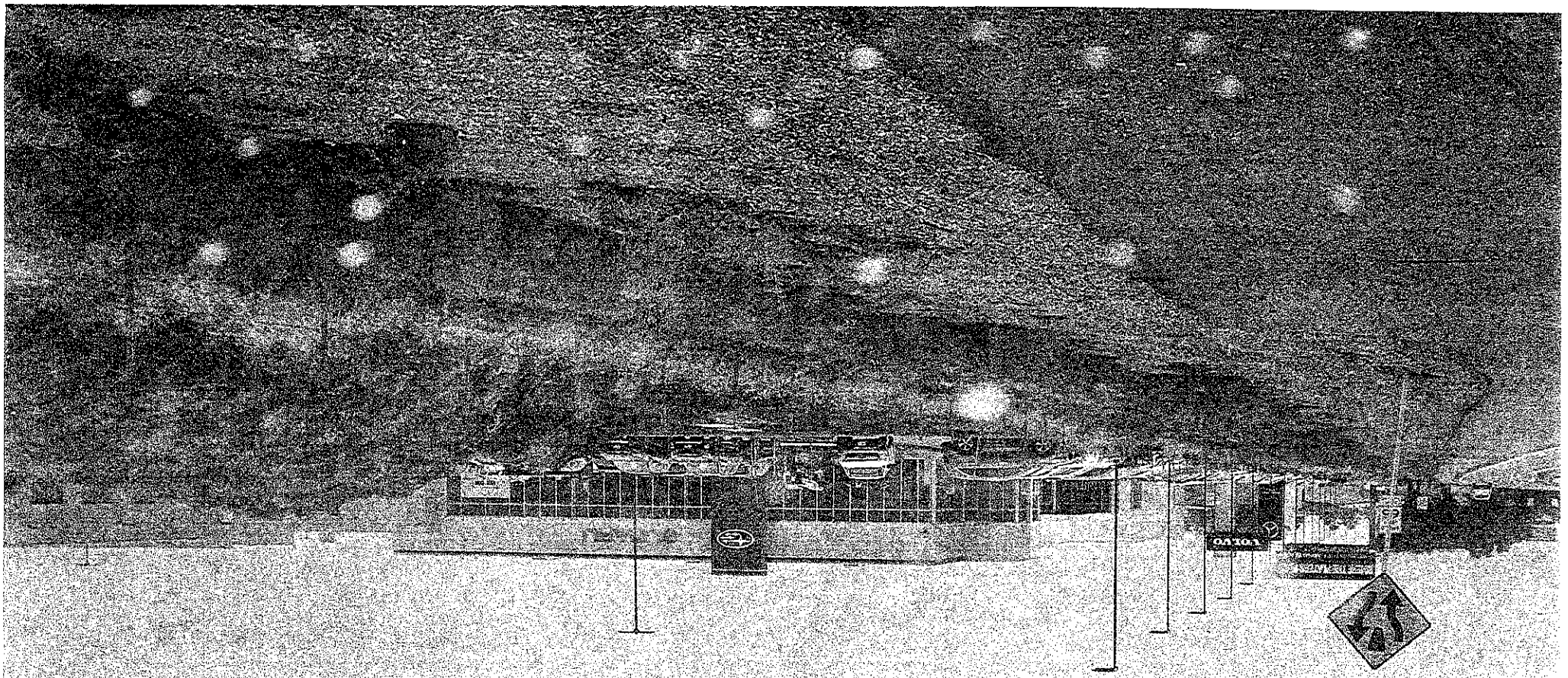
23N1L17078
Subaru of America Inc.

EVIDENCE 18

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

10
PK POLK
TRAVIS


DATSUN
nuvera



23N1L17078
Subaru of America Inc.

EVIDENCE 19

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

GMH Law Offices of Gavin M. Hughes

HughesDealerLaw.com

4360 Arden Way, Suite 1
Sacramento, CA 95864
gavin@hughesdealerlaw.com
(916) 900-8022

January 10, 2024

Brian Rasmussen
Carlos Cabrera
California Department of Motor Vehicles

Via email
Brian.Rasmussen@dmv.ca.gov
Carlos.Cabrera@dmv.ca.gov

Re: *Courtesy Subaru of Chico Correspondence re delays in meeting agreed upon deadlines*

DMV Investigator Cabrera and Sergeant Rasmussen:

This letter summarizes the documents provided herewith in response to Sergeant Rasmussen's January 5, 2024, email requesting the following: "To finalize things, we need to know about the communication between Chico and SOA in regard to delays in meeting the agreed upon deadlines, specifically those found listed in the document labeled 'EXHIBIT 1 TO CONFIDENTIAL AGREEMENT TO STIPULATED DECISION AND ORDER OF THE BOARD, FILED UNDER SEAL' paragraphs 18-21. Are you able to provide copies of any communication to SOA about permitting or construction delays?"

As a point of clarification, paragraphs 18-21 of the Exhibit 1 to Confidential Agreement to Stipulated Decision and Order of the Board, Filed Under Seal establish two (2) separate procedures to extend the timelines set forth in the agreement. First, paragraphs 18-19 concern delays based on government action or inaction. The paragraphs provide for Courtesy to notify SOA of the delays, request a minimum extension of time, verification of facts by SOA, and weekly reports from Courtesy to SOA.

Second, paragraph 21 provides for an additional exception to timely compliance based on *force majeure* events "[n]otwithstanding the provisions of this section…." The only notice requirements described in paragraph 21 concern immediately notifying the other party of such delay (and a specific notice procedure concerning landlord approval not relevant here).

Administrative Law Judge Evelyn I. Matteucci's ("ALJ Matteucci") Confidential Decision Resolving Stipulated Decision and Order Dispute ("Confidential Decision") explains the circumstances concerning the two exceptions at paragraphs 250 through 268. A copy of the Confidential Decision is included herewith for ease of reference.

Concerning paragraphs 18-19, ALJ Matteucci held "[t]here is no evidence that Courtesy notified SOA in writing of the government delay nor did it obtain weekly extensions. Since Courtesy did not provide written notice on a weekly basis to SOA as required, Courtesy did not establish an excuse for its non-compliance under the language of Paragraphs 18 and 19 of the Stipulated Decision." (Confidential Decision, ¶ 260.)

Instead, ALJ Matteucci held Courtesy's timely performance was excused under paragraph 21 based on the *force majeure* provisions. (Confidential Decision, ¶ 268.) She held, "Courtesy notified SOA about the difficulties related to COVID-19. In March 2020, Courtesy's sales operation was shut down by the City of Chico code enforcement and Mr. Pajouh communicated that to Mr. Smit. In any event, arguably no notice was required or it would have been superfluous, since these events were well known to SOA." (*Id.*)

Having clarified the operation of paragraphs 18-21, we provide herewith the communications concerning paragraphs 18-21 that were hearing exhibits during the Board proceeding before ALJ Matteucci. To keep the list of documents accessible and in line with the time period of the Confidential Decision, our search was limited to documents listed by the parties as hearing exhibits at the time of the September 14-16, 2021, and October 18-19, 26, and 28, 2021 hearing before ALJ Matteucci. We can search for additional documents if these documents or that time period were not what you had in mind. We have not limited the documents based on which ones were admitted during the hearing. If you need confirmation concerning which documents were admitted, we can review the administrative record and provide a list of admitted exhibits. The following summarizes the documents provided herewith:

- Exhibit P-10 – Email chain between Jerry Pajouh (Dealer Principal for Courtesy) and Ray Smit (Zone Retailer Development Manager-SFO Zone for SOA) dated January 19, 2020. The email chain discusses Courtesy's ongoing efforts to obtain the permits for the facility project.
- Exhibit P-14 – Email chain concerning the plan check responses in the permitting process for Courtesy's facility between Jerry Pajouh and Subaru representative, Ray Smit. The emails are from April 8, 2020; June 19, 2020; July 1, 2020; and July 3, 2020.
- Exhibit P-16 – Email chain from April 29, 2020, between Jerry Pajouh and Ray Smit concerning revised benchmark dates in light of the Chico California community being largely shutdown during the COVID-19 pandemic with City and County offices closed. As Jerry Pajouh described, Courtesy provided the dates "based upon little more than hopeful optimism."
- Exhibit P-62 – April 19, 2021, Jerry Pajouh Deposition Transcript. The entirety of the transcript was admitted into evidence during the hearing before ALJ Matteucci, however, for your purposes (and for ease of review) a relevant portion of the transcript is on pages 123-125. Those pages discuss Jerry Pajouh's approximately bi-weekly phone calls with Ray Smit concerning the delays in the permitting process.
- Exhibit R-105 – March 27, 2020, email from Jerry Pajouh to Ray Smit. Mr. Pajouh's email notifies Mr. Smit of the impacts stemming from the COVID-19 Pandemic and California's "Shelter in Place" order.

We have omitted other exhibits from Respondent's hearing exhibits that duplicate all or part of the exhibits provided herewith. We can provide the copies of R-107 (duplicate of P-16), R-157 (duplicate of P-10), and R-159 (part of the email chain in P-10 up to the January 8, 2020, 10:34:52 AM email from Jerry Pajouh) upon request.

Please let us know if you need additional clarification concerning the documents provided herewith. We are happy to search for and provide additional documents if needed.

Thank you for your ongoing efforts in this matter.

Sincerely,

Law Offices of Gavin M. Hughes

Robert Mayville Jr.

Gavin M. Hughes
Robert A. Mayville, Jr.

23N1L17078
Subaru of America Inc.

EVIDENCE 20

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

From:	Jerry Pajouh <jpajouh@me.com>
Sent time:	01/19/2020 05:13:49 PM
To:	Smit, Ray
Cc:	Farabee, Scott
Subject:	Fwd: Meeting update with City
Attachments:	City of Chico Plan Check Receipt - 11.26.19.pdf

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.

Hi Ray,

This is in response to your email of Friday. Below was my last understanding of the progress and as we discussed in our meeting in Vegas last week I am waiting for the GC's response. I am expecting a response from him this week hopefully early. I will contact you as soon as I hear with an update.

Thank you,

Jerry

Begin forwarded message:

> **From:** Jerry Pajouh <jpajouh@me.com>
> **Date:** January 8, 2020 at 6:58:27 PM PST
> **To:** "Smit, Ray" <rsmi@subaru.com>
> **Subject: Re: Meeting update with City**
>
> Hi Ray,
>
> We applied for plan check and permitting in November. Please see below email referenced. The City has the construction drawings along with site plan and all the documents they need to proceed with permitting. I am being told there are different departments within the City that need to review the plans such as Engineering, Environmental Health, etc.. I was told this by the GC during our meeting yesterday. There is also a Development agreement between the City of Chico and Courtesy that is currently being reviewed by the City Attorneys office before it's passed on to the City Council for approval as the City of Chico is in the process of annexing the area where our property is located. Permitting a project is a process and that is why the GC is going to the City for a meeting to get an update on this process. I hope I am articulating it well enough so you can get a feel for the process. I will keep you posted every step of the way as I don't do this every day and the process up here is certainly different than what I experienced in Fresno a few years back.
>
> 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
>
> Hello Ray,
>
> The submittal for permitting our project has been complete and I have attached the Plan Check receipt for your records.

Exh. P-10.001

EXHIBIT
3

Thank you and Happy Thanksgiving to you and your family,

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

On Jan 8, 2020, at 6:43 PM, Smit, Ray <rsmi@subaru.com> wrote:

Thanks for the update Jerry. Can you please verify you've obtained permitting?

Thanks,

Ray

Raymond Smit
Zone Retailer Developmemt Manager-SFO Zone
rsmi@subaru.com | C: 678.517.1163
Subaru of America, Inc. | 5000 Hopyard Road, Suite 125 | Pleasanton, CA 94588

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, January 8, 2020 10:34:52 AM
To: Smit, Ray <rsmi@subaru.com>
Subject: Re: Meeting update with City

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.

Ray,

I have been a 100% committed to this project and it's completion timelines. Also have financial interest as every day we are not in the new facility it costs our company major dollars.

I will keep you posted as we progress.

Thank you,

Jerry Pajouh
CEO / Dealer Principal
Courtesy Automotive Center
BMW Buick Cadillac GMC Mercedes-Benz Subaru Volvo
Sales Service Parts Collision

Exh. P-10.002

2520 Cohasset Road
Chico, CA 95973
o (530) 345-9444
c (559) 824-2026
jpajouh@me.com

On Jan 8, 2020, at 10:28 AM, Smit, Ray <rsmi@subaru.com> wrote:

Jerry,

Please continue to make it a priority to hit benchmarks. Please reference the agreed upon stipulations in executed settlement agreement when the benchmarks are not attained. Best to keep prioritizing achieving the agreed upon timelines.

Please let me know if you have any questions.

Thanks,

Ray

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, January 08, 2020 10:19 AM
To: Smit, Ray <rsmi@subaru.com>
Subject: Re: Meeting update with Ci

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.

I can answer that question better after the GC's meeting with the city. I hope to provide timelines at that time as I need to know myself.

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

On Jan 8, 2020, at 10:12 AM, Smit, Ray <rsmi@subaru.com> wrote:

Thanks Jerry.

What is timeframe for starting construction. Do you expect to be able to hit the Jan 31 start of construction benchmark?

Sincerely,

Ray

Exh. P-10.003

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, January 08, 2020 10:08 AM

To: Smit, Ray <rsmi@subaru.com>
Subject: Re: Meeting update with City

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,

As per below email I met with the GC yesterday for an update on the progress of the project which they provided. The status update was mainly around the actual project such as Bids, Subs, etc.. . He has requested a meeting with the city to provide an update on permitting and he's waiting to hear back on a date. I will let you know as soon as I hear from the.

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

> On Jan 8, 2020, at 9:26 AM, Smit, Ray <rsmi@subaru.com> wrote:
>
> Hi Jerry,
>
> How was the meeting with the City on Monday? What is the timeframe for starting construction? The benchmark remains at Jan 31, 2020.
>
> Please advise.
>
> Thanks,
>
> 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
>
> Subaru: Most trusted brand 5 years in a row | Consumer Reports best overall brand | ALG highest residual value

Hi Jerry. Thanks for the update. Did you obtain permitting yet?

From: Jerry Pajouh <jpajouh@me.com>
Sent: Thursday, January 02, 2020 10:13 AM
To: Smit, Ray <rsmi@subaru.com>
Cc: Farabee, Scott <sfarab@subaru.com>; Hinkle, Beth <bhin@subaru.com>
Subject: Re: Status Update for Chico

Exh. P-10.004

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 hope you had a great Holiday Season as well.

I have requested a meeting with the contractor for the week of 6th for an update and waiting for their response. The City of Chico was shut down for the holidays as of the 24th of December. I will provide you an update as soon as we have our meeting.

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

> On Jan 2, 2020, at 9:42 AM, Smit, Ray <rsmi@subaru.com> wrote:
>
> Hi Jerry,
>
> I hope you had a good new year. This is a reminder of your upcoming 1/31/20 benchmark to break ground for the new facility. Please advise status on hitting the benchmark.
>
> Thanks,
>
> Ray

23N1L17078
Subaru of America Inc.

EVIDENCE 21

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

From: **Jerry Pajouh** jpajouh@me.com
Subject: Re: Partial Plan Check Corrections for B19-00481 Subaru/Volvo
Date: July 3, 2020 at 1:18 PM
To: Smit, Ray rsmi@subaru.com
Cc: Beth Hinkle bhin@subaru.com
Bcc: Diane Pajouh pajouh@me.com

Good afternoon Ray, I hope you're doing good as well and staying safe.

Sorry for the delayed response due to month end and all the good things that goes along with it. I had a meeting with the contractor earlier this week regarding the progress and asked him to create a timeline chart with the outstaying items and expected competition timeframes. He is to provide that information sometime late next week which I will share with you once I receive them. He also reminded me that it has been difficult working with the City Officials as their building is still closed and most are woking from remote locations with limited access.

I hope you enjoy the 4th of July Holiday.

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

> On Jul 1, 2020, at 8:18 AM, Smit, Ray <rsmi@subaru.com> wrote
>
> Hi Jerry,
>
> I hope you are staying safe. This is a follow up to the project status below. How did the responses go for the plan check? Also, this is a courtesy reminder that your next benchmark for obtaining permitting is on July 31st, 2020.
>
> I've included the full set of benchmarks below as well.
>
> 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
>
> Thanks.
>
> Ray

From: Jerry Pajouh <jpajouh@me.com>
Sent: Friday, June 19, 2020 12:53 PM
To: Smit, Ray <rsmi@subaru.com>
Subject: Re: Partial Plan Check Corrections for B19-00481 Subaru/Volvo

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're doing Well.

According to GC most of the city folks are still working remotely from home with limited access to their systems. Good news is we are not idle. The responses to plan check comments from the Architect, Civill Engineer, and major subs are due back to the GC by the 26th of this month. The City is also reviewing the Architectural Review Board items and will be working along side of plan check in concurrence in the interest of time. This is the latest update I have, hoping to get more information once the responses to the plan check items have been resubmitted to the city by the GC.

The LOC will be completed early next week and ready for submittal to Cherie which I will copy you on when I send it. Can you tell me the turnaround time once the LOC has been submitted to SOA? Please let me know.

Thank you for the follow up and let me know if you need anything else,

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

> On Jun 19, 2020, at 11:49 AM, Smit, Ray <rsmi@subaru.com> wrote:
>
> Hi Jerry,
>
> I hope all is well on your side. Where do we stand on permitting and construction?
>
> Also, I haven't seen an update on the LOC-maybe I missed it. Please advise.

Thanks,

Raymond Smit
Zone Retailer Developmemt Manager-SFO Zone
rsmi@subaru.com I C: 678.517.1163
Subaru of America, Inc. I 5000 Hopyard Road, Suite 125 I Pleasanton, CA 94588

From: Jerry Pajouh <jpajouh@me.com>
Sent: Wednesday, April 8, 2020 5:56:51 PM
To: Smit, Ray <rsmi@subaru.com>
Subject: Fwd: Partial Plan Check Corrections for B19-00481 Subaru/Volvo

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,

Please see below regarding the City of Chico's Plan Check responses received by the GC.

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

Begin forwarded message:

From: James Seegert <James@Modernbuildinginc.com>
Subject: FW: Partial Plan Check Corrections for B19-00481 Subaru/Volvo
Date: March 31, 2020 at 10:58:33 AM PDT
To: Fritz <fritz@marletteassociates.com>, Dan Dobbie <dandobbie1@gmail.com>, Jeremy Carlson <jeremy@ceschico.com>, Bryan Gray <Brvangray@JESSEEHEATINGANDAIR.COM>, Joe Imes

<imesplumbing@gmail.com>, Nicole Ledford <nledford@northstareng.com>, Jim Stevens <jstevens@northstareng.com>
Cc: Jerry Pajouh <jpajouh@me.com>

And here are the PARTIAL plan check correction list for the Subaru/Volvo Dealership building. This includes the plan check corrections received from the outside plan check group, Bureau Veritas, on the buildings themselves. We are still awaiting additional response from the other internal City department, e.g. Planning, Engineering, Public Works, etc., but these building related comments from Bureau Veritas should be pretty inclusive for the building itself.

Please let me know of any questions –

Thanks,

James

From: bruce.mcclure@Chicoca.gov [mailto:bruce.mcclure@Chicoca.gov]
Sent: Tuesday, March 31, 2020 9:52 AM
To: Inspections; James Seegert; Terry Wolkoff
Subject: Partial Plan Check Corrections for B19-00481 Subaru/Volvo

Exh. P-14.004

23N1L17078
Subaru of America Inc.

EVIDENCE 22

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

From:	Jerry Pajouh <jpajouh@me.com>
Sent time:	04/29/2020 04:54:35 PM
To:	Smit, Ray
Cc:	Hinkle, Beth
Subject:	Re: Info needed

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,

Thank you for your email.

I hope SOA appreciates the fact that I explicitly provided the cash deposit as a bridge to the issuance of the LOC. I'm at a loss to understand why SOA would even consider withholding the return of the deposit upon the issuance of the LOC. It was always clear SOA would return the cash deposit once the LOC was issued. SOA is well aware of the size and scope of our facility project. We did not anticipate having $750,000 in cash locked up for the duration of the project. I hope SOA will ultimately reciprocate our good faith act of initially providing the cash deposit, by returning these funds upon receipt of the LOC.

In regard to SOA's request for revised and definitive Benchmarks, our community is largely shutdown. The City and County offices are closed. We submitted plans to the City in November of 2019 and we still don't have final approval. My builder and architect are doing all they can to expedite final approval, but with government offices currently closed, we are at a loss to predict future events. We have confirmed bank funding will close May 4. I can propose the following dates based upon little more than hopeful optimism:

1. obtain final permits by July 31, 2020;
2. Commence construction September 30, 2020;
3. Complete construction by December 31, 2021; and
4. Obtain final verification January 31, 2022.

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

On Apr 29, 2020, at 9:42 AM, Smit, Ray <rsmi@subaru.com> wrote:

Good morning Jerry,

I'm following up on our conversation last Tuesday regarding the settlement agreement dates. At this point, to even consider exchanging a LOC in lieu your performance deposit we need revised and definitive dates for the below benchmarks:

1. Obtaining permitting
2. Commencing construction
3. Completing construction
4. Obtaining final verification

I know you said dates were unobtainable during our conversation, but we need solid benchmarks. Note, providing

this information does not imply consent of your request for the letter of credit in exchange for the performance deposit.

Sincerely,

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

Subaru: Most trusted brand 6 years in a row | Consumer Reports best overall brand | ALG highest residual value

23N1L17078
Subaru of America Inc.

EVIDENCE 23

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In The Matter Of The Protest Of:	) PROTEST NO.
	) PR-2570-18
COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO,	)
Protestant,	)
vs.	)
SUBARU OF AMERICA, INC.,	)
Respondent.	)

VIDEOTAPED REMOTE DEPOSITION OF SHAHRAM MIHANPAJOUH

(AKA JERRY PAJOUH)

MONDAY, APRIL 19, 2021

11:13:06 A.M.

REPORTED BY: ANNA M. HORTON

CSR No. 6950, RPR

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In The Matter Of The Protest Of:	) PROTEST NO.
	) PR-2570-18
COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO,	)
Protestant,	)
vs.	)
SUBARU OF AMERICA, INC.,	)
Respondent.	)

VIDEOTAPED REMOTE DEPOSITION OF SHAHRAM MIHANPAJOUH, (AKA JERRY PAJOUH), LOCATED IN CHICO, CALIFORNIA, TAKEN ON BEHALF OF RESPONDENT, COMMENCING AT 11:13 A.M., MONDAY, APRIL 19, 2021, BEFORE ANNA M. HORTON, CSR No. 6950, RPR.

A P P E A R A N C E S

(ALL APPEARANCES VIA VIDEOCONFERENCE)

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DIANE MIHANPAJOUH

I N D E X

WITNESS	EXAMINATION BY	PAGE
SHAHRAM MIHANPAJOUH	MS. GIBSON	8, 40
	MR. HUGHES	168

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Exhibit 3	111	[Proposed] Stipulated Decision and Order of the Board Resolving Protest and Lawsuit
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REMOTE DEPOSITION

MONDAY, APRIL 19, 2021

11:13 A.M.

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THE VIDEOGRAPHER: Good morning. We are going on the record at 11:13 a.m. Pacific Time, on Monday, April 19th, 2021. 11:13:34 11:13:38 11:13:39

Audio and video recording will continue to take place unless all parties agree to go off the record. 11:13:45 11:13:48 11:13:48

This is Media Unit 1 of the video-recorded deposition of Jerry Pajouh, taken by counsel for the Respondent, in the matter of Courtesy Automotive Group, Inc., vs. Subaru of America, Inc., filed in the State of California, New Vehicle Board, Case No. PR-2570-18. 11:13:50 11:13:54 11:13:57 11:14:01 11:14:06 11:14:06

This deposition is being held by Veritext Virtual remote. My name is Gregg Eisman, from the firm Veritext, and I am the videographer. 11:14:09 11:14:12 11:14:14

The court reporter today is Anna Horton also from the firm Veritext. 11:14:16 11:14:18

And for the record, would counsel please state their appearances. 11:14:20 11:14:22

MS. GIBSON: This is Lisa Gibson on behalf 11:14:24

of the Respondent, Subaru of America, Inc. 11:14:29

MR. HUGHES: And this is Gavin Hughes for 11:14:32

Protestant Courtesy Subaru, and I've got Robert 11:14:35

Mayville from my office with me also. 11:14:38

MS. GIBSON: I'll let Amy identify herself, 11:14:40

please, her appearance. 11:14:41

MS. TOBOCO: This is Amy Toboco also on 11:14:44

behalf of Subaru of America, Inc. 11:14:47

THE VIDEOGRAPHER: Thank you. 11:14:47

Would the court reporter please swear in 11:14:49

the witness. 11:14:53

11:14:53

SHAHRAM MIHANPAJOUH, 11:14:53

having been first duly sworn, 11:14:53

testified as follows: 11:14:53

11:14:53

EXAMINATION 11:14:53

BY MS. GIBSON: 11:15:10

Q Good morning, Mr. Pajouh. Would you please 11:15:13

state your name, your legal name, and spell it for 11:15:18

the record. 11:15:20

A Sure. My name is Shahram Mihanpajouh, 11:15:23

spelled S-H-A-H-R-A-M, last name is 11:15:28

M-I-H-A-N-P-A-J-O-U-H. 11:15:35

Q Thank you, Mr. Pajouh. 11:15:39

For the purposes of this deposition, and it sounds like to me also daily, you go by a much shorter name, both first and last. And what would that be? 11:15:40 11:15:45 11:15:50 11:15:51

A That would be Jerry Pajouh. 11:15:56

Q Very good. 11:15:57

Could you spell that for us too, please? 11:15:59

A Sure. It's J-E-R-R-Y. And last name is P, like Paul, A-J-O-U-H. 11:16:03 11:16:07

Q Thank you very much. 11:16:12

Mr. Pajouh, have you ever been deposed before? 11:16:15 11:16:16

A Yes, I have. 11:16:17

Q How many times approximately? 11:16:20

A I would say approximately probably three or four times. 11:16:23 11:16:25

Q And was one of those times, as your wife previously testified, involving Weber BMW and an ownership dispute? 11:16:28 11:16:35 11:16:37

A Yes. 11:16:37

Q So that was approximately ten years ago? 11:16:39

A About ten years ago, that's correct. 11:16:42

Q And the other times, were they more recent than that Weber BMW dispute, or were they before that? 11:16:50 11:16:56 11:16:56

A I would say it was probably before that. 11:17:02
Q So even older yet? 11:17:03
A Yes. 11:17:06
Q Were any of those times that you testified 11:17:10
or were deposed -- were any of those times involving 11:17:14
any automotive disputes? 11:17:18
A What do you mean by that, automotive 11:17:21
dispute? 11:17:22
Q Would they involve anything that you would 11:17:25
have been testifying on behalf of a retailer or 11:17:30
involving a franchisor? 11:17:38
A Not franchisor, but we were -- there was a 11:17:42
dispute one time that we had an employee had an 11:17:46
issue, and I was deposed about that. And that was 11:17:50
way before the dispute at Weber. 11:17:52
Q Okay. It's been a while, I can tell, so 11:18:04
I'll go over the ground rules with you if that's 11:18:07
okay too. I know that you were present and you're 11:18:08
going to find them a little repetitive, but I think 11:18:12
it will be beneficial if we do go over them for the 11:18:17
record with you as well. 11:18:18
Is that okay? 11:18:19
A That would be fine. 11:18:20
Q Thank you. 11:18:20
You have taken an oath. This is the same 11:18:22

oath to tell the truth and sworn to tell the truth 11:18:26
that you would take in a court of law. That would 11:18:28
be subject to the penalty of perjury. 11:18:31
Do you understand that? 11:18:32
A Yes. 11:18:33
Q And again, I'm happy -- you've already done 11:18:38
it -- to explain my question or ask it again if you 11:18:43
don't understand it. 11:18:44
Do you understand that? 11:18:45
A Yes. 11:18:47
Q And I don't want you to guess, but I am 11:18:51
entitled to a reasonable estimate. And for the 11:18:54
purposes of what I explained before, you may be able 11:18:57
to estimate how far you are from your wife in the 11:19:00
room right now, but you wouldn't be able to estimate 11:19:02
the size of my kitchen table. That would be a 11:19:07
guess. 11:19:08
Do you understand those distinctions? 11:19:10
A Yes. 11:19:11
Q And we're going to try -- and you're doing 11:19:15
it very well and your wife is excellent as well. 11:19:20
I'm probably the greatest violator of it. But I 11:19:24
will try to ask my question and end my question, 11:19:29
wait for your answer before I start another 11:19:32
question, so that we don't talk over one another and 11:19:34

we can get a clear record. 11:19:36

Do you understand that? 11:19:37

A Yes. 11:19:38

Q And is there any reason today, either like 11:19:44
lack of sleep or medication, that you don't believe 11:19:48
that you could give your best testimony today? 11:19:51

A I can't think of any reasons. 11:19:54

Q Okay. And thank you. 11:19:57

So have you ever -- I know I asked you if 11:20:05
you were deposed. But how many times have you been 11:20:12
involved in a protest with a franchisor? 11:20:19

A Prior to this, never. 11:20:21

Q And when you say "this," you are referring 11:20:25
to the protest that you filed originally when Subaru 11:20:31
noticed its intent to terminate in August of 2018. 11:20:35

Is that correct? 11:20:36

A Correct. 11:20:38

Q And have you ever been involved in 11:20:43
litigation with a franchisor? 11:20:46

A No. 11:20:48

Q And let's make the round. Have you ever 11:20:56
been involved in an arbitration with a franchisor? 11:21:00

A No. 11:21:01

Q In terms of your educational background, 11:21:11
did you graduate from high school? 11:21:14

A Yes. 11:21:15

Q And where was that? 11:21:16

A Norman, Oklahoma. 11:21:20

Q And, I'm sorry, that's Norma? 11:21:23

A Norman. 11:21:24

Q Norman, Oklahoma. 11:21:29

And did you attend college? 11:21:31

A Yes. 11:21:32

Q And where was that? 11:21:34

A Fresno State in Fresno. 11:21:37

Q And did you receive a degree? 11:21:41

A Yes. 11:21:42

Q And what degree was that? 11:21:44

A Bachelor of Science. 11:21:47

Q Did you have a major? 11:21:50

A Business. 11:21:52

Q Did you do any post graduate work after you 11:21:55
attended Fresno State when you received your 11:21:58
Bachelor of Science in business? 11:22:00

A No, I didn't. 11:22:01

Q Did you attend the NADA Academy? 11:22:05

A No. 11:22:06

Q Have you received any certificates or any 11:22:11
other training involving running your dealership 11:22:18
operations? 11:22:18

A Yes. 11:22:20

Q And what would those be? 11:22:21

A Center of Excellence two years in a row with BMW North America, and that goes towards -- to people that are -- to dealerships that are top-end performing dealers in the United States. 11:22:26 11:22:28 11:22:34 11:22:36

I was also chosen to be one of the best dealers in the world. The top five got -- got appointed, and I was actually a nominee for that. 11:22:41 11:22:50 11:22:57

Q Okay. I'm trying to think is that Automotive Boards that does that or Board Automotive? I may have that reversed. 11:23:04 11:23:07 11:23:10

A It was from BMW. It was out of Germany. It was a global nomination. 11:23:15 11:23:17

Q I was thinking, I think, of the Dealer of the Year. That would not be the same program. 11:23:21 11:23:23

A That would not be the same program; that's correct. 11:23:26 11:23:26

Q And do you hold any other certificates or training in any field? Like are you an architect or anything like that? 11:23:32 11:23:39 11:23:40

A No. I know I'm not an architect, but I'm sure I have plenty. I've been in the car business for 42 years. I don't remember most of them. But I have -- I'm sorry. 11:23:47 11:23:52 11:24:01 11:24:02

Q No, no, I didn't -- I told you I would violate this rule, and I just did it. So please, please finish your answer. 11:24:04 11:24:09 11:24:10

A You had asked the question about training as well. I've been to numerous leadership training with different manufacturers. You know, I've been to the West Point for Mercedes-Benz leadership training, and I have attended numerous training with all of the manufacturers. 11:24:12 11:24:16 11:24:21 11:24:25 11:24:29 11:24:30

Q And for Subaru, have you done any Subaru training? 11:24:46 11:24:46

A I've done some. I've been to some training, but nothing to the extent -- and Subaru doesn't really offer that kind of training, so nothing to the extent that I have been exposed to with other manufacturers. 11:24:50 11:24:54 11:24:59 11:25:01 11:25:03

Q And let's talk about those 42 years, probably as succinctly and quickly as we can in terms of your automotive experience. 11:25:13 11:25:21 11:25:24

What was your first job? 11:25:26

A In the automotive industry? 11:25:30

Q Well, even before then, if it was something other than a summer job. 11:25:35 11:25:38

A My first job was when I was in Norman, Oklahoma. I was working at an Italian restaurant. 11:25:41 11:25:45

I started off by cleaning tables, bussing tables, washing dishes, and I ended up managing the place in about a year after I got hired. I ranked up to the point that I was the nighttime manager. 11:25:48 11:25:53 11:25:57 11:25:59

Q I bet you were no longer washing dishes when you were the manager? 11:26:03 11:26:06

A At home I do. 11:26:07

Q That's why God made dishwashers. That is my philosophy. 11:26:10 11:26:14

A Yeah. 11:26:15

Q Okay. And after the Italian restaurant, what would be your next job? 11:26:18 11:26:21

A After the Italian restaurant, I moved to Fresno, and I started selling cars while I was attending college. 11:26:24 11:26:27 11:26:29

Q And from a new car dealership or used car dealership? 11:26:36 11:26:37

A It was a new car dealership. 11:26:40

Q And what brand was it, the name? 11:26:43

A It was Chrysler Plymouth at the time. 11:26:45

Q When there were still Plymouths. 11:26:47

A When there was still. 11:26:50

Q And do you remember the name of that dealership? 11:26:52 11:26:52

A Believe it or not, it was Courtesy Chrysler 11:26:54

Plymouth in Fresno, California. 11:27:01

Q Is it still there? 11:27:03

A No. It's been sold since then and renamed. 11:27:07

And, of course, you know, the franchise, no more 11:27:11

Plymouth. So you got the Dodge that's merged with 11:27:15

Ram and Chrysler and all that so -- 11:27:18

Q Yeah. There are -- Courtesy is not an 11:27:22

uncommon name for dealerships, are they, at least, I 11:27:30

can think of a few myself as well. 11:27:33

Is that true? 11:27:35

A Correct. 11:27:36

Q Yeah, I forgot one thing. The videographer 11:27:40

can catch you nodding your head up and down, but 11:27:43

Madam Court Reporter can't. So we have to have all 11:27:47

audible answers. But I appreciate that. I knew 11:27:51

what you were saying too. 11:27:54

Okay. And so you were selling cars while 11:27:57

you were going to college. And did you do that 11:28:02

throughout the four years or so at Fresno State? 11:28:06

A It took me longer than four years, but, 11:28:10

yes, I did. 11:28:11

Q And, well, you were working at the same 11:28:18

time. That might have explained it. 11:28:21

A Yes. 11:28:22

Q And after Fresno State, did you continue 11:28:28

working at Courtesy Chrysler Plymouth in Fresno, or did you work somewhere else? 11:28:33 11:28:34

A No. Courtesy Chrysler Plymouth was about a 13-, 14-month period. And I started working at a Porsche, Audi, Ferrari store as a salesman while I was going to -- the majority of the time that I was going to school, that's where I worked. 11:28:38 11:28:43 11:28:48 11:28:50 11:28:52

Q Okay. And what was the name of that Porsche Audi? 11:28:55 11:28:56

A It was, I'm sorry, Gardner Goldman Porsche, Audi, Ferrari. 11:29:00 11:29:02

Q And how long did you work there? 11:29:10

A Six years. 11:29:10

Q And were you selling cars again? 11:29:14

A I was. 11:29:17

Q Did you have any managerial responsibilities? 11:29:19 11:29:20

A I was offered a managerial position multiple times while I was there, but I did not accept any of them while I was going to school. My goal was to be responsible for myself, allowing me to go to school until I finished. 11:29:24 11:29:27 11:29:30 11:29:35 11:29:37

At that point, I accepted a position as a manager. The same organization owned a Volkswagen which was right next door to the Porsche Audi store, 11:29:40 11:29:45 11:29:48

and I took that over for a few months. 11:29:51

Q And that was after you graduated from 11:29:53

Fresno State? 11:29:55

A Correct. 11:29:55

Q And you were the general manager or the 11:29:57

general sales manager? What position did you hold? 11:30:00

A I was a sales manager. 11:30:02

Q And would that have also been Gardner 11:30:11

Goldman Volkswagen? 11:30:12

A Gardner Goldman, that's correct. 11:30:14

Q Gardner Goldman. 11:30:19

And how long were you with the Volkswagen 11:30:22

dealership? 11:30:24

A Just a few months. I would say four 11:30:27

months. 11:30:28

Q Four months? 11:30:28

A Yeah. 11:30:28

Q And then did you continue to another 11:30:32

dealership? 11:30:32

A I did. I went to work for the local Volvo 11:30:36

store. And the reason I left is Gardner Goldman 11:30:39

organization sold four times during the six years 11:30:44

that I was there, so I was looking for a more stable 11:30:47

of an organization. So I went to Volvo store. The 11:30:53

same owner had been there for decades. 11:30:55

Q And was that also in Fresno? 11:30:58

A That is correct. 11:30:59

Q And what was the name of the Volvo dealership? 11:31:02 11:31:03

A (Inaudible) Volvo. 11:31:03

MS. GIBSON: Did you get that, Madam Court Reporter? 11:31:14 11:31:14

THE REPORTER: I did not. I was just going to ask him to repeat that. 11:31:16 11:31:18

THE WITNESS: Rontells Volvo. 11:31:19

BY MS. GIBSON: 11:31:19

Q Could you spell it, please, for the court reporter. 11:31:19 11:31:19

A Sure. It was R-O-N-T-E-L-L-S. 11:31:22

Q Okay. Like it sounds. 11:31:26

A Right. 11:31:28

Q And how long were you there? 11:31:29

A I was there for a short period of time. I was there for like 14, 15 months. And ever since I had moved, made a move, I was getting phone calls from a local BMW store that had been there for a long time as well, and they wanted me to assume the role of a general sales manager. 11:31:33 11:31:38 11:31:41 11:31:46 11:31:49 11:31:53

Q Okay. And so you moved to the BMW store from the Volvo Store? 11:31:57 11:32:01

A Correct. 11:32:01

Q And what was the name of that store? 11:32:02

A Weber BMW. With one "b." 11:32:05

Q Okay. Thank you. 11:32:07

And how long were you an employee of Weber 11:32:15
BMW? 11:32:17

A 12 years. 11:32:17

Q And when did you become an owner? 11:32:21

A In 1998. 11:32:28

Q And that was -- I'm trying to think. That 11:32:32
was purchased from whom? 11:32:39

A From the Weber family. 11:32:45

Q And after that, after becoming an owner, 11:32:50
how long did you still own Weber BMW? 11:32:55

A For 15 additional years. 11:32:57

Q Before it was sold, correct? 11:33:03

A Correct. 11:33:04

Q And that would be approximately -- that 11:33:09
would bring us approximately to 2015? 11:33:12

A 2013. From '98 to 2013, which was about 11:33:19
15 years. 11:33:20

Q Okay. Thank you. 11:33:30

And then after Weber BMW was sold, you 11:33:39
worked -- did you work anywhere between that and 11:33:43
purchasing the current five franchises that you own? 11:33:48

A I did not. 11:33:50

Q And so in May of 2015, from Mr. Ward and 11:33:58

Mr. Anderson, you and your wife purchased what we're 11:34:01

going to call the five franchises, right? 11:34:03

A Correct. 11:34:04

Q And that would be the Subaru store, Volvo, 11:34:13

one franchise consisting of the Buick, GMC, Cadillac 11:34:19

brands, BMW, and Mercedes. 11:34:22

Is that correct? 11:34:22

A Correct. 11:34:25

Q And do you agree with your wife that the 11:34:29

goodwill involved in that acquisition was around 11:34:31

6 million? 11:34:32

A It was 6.6 to be exact. 11:34:36

Q And you made application to Subaru to be 11:34:55

the principal owner of the Subaru dealership, 11:35:01

correct, after you acquired that franchise? 11:35:07

A Correct. 11:35:07

Q And you also entered into a Subaru dealer 11:35:15

agreement, right? 11:35:19

A Correct. 11:35:20

Q And I guess let's -- I'm wondering if we 11:35:27

should do -- I'm sorry, let's just go off the record 11:35:30

for just one second. 11:35:33

THE VIDEOGRAPHER: Off the record at 11:35:35

11:35 a.m. 11:35:38

(A discussion was held off the record.) 11:37:03

THE VIDEOGRAPHER: Back on the record at 11:37:06

11:37 a.m. 11:37:08

MS. GIBSON: Thank you. 11:37:09

BY MS. GIBSON: 11:37:09

Q Before we get to the exhibit, Mr. Pajouh, could you tell me if you are what is known as the dealer principal of the Volvo franchise? 11:37:15 11:37:22 11:37:26

A I am. 11:37:28

Q And would that also be the same for the BMW and the Mercedes? 11:37:32 11:37:34

A Yes. 11:37:36

Q And what is your role with the GM franchise? 11:37:40 11:37:41

A I'm the general manager. 11:37:45

Q And that also has to be a position that's approved by General Motors, right? 11:37:49 11:37:51

A That's correct. 11:37:51

Q The DP. 11:37:55

And in terms of your roles of being a dealer principal versus being a general manager, is it much different with respect to the GM franchises as it is to -- with the other four franchises? 11:38:03 11:38:08 11:38:12 11:38:16

A You know, as far as General Motors is 11:38:21

concerned, I do the day-to-day operation. Diane is our dealer principal. She attends the meetings, and sometimes I accompany her, and sometimes I don't. So she's more involved with the manufacturer, and -- but I do the day-to-day operation. And for the -- most of the time, I do accompany her to her meetings. 11:38:25 11:38:28 11:38:31 11:38:35 11:38:39 11:38:42 11:38:43

Q And for these five franchises, is there also a GM for the other four, Saturn (sic), Volvo, BMW, and Mercedes? 11:38:48 11:39:02 11:39:03

A I'm sorry, would you mind repeating the question? I didn't get it. 11:39:05 11:39:08

Q That's fine. 11:39:09

Are there -- could you tell me, is there a GM for the Subaru franchise? 11:39:12 11:39:17

A I'm the general manager for Subaru franchise. 11:39:21 11:39:21

Q Are you also the general manager for the Volvo, BMW, and Mercedes franchises? 11:39:23 11:39:27

A I am. 11:39:29

Q Do you share -- do you have a position of a sales manager for Subaru? 11:39:35 11:39:37

A Yes. 11:39:40

Q And who is that? 11:39:42

A His name is Kevin Akins. 11:39:46

1	Q Could you please spell that last name?	11:39:48
2	A It's A-K-I-N-S.	11:39:50
3	Q And is he also the sales manager for Volvo,	11:40:02
4	Buick -- or, excuse me, Volvo, GM franchises and	11:40:06
5	BMW, Mercedes franchises?	11:40:09
6	A No.	11:40:10
7	Q So you have separate sales managers for	11:40:13
8	each of the other four franchises?	11:40:15
9	A That's correct. We have one for GM, and	11:40:17
10	then I have one that is in charge of the European,	11:40:20
11	which is BMW, Mercedes, and Volvo.	11:40:23
12	Q Okay. And on the service side of your	11:40:34
13	operations, do you have -- you have what we call, do	11:40:40
14	you not, a dual service operation?	11:40:44
15	A We have a dual service operation. That's	11:40:47
16	correct.	11:40:47
17	Q So do you have a single service manager	11:40:52
18	that operates your dual service operations?	11:40:56
19	A We actually have two people. One is a	11:41:01
20	service director, and the other one is a service	11:41:03
21	manager.	11:41:05
22	Q And they -- the service director is	11:41:08
23	responsible for all five franchises?	11:41:11
24	A Oversees the operation for -- of the	11:41:15
25	service departments, correct.	11:41:17

Q And the service manager, reports to the service director? 11:41:21

A Correct. 11:41:23

Q And the service manager is also responsible for all five franchises? 11:41:26

A Mainly for GM and Subaru, since they're in the same shop. 11:41:32

Q Where are the Mercedes service operations? 11:41:41

A They are in the European building. 11:41:48

Q So in the European building, you have the Volvo, Mercedes, and BMW service operations? 11:41:53

A Correct. 11:41:57

Q And do they also have a service director and service manager? 11:42:00

A Service director office is in the European side, so he oversees the European operation. And -- but all of the after sales managers, they report to him. 11:42:05

Q And does each brand -- or, excuse me, does each franchise have its own after sales manager? 11:42:13

A No. 11:42:17

Q Is that just the single service manager that we were discussing before that reports to the director? 11:42:20

A Correct. Oversees -- the majority of these 11:42:25

operations is out of the GM-Subaru side and that's -- he oversees that operation. 11:42:42 11:42:46

Q Are both the service director and the service manager or after sales manager, are they both located in the European building? 11:42:48 11:42:53 11:42:57

A No. The service manager is in the Subaru/GM building, and the after sales director is in the European -- 11:42:59 11:43:02 11:43:04

Q Got it. 11:43:06

A -- building. 11:43:07

Q Okay. Is Courtesy Automotive, Inc., is that a holding company for all of the five franchises? 11:43:20 11:43:23 11:43:23

A Yes. 11:43:24

Q Is it an S-corp? 11:43:28

A It is an S-corp. 11:43:30

Q And do the five franchises operate as DBAs, or are they their own separate entities as well? 11:43:37 11:43:44

A No. They're DBAs. 11:43:46

Q So your financials, when you report your financials to the franchisors, would they include the financials of all five of those franchises? 11:43:51 11:43:57 11:44:03

A Yes. 11:44:05

Q In particular on the Subaru financial statement, are you familiar with it? 11:44:13 11:44:16

A Yes. 11:44:17

Q And on the first page, you may recall 11:44:21

there's a balance sheet? 11:44:22

A Yes. 11:44:23

Q And in the bottom, towards the bottom 11:44:26

right-hand side of the financial statement, there's 11:44:29

usually some summary income and sales information. 11:44:35

Do you recall that? 11:44:36

A Yes. 11:44:36

Q And usually the first column is Subaru new 11:44:44

vehicle sales, and the second column is just to the 11:44:48

right in that summary information, it says "other." 11:44:53

Are you aware of that? 11:44:55

A Yes. 11:44:55

Q Okay. And given what I think I understand 11:45:02

you just informed me of, is in that "other" column, 11:45:07

other new vehicle sales, that would have sales of 11:45:11

the GM, the Volvo, the Mercedes, and the BMW 11:45:15

franchises, right? 11:45:18

A Correct. 11:45:19

Q Is Courtesy Automotive, Inc., is it 11:45:33

profitable? 11:45:34

A Yes. 11:45:37

Q How about 2020, was that a profitable year? 11:45:42

A Yes. 11:45:43

Q How did it rank in terms of profits since you acquired the franchise -- franchises in 2015? 11:45:51 11:45:58

A Would you mind repeating the question, please? You cut out a little bit. 11:46:00 11:46:02

Q I'm sorry. I shouldn't lean back like that. It's not helpful. 11:46:07 11:46:11

You recall that -- I guess there's been testimony so far that you, I think, might have testified to it as well, that you bought Courtesy Automotive, Inc., and the franchises that you currently own in May of 2015. 11:46:14 11:46:19 11:46:22 11:46:26 11:46:29

Is that correct? 11:46:30

A That's correct. 11:46:32

Q Okay. And then you would have had or would have recorded at least partially for 2015 financials, and then you would have financials for 2016, 2017, 2018, 2019, and 2020 and 2021 to date, correct? 11:46:37 11:46:39 11:46:46 11:46:56 11:46:56

A Correct. 11:46:56

Q Okay. But in terms of the annual years, which would be '16 through 2020, how did 2020 rank vis-a-vis the other years? Was it less profitable than most of the other years on average, or was it the most profitable year? 11:46:59 11:47:07 11:47:12 11:47:17 11:47:18

A 2020 was more profitable than the previous 11:47:24

years. 11:47:24

Q How much so? 11:47:26

A I would have to rely on my memory, and I don't really want to guess, but, approximately, I would say we were ahead by maybe a quarter million dollars, maybe a little bit more. 11:47:30 11:47:32 11:47:37 11:47:41

Q And, in fact, if you know, 2020 was an incredibly profitable year for automobile dealers in general, wasn't it? 11:47:51 11:47:56 11:47:58

A Yes, it was from the reports that I have read. 11:48:00 11:48:01

Q Are you a 50 percent owner of a real estate company called JP Real Estate? 11:48:10 11:48:19

A I believe I'm 51 percent. 11:48:24

Q So you would be 51 percent. Is that Held -- is that another company that would be held by Courtesy Automotive, Inc., or is that its own stand-alone? 11:48:28 11:48:32 11:48:35 11:48:36

A That's its own stand-alone corporation or LLC, limited liability partnership. 11:48:40 11:48:43

Q Other than the five franchises that operate as DBAs, does Courtesy Automotive, Inc., hold any other entities? 11:48:49 11:48:54 11:48:55

A No. 11:48:57

Q And I presume this is going to be the same 11:49:02

answer, but I need to ask you just to verify. Since 11:49:07
acquiring the franchises that you now own under the 11:49:13
Courtesy Automotive, Inc., umbrella, have you 11:49:17
purchased any other dealerships? 11:49:21
A No. 11:49:22
Q Have you ever in your I think you said 11:49:28
43 years in the auto industry -- have you ever built 11:49:33
green field or ground-up dealership facilities 11:49:40
before this project that you're working on right 11:49:42
now? 11:49:43
A Would you mind repeating the question, 11:49:45
please? 11:49:46
Q No problem. 11:49:46
In your career, have you ever been 11:49:51
responsible for constructing new facilities 11:49:56
ground-up the way that you are now in this 11:50:00
five-franchise project? 11:50:01
A Yes. When I bought the Weber BMW, we 11:50:09
relocated the facility just like we're doing with 11:50:14
Subaru and the other franchises that we have. And 11:50:17
we acquired six one-acre parcels in a developed 11:50:22
area, newly developed area, but with no 11:50:26
construction. The roads were in. Sewer, water, 11:50:30
fiber, all that was in in each parcel. So -- so we 11:50:37
built a brand new dealership from the ground up. 11:50:41

Q And when was that? 11:50:42

A That was completed on September 4th, 2001. 11:50:48

And we started construction in 1998, fall of 1998. 11:51:00

Q When you say you started construction, are 11:51:03

you saying shovel in the ground, or are you saying 11:51:06

that you were negotiating the property and getting 11:51:11

permits and everything? What do you mean by 11:51:15

starting construction, I guess, I'm asking. 11:51:17

A Shovel in the ground. 11:51:19

Q And so prior to that, you even had to 11:51:23

invest time and efforts to also get the permits to 11:51:29

build and start construction? 11:51:32

A Correct. 11:51:34

Q And how long did that take? 11:51:36

A At City of Fresno it didn't take long at 11:51:41

all, and I think what really helped us there was the 11:51:46

fact that all of the parcels were actually 11:51:47

developed. So we had infrastructure. We had water, 11:51:51

sewer, cable, gas, electrical. We had everything, 11:51:57

like I said. And each parcel had that already piped 11:52:02

in and ready to go, unlike -- 11:52:04

Q Was it already -- I'm sorry. 11:52:06

A I'm sorry. 11:52:07

Q No. It was my fault. Please finish. 11:52:10

A Unlike our project here, where it's just 11:52:12

farmland, where we're right now in the process of pulling water and sewer, they're working on right now out on the road to try to bring the infrastructure up. 11:52:17 11:52:21 11:52:24 11:52:27

Q And were those parcels already zoned automotive when you bought them? 11:52:32 11:52:35

A It was not. 11:52:36

Are you talking about our current location or the Weber BMW project? 11:52:38 11:52:43

Q Thank you for asking for that clarification. 11:52:45 11:52:45

At that time, my question, my last question, I was thinking of Weber BMW. 11:52:48 11:52:51

A All we had to do -- it was zoned, but all we had to do is get a conditional use permit, which didn't take long at all. I believe it was zoned commercial so we had to get a CUP. 11:52:54 11:52:58 11:53:03 11:53:05

Q Did you own that land that you built the new facility for Weber BMW on? 11:53:09 11:53:12

A We bought it, correct. 11:53:14

Q Okay. And you bought that prior to 1998? 11:53:22

A Actually we did it simultaneously. We bought the land, and we were able to move dirt and do what we had to do. 11:53:27 11:53:34 11:53:36

It was a two-phase process. First phase 11:53:40

was to develop the southern one-third of the facility. And we had a modular building that the City allowed us to sell used cars while we were pulling permits and doing construction on the new car side. 11:53:43 11:53:47 11:53:51 11:53:54 11:53:56

And while we were doing that, the landowner, which was California Cotton Growers, had given us permission to do that with the understanding that we're going to close escrow on the facility -- on the property simultaneously as we were building the buildings. 11:54:00 11:54:02 11:54:05 11:54:08 11:54:12 11:54:15

Q So approximately start to finish, including whatever you needed to do to acquire the land and also to get the conditional use permit or whatever was necessary from the City of Fresno to construct -- to start construction of the facilities, approximately how long do you think that took? 11:54:22 11:54:27 11:54:34 11:54:37 11:54:39 11:54:42 11:54:42

A It was -- I want to say it was fall of 1998 and we moved in September of -- September 4, 2001. So it was almost a two-year project. 11:54:47 11:54:51 11:54:57

Q I'm sorry, maybe my math is funny. Isn't that three years? From fall of 1998 to September 4, 2001? 11:55:06 11:55:13 11:55:14

A That's if you add the -- if you add the 11:55:18

time that you were utilizing the south part of the facility. I thought you were asking me about the building itself. 11:55:22 11:55:24 11:55:25

Q Okay. How long it took you to do the building. Okay. I got you. 11:55:28 11:55:29

A Right. 11:55:30

Q Okay. Very good. Okay. So about two years to do everything needed to build and complete the building? 11:55:32 11:55:37 11:55:38

A Correct. 11:55:38

Q Okay. Are there any other companies that are related to either the JP Real Estate Company or Courtesy Automotive, Inc., that we have not talked about right now that you and your wife own? 11:55:51 11:56:01 11:56:04 11:56:06

A Diane has -- Diane and I own DP Advertising, which is an in-house advertising agency that takes care of the franchises that we represent. 11:56:13 11:56:16 11:56:24

I didn't finish my answer for your question of other projects, the last question. 11:56:28 11:56:30

Q Okay. Good. Thank you. 11:56:32

A Yeah. We did -- the first facility was 30,000 square feet, full service facility. And the southern portion of the project where we had the modular building and we were selling used cars off of stayed operational until 2006, at which point the 11:56:36 11:56:40 11:56:44 11:56:49 11:56:53

modular building came out and we built a ground-up, two-story certified preowned and luxury used car full service facility so -- and that was 33,000 square feet. 11:56:57 11:57:01 11:57:05 11:57:08

Q Well, I hope they paid you enough for it when you built all that for them. It sounds like you turned over a nice property. 11:57:17 11:57:20 11:57:22

A Actually they didn't pay us anything. BMW did not have a per-car program or anything. It was just up to us to make it profitable. 11:57:25 11:57:29 11:57:33

Q I'm sorry, what I was really referring to was the people that eventually bought the franchise from you. 11:57:37 11:57:40 11:57:41

A Oh, yes. Yes. 11:57:43

Q Did they -- they also bought, I presume, the new building that you had built and the property. 11:57:46 11:57:51 11:57:51

Is that correct? 11:57:51

A That's correct. They appreciated our operation very much. 11:57:54 11:57:57

Q Yeah. It sounds like you gave them a turnkey. 11:57:59 11:58:01

A Pretty much. 11:58:03

Q We're going to -- let's just identify the dealer agreement, and then we can take a lunch 11:58:13 11:58:16

break. 11:58:19

(Exhibit 1 was previously marked for 11:58:19

identification and attached hereto.) 11:58:19

BY MS. GIBSON: 11:58:23

Q This is, I'm pretty sure, Exhibit 1. 11:58:34

Amy, do I have that right? It's Exhibit 1 11:58:36

that we got there? 11:58:39

MS. TOBOCO: Yes. 11:58:40

BY MS. GIBSON: 11:58:40

Q Okay. And this is Exhibit 1 previously 11:58:45

identified as the Subaru Dealer Agreement, a 32-page 11:58:50

agreement. 11:58:51

And if we could just, Amy, page down to the 11:58:57

ownership area. 11:59:04

Okay. And, Mr. Pajouh, this is your legal 11:59:13

name. Let me try. Shahram Mihanpajouh? 11:59:22

A Correct. 11:59:23

Q And this is identifying you as the 11:59:25

controlling owner of the Subaru dealership. 11:59:30

Is that correct? 11:59:30

A That's correct. 11:59:31

Q Okay. And if we page down a little bit 11:59:35

further to -- I think there will be either -- I 11:59:37

think it will be an electronic signature. 11:59:40

Oh, yeah, here we go, you are the executive 11:59:42

manager, general manager, president, and treasurer. 11:59:48

Is that correct, Mr. Pajouh? 11:59:49

A That's correct. 11:59:49

Q And page down. 11:59:58

And I don't see the electronic signature. 12:00:25

Do you recognize this document as being the current Subaru document? 12:00:30 12:00:33

If we go up to the top and at least identify the date of this document? 12:00:36 12:00:39

Yeah, I think it will be the next page. There we go. 12:00:55 12:00:55

This is an agreement made October 17th, 2019. And it's between Courtesy -- Courtesy intending to do business as Courtesy Subaru Chico and Subaru of America. And with the principal place to do business at 896 East Avenue Chico. 12:01:02 12:01:13 12:01:19 12:01:26 12:01:30

Is that what you would recognize as being the current copy of the Dealer Agreement with Subaru? 12:01:33 12:01:36 12:01:37

A I do. 12:01:39

MS. GIBSON: Okay. Well, why don't we -- why don't we break for lunch, we got some good preliminary stuff out of the way, and go off the record. 12:01:43 12:01:49 12:01:52 12:01:52

Is that okay? 12:01:56

MR. HUGHES: That's fine with me. 12:01:59

THE VIDEOGRAPHER: Off record at 12:02:00

12:01 p.m. 12:02:03

(A lunch recess was taken at 12:01 p.m..) 12:02:03

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REMOTE DEPOSITION 12:35:25

MONDAY, APRIL 19, 2021 12:35:25

12:35 P.M. 12:35:25

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THE VIDEOGRAPHER: Back on the record 12:35:43
beginning Media Unit 6 at 12:35 p.m. 12:35:46

12:35:46

SHAHRAM MIHANPAJOUH, 12:35:46

having been previously duly sworn, 12:35:46

testified as follows: 12:35:46

12:35:46

EXAMINATION (continued) 12:35:46

BY MS. GIBSON: 12:35:51

Q Okay. I think when we last left, we were 12:36:00
looking at the Dealer Agreement. 12:36:02

If we can look at the Facility Addendum, 12:36:12
please. And I believe that's Exhibit Number 2, but 12:36:18
I'm having trouble looking at my notes. 12:36:25

Am I correct, Madam Court Reporter? It's 12:36:26
Exhibit Number 2? 12:36:28

MR. HUGHES: Yes, it is. 12:36:30

MS. GIBSON: Thank you, Mr. Videographer. 12:36:36

(Exhibit 2 was previously marked for 12:36:36
identification and attached hereto.) 12:36:36

BY MS. GIBSON: 12:37:01

Q Mr. Pajouh, do you recognize this Exhibit 2 12:37:03
dated May 21st, 2020, Amendment to the Existing 12:37:08
Facility Addendum? 12:37:09

A Yes. 12:37:12

Q And under -- there on the first page, 12:37:17
there's seven bullet points. 12:37:21

Do you recognize those as being the 12:37:22
original milestones upon you being appointed as a 12:37:27
Subaru dealer to build a Subaru dealership? 12:37:33

A Yes. 12:37:34

Q And you are aware that Subaru, when they 12:37:39
appointed you, required that you build these 12:37:46
dealership facilities because the ones that were 12:37:49
being provided were deficient? 12:37:52

A Yes. 12:37:54

Q And since your appointment, May 5th, 2015, 12:38:02
Subaru continues to be in deficient dealership 12:38:12
facilities, right? 12:38:13

MR. HUGHES: Object to the form of the 12:38:14
question. 12:38:14

BY MS. GIBSON: 12:38:14

Q Go ahead and answer, please. 12:38:18

A Yes. 12:38:20

Q And if we were to just take the date here 12:38:29

of May 21st, 2020, would you agree that that was kind of well and truly into what we all now call COVID? 12:38:37 12:38:41 12:38:42

A May 21st, 2020, Yes, we were at the beginning stages of it, yes. 12:38:47 12:38:49

Q And did you ask for an extension because of the uncertainty of COVID? 12:38:54 12:38:57

A We didn't ask for an extension. I was in communications with Mr. Smit as far as the difficulties of trying to get anything done because, you know, it wasn't just the City of Chico, but the whole state had shut down. So the municipalities were shut down. There was really nobody to get a hold of in order to proceed with what we needed to get a hold of, the folks that we needed to get ahold of. So we had communications in regards to that, and he had proposed some new dates just to have something moving forward. 12:39:00 12:39:04 12:39:06 12:39:09 12:39:13 12:39:17 12:39:20 12:39:23 12:39:27 12:39:31 12:39:34

Q So you don't recall indicating that if -- 12:39:41

Amy, if we could page down to the bottom, the series of milestones. 12:39:52 12:39:58

There we go. 12:39:59

You don't recall sending an email saying, "These may be optimistic, but pursuant to your request, these are the dates that I propose we have 12:40:01 12:40:06 12:40:09

extended to"? 12:40:11

A Yeah. I don't recall us proposing the 12:40:13
dates. They were proposed by Subaru, and we were 12:40:20
optimistic that we could get through the pandemic. 12:40:23
We didn't know how long it was going to take. And 12:40:26
we had conversations that those would be optimistic, 12:40:31
but we had -- they had to have something, so that's 12:40:35
what we agreed to with the understanding we're going 12:40:39
to take a look at it once things quiet down a little 12:40:44
bit and things -- the State starts opening up. 12:40:47

Q And once things quieted down a little bit, 12:40:50
did you ask to modify any of these dates? 12:40:54

A No. By then we were in the middle of the 12:40:56
litigation, so I worked through my counsel. 12:41:01

Q Okay. So when did you file the protest? 12:41:06
Do you remember? 12:41:07

A I don't remember. 12:41:07

Q And in terms of being in litigation or not 12:41:22
being in litigation as we sit here today, is there 12:41:28
any reason that you would need to modify these 12:41:30
dates? 12:41:30

MR. HUGHES: Object to the form of the 12:41:34
question. 12:41:35

THE WITNESS: Yeah. Repeat the question so 12:41:38
I make sure I understand your question. 12:41:40

BY MS. GIBSON: 12:41:40

Q Okay. Let's look at the first date. Do you see the first date that says, 12:41:42 12:41:44

"Dealer obtains necessary zoning permits and necessary government approvals for construction of the permanent facility on or before July 31st, 2020"? 12:41:47 12:41:49 12:41:51 12:41:53 12:41:54

Would you, sitting here today, put the date in of April 20th, 2021? 12:41:57 12:42:01

A I would, yes. At least what I know today, but I didn't know that at the time. 12:42:08 12:42:10

Q Okay. And I doubt it, but has anything -- have you received any notification that you will be getting permitted tomorrow as of April 20th, 2021? 12:42:14 12:42:17 12:42:23

A We have every indication that the City is about to issue the permits tomorrow. They have -- they had given a list to the contractor and the contractor -- I was checking my email this morning -- has already provided it, but it was an email that went from our general contractor to Mr. Sawley at the City to see if there is anything that is getting in the way of him being able to pull a permit tomorrow, because he has checked all of the boxes and provided everything that they were looking 12:42:25 12:42:31 12:42:37 12:42:40 12:42:44 12:42:47 12:42:51 12:42:54 12:42:59 12:43:02

for so -- and I haven't seen a response from Mr. Sawley. 12:43:05 12:43:06

So as we sit here right now, I have no reason to believe that they are not going to do it tomorrow unless something comes up. 12:43:09 12:43:11 12:43:13

Q Okay. Thank you. 12:43:19

And the next bullet point, 12:43:21

"Dealer commences vertical construction of the permanent facility on or before December 30, 2020." 12:43:24 12:43:27 12:43:29

Would you now, knowing what you know, put the date of April 22nd, 2021, there? 12:43:31 12:43:35

A Repeat -- 12:43:36

MR. HUGHES: Object to the form of the question. It's an incomplete hypothetical. 12:43:37 12:43:40

THE WITNESS: If you can repeat the question? I don't think I understood what you said. 12:43:41 12:43:43

BY MS. GIBSON: 12:43:43

Q What date would you put in, based upon you getting a permit tomorrow, for the second milestone there, to commence vertical construction? 12:43:46 12:43:50 12:43:53

A I think the increments that were used in this letter with the dates, they're -- I would use the same increments after the permit has been issued. And I believe -- I think is it five months 12:43:56 12:44:00 12:44:03 12:44:11

between? Sorry, I just -- 12:44:17

Q It's 60 days. 12:44:20

A Is it 60 days? 12:44:21

Q It's 60 days. I can see that is the 12:44:24
difference between July 31st and September 30th. So 12:44:29
if we had April 20th in the first date, you would 12:44:33
put something around June 19th for commencing 12:44:38
construction? 12:44:39

A I think that's reasonable. That's a better 12:44:42
question for the general contractor quite honestly. 12:44:44
It's been -- as you're aware, construction has been 12:44:48
on fire. And I kind of wish that we had received 12:44:52
our permitting prior to COVID because, you know, 12:44:57
even though there were slowdowns during the COVID 12:45:00
due to the shelter in place and all that, I stayed 12:45:04
in touch with the contractor so it's his goal to be 12:45:08
able to do that, to have that -- the 60 days or 12:45:11
90 days to be able to -- we need to start 12:45:15
construction. We needed to start construction a 12:45:17
year and a half ago, when we said we were going to 12:45:20
do it. 12:45:21

So he knows the urgency of it. You know, 12:45:25
every day that we're here with property carrying 12:45:29
costs and the insurance and the use of the facility 12:45:34
that's dated and old, it's costing Courtesy in the 12:45:38

tens of thousands of dollars in expense for every month that we are here, so we can't get there fast enough. 12:45:41 12:45:44 12:45:44

Q So have you asked your general contractor what day he would start construction if the permit is issued tomorrow? 12:45:50 12:45:54 12:45:56

A I have asked him. And he said it depends on when they're going to issue it because -- and I'm not a contractor, and I'm not speaking for him. But the way I understand it is they have timelines that we've got to meet, otherwise, they start other jobs, so -- but it is his goal to be able to start construction 60 to 90 days after it is issued a permit. He's already gotten some of the contractors and all that onboard. So I would have to say 60 to 90 days should be reasonable. 12:45:58 12:46:02 12:46:05 12:46:07 12:46:11 12:46:14 12:46:19 12:46:22 12:46:26 12:46:28

Q And who is your general contractor? 12:46:32

A James Seegert with Modern Contractors -- Modern Building. Sorry. 12:46:36 12:46:38

Q Okay. And have you also discussed with the contractor, if they start 60 to 90 days from whenever the permits are issued, how long it will take them to actually complete the buildings? 12:46:45 12:46:51 12:46:54 12:47:00

A Yes. 16 -- this is going to be a 16-to-18-month project, based on what we have, so -- 12:47:03 12:47:11

and that's -- those are the numbers, depending on the weather, he said. So if we get a lot of rain, which we're going to go towards dry season now. So we're hoping by the time that the rainy season comes around again next year, that the buildings are enclosed so he can work on the inside of -- the inside of the buildings. 12:47:13 12:47:16 12:47:20 12:47:24 12:47:26 12:47:31 12:47:32

The building enclosure is the one that really determines based on -- based on what I experienced in my past two projects and what he has told me. 12:47:35 12:47:39 12:47:42 12:47:43

Q And what building will you start on first? 12:47:51

A I can't answer that question. They're all going to be done at the same time. The way I understand it is they're going to start with one building, and then, you know, with infrastructures go into all of them at the same time. So when they frame to pour the concretes and the footings, they're going to pour one, and while they're pouring, they're going to go and frame the next one and then the next one and rotate around the campus. That's the way I was explained. 12:47:54 12:47:56 12:48:00 12:48:02 12:48:07 12:48:11 12:48:14 12:48:18 12:48:20 12:48:23

Q You have not asked them to prioritize any one building over another? 12:48:26 12:48:28

A I'm assuming that the Subaru building, 12:48:30

since it's the first one on the property, that's where they're going to start and then make their way down to the BMW, Mercedes, and then Cadillac and Buick-GMC. 12:48:34 12:48:37 12:48:42 12:48:44

Q But you have not asked them to start with the Subaru building? 12:48:48 12:48:49

A I have -- no, I have not. A certificate of occupancy of the completion of the project is going to be issued -- the way I understand it, it's going to be issued all at once. 12:48:53 12:48:55 12:48:58 12:49:02

Q Why do you understand that? 12:49:06

A Based on working with the City and the general contractor. 12:49:07 12:49:11

Q So until all of the buildings are built, there will be no certificate of occupancy for any one of them individually? 12:49:16 12:49:20 12:49:22

A We had applied for the project as a whole with the City, so I'm assuming that there's going to be one certificate of occupancy. Again, I'm just assuming. I can't really say that's the way it's going to go down. 12:49:24 12:49:28 12:49:31 12:49:33 12:49:34

Q Who would know that? 12:49:37

A Probably, yeah, between general contractor and the City we can find out. 12:49:39 12:49:46

Q And would that be James Seegert and Mike 12:49:52

Sawley? 12:49:53

A That is correct. 12:49:53

Q And is there one permit for the entire project that has to be pulled? 12:50:09 12:50:12

A I'm assuming. I don't know. That would be a good general contractor -- I can find out. 12:50:21 12:50:26

Q You don't know if there's more than one permit involved in terms of the entire construction project? 12:50:30 12:50:35 12:50:36

A I can't answer that question with confidence, no. But I know for a fact that we had to do a lot line adjustment, boundary line modification is what they call it, in order to be able to facilitate pulling permits or permit. So that's being done and recorded, and that's what I'm basing my answer on. I really couldn't tell you. 12:50:38 12:50:42 12:50:47 12:50:50 12:50:54 12:50:59 12:51:02

Q And before Mr. Seegert was involved, did you have another general contractor involved? 12:51:12 12:51:14

A I did not. 12:51:15

Q Who is James Stevens? 12:51:18

A What was the name again? 12:51:22

Q James Stevens. 12:51:25

A James Stevens? 12:51:26

He is -- he is our civil engineer. Jim Stevens? 12:51:32 12:51:35

Q That's correct. 12:51:35
A Yeah, he's our civil engineer. 12:51:38
Q Was he ever an architect for you? 12:51:40
A No. 12:51:40
Q Did he precede Mr. Seegert in terms of being a vendor to help you with this project? 12:51:51 12:51:54
A No. 12:51:55
Q Did you have Mr. Seegert employed before you employed Mr. Stevens? 12:52:02 12:52:05
A I think it was simultaneous, but I don't remember. 12:52:08 12:52:12
Q And what did Mr. Stevens do as a civil engineer? 12:52:23 12:52:24
A He actually did all of the grading, which way the water runs, where the curbs and gutters are going to go, and things of that sort. 12:52:28 12:52:33 12:52:35
Q Did he do a drainage study? 12:52:37
A Yes. 12:52:39
Q Did he do any landscaping studies? 12:52:43
A No. We have a different architect for that. 12:52:45 12:52:46
Q And who is that? 12:52:47
A His name is Brian Fir, I believe. F-I-R, I believe but -- is the spelling. 12:53:02 12:53:05
Q And do you have an architect that you 12:53:17

1	employed?	12:53:17
2	A Yes. It's Marlette & Associates out of	12:53:21
3	Clovis, California.	12:53:26
4	Q And would that involve Mr. Ron Marlette?	12:53:31
5	A No. It would be actually Fritz Newman and	12:53:35
6	Ron. Ron is overseeing the project, and Fritz is	12:53:39
7	the one that I actually dealt with on day-to-day.	12:53:43
8	Q And at the City, who did you deal with on a	12:53:50
9	day-to-day basis at the City?	12:53:52
10	A Well, it depends on when you're -- when	12:53:55
11	you're referencing timewise. Some of the folks that	12:53:58
12	I started working with are -- have moved on, and,	12:54:03
13	you know, due to COVID, some of them never came	12:54:06
14	back. So recently, mainly it's been Mr. Sawley,	12:54:11
15	Mike Sawley is the one that helped me with what we	12:54:17
16	needed to do with the City.	12:54:19
17	Q And is the City reopened now after COVID?	12:54:24
18	A Yes. The City is -- the building is	12:54:27
19	closed, but the -- Mr. Sawley and the development	12:54:33
20	team are back in the office. So that's why we've	12:54:37
21	been able to gain some momentum on our project,	12:54:40
22	since they have come back from the -- from COVID.	12:54:43
23	But again, the building itself is still closed. So	12:54:46
24	if we're going to drop something off, we have to	12:54:49
25	make an appointment, and then they come over and	12:54:51

open the door. 12:54:53

Q And when did -- when would you say the City 12:54:59
reopened? 12:54:59

A As soon as Governor Newsom after the first 12:55:05
of the year lifted the restrictions, COVID 12:55:07
restrictions, on all government agencies in the 12:55:10
State of California. 12:55:11

Q So the City didn't reopen until 2021? 12:55:15

A Correct. 12:55:16

Q Not even remotely? 12:55:23

A Remotely, yeah, we were able to send emails 12:55:28
or files, and they would get back with us, us being 12:55:34
myself and the contractor and the architect, maybe 12:55:39
two weeks later when they checked their mail. And 12:55:43
it was a very lengthy and painful process to try and 12:55:51
get a hold of anybody, because they weren't there. 12:55:55

Q Well, do you think this was generally 12:55:58
experienced the same way throughout California, or 12:56:03
do you think this was just particular to the City of 12:56:05
Chico? 12:56:07

MR. HUGHES: Objection. Calls for 12:56:08
speculation. Lack of foundation. 12:56:11

THE WITNESS: Yeah, I don't -- I know how 12:56:15
we experienced it, so I would have to assume that. 12:56:18
And I don't like to make assumptions, so I don't 12:56:20

know. But I know that was the case with us. 12:56:26

BY MS. GIBSON: 12:56:26

Q And when you were emailing remotely to the 12:56:30

City, you were mostly emailing Mr. Sawley? 12:56:35

A And actually, I was working with the 12:56:40

Assistant City Manager. Chris Constantin was my 12:56:43

main contact. He was very helpful in every way that 12:56:48

he could, but he left the City of Chico for a 12:56:52

different position in a town down in Southern 12:56:54

California. 12:56:57

Q How about Mr. Seegert, was he emailing 12:56:59

people at the City during -- from May 2020 to the 12:57:06

end of the year? 12:57:07

A Yes. 12:57:11

Q Do you recall needing to finalize the 12:57:29

Development Agreement for the purposes of getting 12:57:32

the permits issued by the City? 12:57:35

A Yes. 12:57:39

Q When do you first recall starting the 12:57:43

negotiations and/or drafting of the Development 12:57:48

Agreement? 12:57:49

A If my memory serves me correctly, it was 12:57:55

somewhere between September, October of 2018. It 12:58:00

was right after the City had annexed the property in 12:58:04

the -- into the City jurisdiction. Prior to that 12:58:09

was County jurisdiction. 12:58:13

Q And so this was a requirement by the City? 12:58:18

A It was, yeah. It was a requirement by the City because they knew that the plans had been developed based on County standards. And they didn't want to slow anything down. They wanted us to move forward without creating any kind of stumbling blocks, so they started working with us, with me, in order to be able to do the Development Agreement, to check some of the boxes that they need to have to issue the permit. 12:58:21 12:58:26 12:58:29 12:58:31 12:58:36 12:58:39 12:58:43 12:58:46 12:58:48

You know, something as simple as the length of a parking stall is different in the County than it is in the City. And the aisleway between the two parking stalls is different in the County than it is in the City. The height of the lights, you know, things of that nature, are different standards in the City than they are in the County. 12:58:50 12:58:53 12:58:57 12:59:00 12:59:04 12:59:07 12:59:13

Q And the Development Agreement, was it initially sent to you as some standard form that the City uses for development agreements? 12:59:19 12:59:23 12:59:25

A I don't recall. I think -- 12:59:29

Q You don't recall whether you drafted it first or they drafted it first? 12:59:30 12:59:33

A I don't recall. 12:59:36

Q Do you have your own form for a Development Agreement? 12:59:40 12:59:41

A I do not, no. So I would have to assume that it was initiated by the City, but realistically I don't remember. 12:59:44 12:59:48 12:59:50

Q Did you have a lawyer involved in the drafting of it? 12:59:54 12:59:56

A To review the drafts that were going back and forth, yes. 12:59:58 13:00:00

Q And what attorney was that? 13:00:02

A I have to give you that name. I don't recall off the top of my head because he was not really that involved. I just -- I would just have him review it and make sure that what it says in there is what we had agreed to. So I can provide you that information though. 13:00:06 13:00:09 13:00:14 13:00:19 13:00:22 13:00:24

Q Okay. And if he wasn't that involved, who was mostly involved with any changes you wanted to the agreement? 13:00:29 13:00:32 13:00:33

A It was between us and the City. 13:00:39

Q And us would be you and Mrs. Pajouh? 13:00:44

A No, just Courtesy. Diane wasn't involved in any of that. 13:00:47 13:00:48

Q So when you say us at Courtesy, is there anybody else that you're speaking of but yourself? 13:00:53 13:00:56

A No. It's between me and the City. 13:01:01

Q And what kind of changes do you recall that you wanted to make to the Development Agreement? 13:01:04 13:01:06

A The height of the light poles, the height of the manufacturer's pylons, the City standards for both of those were at 12 feet. And we're developing right on Highway 99, and having a 12-foot pylon doesn't really -- it's not that noticeable. So we had to ask for variance from the City. 13:01:12 13:01:18 13:01:25 13:01:28 13:01:32 13:01:37

Those are some of the examples. There are other detail design examples that played a role in that as well. 13:01:39 13:01:45 13:01:48

Q And when did you finally execute the Development Agreement? 13:01:58 13:02:01

A When the City came back from their shelter in place, when they opened up, it was shortly after that. I want to say in about like six weeks afterwards. I would have to say it was sometime in March. Then it had to go -- there was a sequence of events that needed to happen. They had to put a notice out in the newspapers if anybody wants to oppose it. And then after that time period, it went to the Planning Commission. So that took a while because they had to schedule it so many days in advance. And the Planning Commission would vote on 13:02:07 13:02:11 13:02:13 13:02:17 13:02:21 13:02:24 13:02:27 13:02:33 13:02:36 13:02:39 13:02:42

it. 13:02:43

Then it would go to the City Council. They 13:02:46
needed to publicize it again in the newspaper. And 13:02:51
given that like two weeks, again, I don't know the 13:02:53
exact details on the timelines. Then this had to go 13:02:58
to the City Council for the first meeting. And then 13:03:02
there's another subsequent meeting that they 13:03:05
actually adopt it which is two weeks after that. So 13:03:08
I want to say it got done sometime in March. 13:03:12
March 23rd stands up, but don't quote me on the 13:03:18
date. That's an estimate. 13:03:22

Q We're recording you. We're not only 13:03:26
quoting. We're recording you on the date here in 13:03:29
this deposition. 13:03:30

So other than light poles or the pylons - I 13:03:37
think you mean brand monument signs, right, when 13:03:40
you're talking about pylons? 13:03:41

A That's correct. Pylons, that's correct. 13:03:44
Sorry. 13:03:44

Q And issues about the standard parking 13:03:48
stalls and drive aisles, were there any other issues 13:03:55
that you needed to address in the Development 13:04:00
Agreement? 13:04:00

A Yes, there were more, but I don't recall 13:04:05
every single one of them. 13:04:07

Q Would it be anything having to do with trees? 13:04:10 13:04:11

A Yes. 13:04:15

Q Earlier you testified that you had a landscaping vendor involved, and I think you said his name was Ryan Fir. 13:04:18 13:04:23 13:04:27

A Brian. 13:04:29

Q Could that really have been Brian Firth? 13:04:32

A Yeah, Brian Fir. 13:04:34

Q Firth, F-I-R-T-H. 13:04:38

A That's -- yeah, that's him. I didn't say Ryan. I said Brian. 13:04:43 13:04:44

Q I got you. I heard Ryan. I'm sorry. 13:04:47

A Yeah. 13:04:47

Q My apologies. 13:04:49

And was there anything having to do with the gravel surfaces? 13:04:56 13:04:58

A I don't understand the question. 13:05:05

Q Would you have to have addressed anything in the Development Agreement regarding future preowned building pad to be gravel surface? 13:05:09 13:05:13 13:05:16

A That's what the City had recommended, for them to put that in there so there would be no misunderstanding down the road. And we wanted to make sure that there was no erosion of the soil 13:05:18 13:05:20 13:05:24 13:05:30

during the rainy season. So they had recommended 13:05:33
that, to put in there, so we agreed to it. 13:05:36
Q And when did the City make those 13:05:38
recommendations? 13:05:39
A During our negotiations. 13:05:44
Q Could that have been during COVID? 13:05:48
A We did not really get a whole bunch done 13:05:54
during COVID. We got -- the majority of our 13:05:58
negotiations or communications was prior to the 13:06:03
state shutting down. But I don't remember the date 13:06:06
of each element that went in there, that went in to 13:06:10
the Development Agreement. 13:06:11
Q That's fair enough. 13:06:14
Let me send something to Amy and let's mark 13:06:18
it. It might help you remember. 13:06:27
Amy, tell me whether you get that document. 13:06:33
MS. TOBOCO: No, hold on. Let me bring it 13:06:40
up. I just have to save it, so if you would like 13:06:43
to -- I think it came through. I can't see it yet. 13:06:48
BY MS. GIBSON: 13:06:48
Q Okay. And in 2018, from 2018, you estimate 13:07:01
it was September or October when you started 13:07:04
negotiation on the Development Agreement, was there 13:07:08
much negotiation that occurred in calendar year 2019 13:07:14
on the agreement? 13:07:15

A No. It was in September, October of '18 when we started developing the Development Agreement. The Camp Fire hit in November 8th of 2018. And there was no communication at all in regards to the Development Agreement because the town of Paradise burned down, as you're maybe aware. And there was an influx of over 20,000 people that were homeless. So they moved to Chico and other vicinities, but the majority of them to Chico. 13:07:18 13:07:23 13:07:27 13:07:32 13:07:35 13:07:40 13:07:46 13:07:51 13:07:54

So we couldn't get anybody to respond to anything due to the Camp Fire and overwhelming work that was on the City of Chico's plate. They had to deal with that. I want to estimate the time that we finally got them to get back with us was somewhere between June, July of 2019 is when we got back to addressing it. 13:07:56 13:08:02 13:08:07 13:08:10 13:08:14 13:08:23 13:08:26

Q Okay. If we could mark, please, I believe I'm at Exhibit 7. This is an email from Mr. Seegert to Mr. Pajouh dated July 8, 2020. 13:08:30 13:08:37 13:08:44

(Exhibit 7 was marked for identification and attached hereto.) 13:08:44 13:08:46

BY MS. GIBSON: 13:08:58

Q It is what appears to be notes from what has to be addressed in the -- from the Development Agreement listed A through F. 13:09:00 13:09:06 13:09:08

Could you just take a minute or so, Mr. Pajouh, in regard to this and read it. 13:09:11 13:09:20

A Okay. 13:09:36

Q Why did Mr. Seegert send you this list? 13:09:39

A He wanted to make sure that it gets incorporated in the Development Agreement because these were County standards and the City standards would not allow us to build the dealership unless we had these as part of our Development Agreement so -- 13:09:40 13:09:43 13:09:48 13:09:53 13:09:58

Q Do -- 13:09:59

A I'm sorry. 13:09:59

Q Nope. I apologize. I stepped on you. Please finish. 13:10:02 13:10:03

A No, I was pretty much done. It was just giving me what needed to be in the Development Agreement in order for us to be able to proceed with the plans that we had based on County standards so the City would accept these standards as compared to what they enforce. 13:10:05 13:10:09 13:10:12 13:10:16 13:10:21 13:10:23

Q When he says "as discussed this afternoon," do you recall having a discussion about these elements that needed to be or standards that needed to be incorporated in the Development Agreement? 13:10:27 13:10:31 13:10:34 13:10:37

A I've had many discussions with James Seegert. He's been very instrumental in pointing 13:10:40 13:10:45

out what could become an obstacle moving forward. 13:10:48
So we uncover them and make sure we include it in 13:10:53
the Development Agreement because once we're issued 13:10:55
a permit then we can move forward without having any 13:10:58
interruptions. 13:11:00
Q But do you remember what he's referring to 13:11:02
here "as discussed this afternoon"? Do you remember 13:11:06
that discussion? 13:11:07
A I don't remember this particular 13:11:10
discussion, but I know for a fact that we had many 13:11:12
discussions, that these items had been discussed. 13:11:15
Sometimes they were discussed individually, but he 13:11:18
had recapped it in this email and sent it to me so 13:11:23
we can make sure that the City includes it in the 13:11:27
Development Agreement or we include it in the 13:11:29
Development Agreement and the City -- we put it on 13:11:32
there so the City accepts them. 13:11:34
Q So when you received this list from 13:11:37
Mr. Seegert, what did you do with it? 13:11:40
A Made sure that it was included in our 13:11:44
Development Agreement. 13:11:44
Q And did you send any of this to the City? 13:11:48
A I'm sure I did because what you have here 13:11:52
is included in our Development Agreement. 13:11:54
Q And did you ever receive anything back from 13:11:59

1	the City when you requested these changes?	13:12:01
2	A I don't recall but I'm sure I did because	13:12:05
3	we -- the limited communication we did have with the	13:12:10
4	City, it was to address these.	13:12:12
5	Q And it took from July 2020 to March 23rd,	13:12:19
6	2021, to address these in the Development Agreement?	13:12:23
7	A No. March 23rd it was accepted. It took	13:12:30
8	them that long to review it, organize it, schedule	13:12:34
9	it for what they have to do in order for them to --	13:12:38
10	for the City Council to adopt it.	13:12:42
11	Q And so you're telling me that how much of	13:12:49
12	that time, please, again, was the City Council	13:12:53
13	adopting it? That was from January to March, right?	13:12:58
14	A I would -- yeah, I would assume so. As	13:13:01
15	soon as they opened up, we were -- we were having	13:13:04
16	meetings to make sure that it all got lined up and	13:13:07
17	got scheduled.	13:13:08
18	And as a matter of fact, the City manager	13:13:11
19	actually pulled up the first reading of the	13:13:15
20	Development Agreement by the City Council, and also	13:13:19
21	they moved up the date. They did an emergency	13:13:23
22	meeting for the Planning Commission so it doesn't	13:13:30
23	delay the project as much as it's been delayed.	13:13:33
24	So the Planning Commission meeting was an emergency	13:13:38
25	meeting that he called.	13:13:39

Q And so it took approximately over five months to get the City -- not talking about the going through the Planning Council or anything, to get the City to agree to present this -- these changes, these six changes? That took five months? 13:13:46 13:13:52 13:13:56 13:13:59 13:14:05

A Which five months are you referring to? 13:14:08

Q Over five months from July 8 to December 31st, 2020. 13:14:10 13:14:15

A Yeah, but I'm sure there was more than just these changes. Our communication was very limited during 2020 with the City because they weren't there. So we would submit, and we would wait for a response back from them. Sometimes it would take weeks. 13:14:17 13:14:22 13:14:25 13:14:30 13:14:33 13:14:34

Q And would you ever take weeks to respond back to their changes? 13:14:38 13:14:39

A No. 13:14:41

Q And what other changes did you propose besides these? 13:14:48 13:14:49

A I believe we provided a copy of the Development Agreement. I don't remember line by line. 13:14:55 13:14:57 13:14:58

Q And those changes were eventually accepted by the City? 13:15:03 13:15:04

A Modified changes. 13:15:10

Q Okay. And so there were other things that you're saying that you did propose to the City other than these six things? 13:15:13 13:15:16 13:15:17

A Yeah. It's on the Development Agreement. If I'm not mistaken, we did provide a copy of that. 13:15:22 13:15:27

Q Uh-huh. 13:15:28

And from basically November of 2018 when the Camp Fire happened to July of 2019, you were unable to negotiate anything in the Development Agreement with the City? 13:15:34 13:15:41 13:15:43 13:15:44

A There was -- it was very chaotic here. No, there was zero communication. Our file just went to the bottom of the pile. We couldn't get the City to respond to anything, and rightfully so. There were people that were camping out on the streets. 13:15:49 13:15:52 13:15:55 13:15:59 13:16:02

Q In between July 2019 until, let's take, March 2020, how much negotiations went on between you and the City on the Development Agreement? 13:16:08 13:16:13 13:16:16

A What do you mean by how much? 13:16:23

Q What were you asking for in that eight-month period? 13:16:28 13:16:31

A It was all construction-related. You know, just, you have an example here, that the contractor provided some more information for me to make sure that they were included in the Development Agreement 13:16:34 13:16:37 13:16:40 13:16:42

because the Development Agreement, the way I understand it, supersedes the County -- I mean the City codes. So if -- so these are the things that or items that the contractor provided, and I don't recall exactly line by line every single one of them. But the finished product is provided. 13:16:45 13:16:49 13:16:53 13:16:57 13:17:02 13:17:08

If I may say this, we needed to have the Development Agreement running alongside of the pulling permits, because whatever was not going to be provided due to City standards that needed to be provided, the Development Agreement overcame those objections from the City. This was really designed by the City in order for us to be able to complete the project. 13:17:11 13:17:16 13:17:19 13:17:24 13:17:28 13:17:33 13:17:35 13:17:39

Q And you don't recall what was being changed on the Development Agreement during the period once the City would then respond to you in July 2019 until COVID in March 2020? 13:17:47 13:17:52 13:17:55 13:17:59

A I don't recall, no. 13:18:02

MS. GIBSON: Amy, if we could pull up the site plan, and let's mark that as Exhibit 8. 13:18:17 13:18:25

MR. HUGHES: Lisa, before you start, I just wanted to get my objection on the record to the lack of the video notice pursuant to CCP 2025.330. Obviously, we're letting the deposition proceed, 13:18:48 13:18:51 13:18:58 13:19:01

right? I just had to get it on the record, I think 13:19:04
I did it on the one this morning, but not Jerry's. 13:19:08
MS. GIBSON: Okay. And then I'll indicate 13:19:09
that we have an email exchange where I said, "Do you 13:19:12
need notice?" And you said, "No." And I understand 13:19:15
that you didn't say or realize that I was asking for 13:19:21
any -- for all notices required under the CCP, but I 13:19:27
understood it to be as such so -- okay. 13:19:33
Here we go. I wouldn't know, is that -- 13:19:43
Amy, is that -- can you bring up that attachment, if 13:19:50
you click on it? 13:19:52
Thank you. Perfect. 13:19:55
BY MS. GIBSON: 13:19:57
Q Mr. Pajouh, do you recognize these drawings 13:20:06
of Courtesy Automotive Center? 13:20:13
A Yes. 13:20:14
MS. GIBSON: And, Amy, I don't know if you 13:20:21
can click on the X that's over there showing the -- 13:20:26
it's really going to click in more in the right-hand 13:20:29
corner of that rectangle. In the rectangle across 13:20:36
from bookmarks, there's a little X in that 13:20:41
right-hand corner. 13:20:42
There you go. Thank you. 13:20:45
BY MS. GIBSON: 13:20:45
Q And if we could page down a little bit, and 13:20:50

you can tell me who NorthStar is. 13:20:54

A NorthStar is our civil engineering firm. 13:20:57

Q Would that be the same one that James Stevens -- 13:21:02

A Correct. These are our civil plans. 13:21:06

MS. GIBSON: Okay. And if we -- if we look at -- maybe if we could just Zoom in on the site map part, Amy, please. 13:21:12

Okay. And, yeah, there we go. 13:21:49

BY MS. GIBSON: 13:21:49

Q We were talking earlier, Mr. Pajouh, about the order of the buildings. 13:21:58

Could you please explain to me, looking at this, and if you need something else, let me know, are you calling the first building the one on the right, the far right? 13:22:07

A No, I'm calling the first building the one on the far left because -- 13:22:21

Q It says -- 13:22:24

A I'm sorry. 13:22:25

Q -- preowned vehicle building? 13:22:27

A That's -- that's not -- no. That's Phase 2. That's where the gravel is going to go to cover the pad that -- they asked to do that to cover it up. So the first building is going to be the one 13:22:29 13:22:33 13:22:38 13:22:42

immediately to the right of it. That one. 13:22:45

Q Okay. And that one will be the 13:22:48

Subaru/Volvo building? 13:22:53

A That's correct. 13:22:54

Q And when you say -- could you tell me what 13:22:56

is happening on Phase 1? 13:22:58

A Phase 1 is everything that's shaded except 13:23:00

the actual building for the preowned vehicles. So 13:23:07

Phase 1 is the -- all of the dealership buildings, 13:23:11

the Service Center, and all of the improvements on 13:23:15

the lot. 13:23:20

Q And what is in Phase 2? 13:23:24

A Phase 2 would be building the preowned 13:23:28

building, which is about perhaps three to four years 13:23:31

down the road after we move in. 13:23:35

Q And is that also something right now that 13:23:39

is part of what will be a permit that is issued for 13:23:42

Phase 2? 13:23:43

A No. 13:23:45

Q You're only talking about tomorrow that a 13:23:48

permit will be issued for Phase 1? 13:23:50

A Correct. 13:23:54

Q Let me just ask what hopefully makes sense 13:24:06

to you. Why do you consider the Subaru/Volvo 13:24:11

building the first building and not the far right 13:24:16

1	building the first building?	13:24:19
2	A That's the way I've always imagined it	13:24:22
3	because southbound 99 is immediately to the east of	13:24:27
4	the property, and that's where it's most visible.	13:24:31
5	So I envision those buildings to go up first, so	13:24:38
6	that's why.	13:24:39
7	Q And right in front of the building is the	13:24:42
8	traffic going from left to right, or is it going	13:24:44
9	from right to left, the road on the side that the	13:24:49
10	buildings are on?	13:24:51
11	A Traffic is going from left to right	13:24:53
12	immediately in front of the -- in front of the	13:24:58
13	buildings on State Highway 99.	13:25:01
14	Q And the next building over from the	13:25:10
15	Subaru/Volvo building, what is that one going to be?	13:25:12
16	A That's going to be BMW and Mercedes-Benz in	13:25:16
17	that order, going from left to right.	13:25:19
18	Q And then can I assume by process of	13:25:23
19	elimination that the far right building will be the	13:25:27
20	Buick, Cadillac, and GMC, right?	13:25:31
21	A Yeah. It will be Cadillac on the left-hand	13:25:36
22	side of the building, and Buick/GMC on the	13:25:40
23	right-hand side.	13:25:40
24	Q And what side of the Subaru/Volvo building	13:25:45
25	is Subaru going to be on?	13:25:49

A Subaru is going to be on the left-hand side of the building, and then Volvo is on the right-hand side of the building. 13:25:51 13:25:54 13:25:55

Q Is this fair in its depiction that the building will be half and half dedicated to Volvo and Subaru? 13:25:58 13:26:02 13:26:05

A They're all that way, but they're completely separate customer touch points, you know, service, reception, customer lounge, everything is corporate I.D. The showroom, delivery areas are all dedicated to the respective brands. 13:26:07 13:26:10 13:26:12 13:26:16 13:26:19

Q Are all customer touch points in the Service Center for Subaru? 13:26:24 13:26:27

A Service reception is customer touch point, but the service itself is not. We have designed, based on Subaru's request, an express service building which is -- if you look at the Subaru service drive and you look at the Subaru building, it's that area that's white immediately to below the -- below the Subaru building crossing that driveway. 13:26:30 13:26:37 13:26:41 13:26:44 13:26:50 13:26:54 13:27:03

Do you see that white area? Right there. No. Down a little bit. Down, right there. 13:27:10 13:27:13

Q Oh, okay. So that's going to be the Subaru, you said, express service? 13:27:15 13:27:18

A Express service, correct. 13:27:21

Q And in terms again of who we see here on the overall site plan, you don't know if this has to be built with one permit or several permits? 13:27:30 13:27:38 13:27:41

A I don't know. That's because -- 13:27:48

Q And -- 13:27:49

A I'm sorry, the way I understand it, that's between the general contractor and the City, what the City's requirements are in order for him to proceed. I certainly can find out for you. 13:27:51 13:27:53 13:27:57 13:27:59

Q Thank you. 13:28:00

And do you see where it says Garner Lane? There, yeah. 13:28:06 13:28:10

What is on that side of the permitted site we're looking at here? 13:28:19 13:28:22

A What is on that side of the road? 13:28:24

Q Yes. 13:28:25

A Garner Lane? 13:28:25

It used to be a golf course that they just recently abandoned. It's a 20-acre parcel. They donated that, ten acres of it, to be the Humane Society, which they're in the process of developing. And the southern end of it which is immediately across the Garner Lane from us is going to maintain blank as far as I know for the time being. But I don't know what their plans are for that piece. 13:28:30 13:28:33 13:28:38 13:28:41 13:28:44 13:28:48 13:28:53 13:28:56

Q And how do the -- how do customers access the -- this dealership property? Is it from State Highway 99 or Garner Lane or both? 13:28:59 13:29:05 13:29:09

A No, no access from State 99. If you look at Garner Lane and move the whole site plan to the right a little bit, you can see how -- no, to the right, the other way. Yeah, there you go. You can see how Garner Lane goes into State Highway 99. There is actually a stoplight there. It's a four-way intersection. So the visibility is off of Highway 99, and the access is through Garner Lane. 13:29:13 13:29:17 13:29:23 13:29:26 13:29:29 13:29:32 13:29:36 13:29:40

Q Okay. And so if I were going to just try to walk through this, if I'm going from left to right on Garner Lane, the first what I think I see as a driveway is a driveway that appears to be connected to the Phase 2 preowned vehicle building? 13:29:47 13:29:52 13:29:57 13:30:02 13:30:06

A No. Actually it's a feeder for Subaru and Volvo, and then later when we build the preowned business, they will access it through there. And we've given the other dealerships a different access point, which is immediately to -- not immediately, but to the right of it, right before the Service Center. So they have their own access. 13:30:11 13:30:15 13:30:17 13:30:21 13:30:23 13:30:26 13:30:31

Q Okay. It's not -- it is not necessarily shown though. Oh, you said to the right of the 13:30:34 13:30:37

Service Center. 13:30:39

Amy, I'm sorry, could you just scoot it 13:30:43

over to the right a little bit? 13:30:45

A Not to the right of the Service Center, to 13:30:47

the right of the driveway you and I were talking 13:30:49

about. 13:30:50

Right there. Right. 13:30:52

Q Okay. Okay. 13:30:54

If we can page down, I think in here we do 13:31:00

have a better layout of the Subaru building itself, 13:31:05

but maybe not. 13:31:06

Maybe, Amy, if you can navigate from the -- 13:31:12

here we go. Thank you. 13:31:17

So you submitted this plan in 2019 to 13:31:37

Subaru for their approval? 13:31:39

A This is -- to answer your question is yes. 13:31:44

I'm not sure if this is the only thing we -- are you 13:31:49

still on the civil plans? 13:31:51

Q Yes, I am. 13:31:52

A Okay. The civil plans don't show the -- 13:31:55

they show no layouts. So they're just -- they plug 13:31:58

that in so they know where the buildings are and all 13:32:00

that. So the answer to your question is, yes, we 13:32:03

have submitted to Subaru the plans that we worked 13:32:07

with Subaru's architect Feltus -- 13:32:15

Q Hawkins? 13:32:16

A Hawkins, yes. Thank you. Feltus Hawkins, 13:32:19
we worked with them, and we received Subaru's 13:32:24
approval on the site plan and the floor plans of all 13:32:31
the buildings that pertains to Subaru. 13:32:35

Q And Volvo has their own architect, too, 13:32:38
right? 13:32:38

A Every single one of them got their own 13:32:41
architect, yes. 13:32:42

Q And are there also a set of Marlette plans 13:32:47
that would give the elevations and the design 13:32:54
drawings of the way that each and every building is 13:32:58
going to look like? 13:32:59

A Yes. 13:33:02

Q And in terms of the Volvo architect and 13:33:14
submission to Volvo, do you know when you got 13:33:18
Volvo's approval for those site plans? 13:33:24

A I don't remember when, no. 13:33:27

Q Do you think it was in 2019? 13:33:30

A I couldn't tell you. I think it was before 13:33:34
then. 13:33:36

Q Okay. And how about for BMW? 13:33:41

A It was before 2019. All of those, we 13:33:44
worked through all of them about the same time so -- 13:33:48
and they all pretty much got approved about the same 13:33:51

time. 13:33:53

Q So after all of the manufacturers had approved everything, the only thing that you can recall that has been a reason why you have not proceeded ahead with the project is because of issues in communications with the City? 13:33:57 13:34:01 13:34:06 13:34:08 13:34:13

A That is correct. Because the plans have been approved by all of the manufacturers for quite some time. 13:34:17 13:34:19 13:34:20

Now, having said that, I want to clarify one thing. Cadillac did not have a corporate I.D. guidelines, and what we had done is we had developed an envelope where it was going to go in, and we were able to -- they had given us the -- they had given us the okay to mix it with Buick and GMC so -- but they recently came up with their Cadillac guidelines, which within a week and a half we were able to modify and submit it to them for the modified floor plan of the Cadillac building and allowed us to do that. So I just want to be clear on that. 13:34:23 13:34:26 13:34:29 13:34:32 13:34:36 13:34:40 13:34:43 13:34:46 13:34:48 13:34:54 13:34:57 13:34:58

Q Okay. 13:35:01

Amy, if we can mark as Exhibit 8, please. Oh, 9. 13:35:05 13:35:09

MS. TOBOCO: I don't think we formally 13:35:10

marked what we had up as Exhibit 8. 13:35:14

MS. GIBSON: Okay. Thank you. So I would like to mark, what were they, the civil plans for the Courtesy Automotive Construction project as Exhibit 8. 13:35:16 13:35:22 13:35:28 13:35:31

MS. TOBOCO: I believe they were called -- 13:35:33

MS. GIBSON: Civil improvements. 13:35:36

MS. TOBOCO: Hold on. We'll get the name if you want so you can reference it. Yeah, civil improvements. Okay. 13:35:39 13:35:46 13:35:49

(Exhibit 8 was marked for identification and attached hereto.) 13:35:49 13:35:49

MS. GIBSON: And now I would like to mark as Exhibit 9 the to do list. 13:35:51 13:35:54

(Exhibit 9 was marked for identification and attached hereto.) 13:35:54 13:36:07

BY MS. GIBSON: 13:36:07

Q Mr. Pajouh, did you ever communicate to Subaru that the City was not communicating with you? 13:36:23 13:36:28

A They were aware of it. 13:36:31

Q How was that? 13:36:33

A I'm sorry, they were aware of it, that due to COVID they were shut down. 13:36:40 13:36:43

Q Did you give any communications to Subaru that they were shut down? 13:36:48 13:36:51

A Yes. 13:36:53

Q And who did you communicate that to? 13:36:55

A With Mr. Smit, Ray Smit. 13:37:01

Q And was it only COVID that you communicated to Mr. Smit about? 13:37:05 13:37:07

A I believe. And I'm going back. If my memory serves me correctly, we had communications in regards to the Camp Fire as well. And they were very sympathetic, and they even gave us five truck loads of Subaru chairs for us to hand out to people that were homeless due to the fire. 13:37:09 13:37:13 13:37:16 13:37:23 13:37:27 13:37:30

Q I didn't know that. That's nice. 13:37:31

A That was very nice. 13:37:34

Q Good. 13:37:35

A Very well received in the community. 13:37:38

Q And how many times do you recall letting Mr. Smit know that the City was not communicating with you about the plans and the permits? 13:37:42 13:37:48 13:37:54

A I don't recall how many times. Frequent enough. 13:37:58 13:37:58

Q Did you update them on a weekly basis? 13:38:00

A I don't believe so. I don't think it was weekly during the Camp Fire. 13:38:04 13:38:07

Q Do you think it was monthly? Not Camp Fire. I'm talking about COVID. 13:38:09 13:38:13

A During COVID? 13:38:15
Q Yeah. 13:38:16
A I did tell him at the beginning, and then 13:38:20
this all came about, and then I communicated through 13:38:23
counsel. 13:38:26
Q So when was the beginning that you told 13:38:30
him? 13:38:31
A March 23rd when we got shut down by the 13:38:38
Code enforcement. 13:38:38
Q And then you don't remember when you filed 13:38:42
this protest? 13:38:43
A I don't recall. 13:38:45
Q Okay. But you believe that you might have 13:38:50
told him in March and then never communicated 13:38:54
anything further because of litigation? 13:38:59
A I wouldn't say never. I would say to the 13:39:01
point that we filed the protest. 13:39:04
Q Okay. And you don't remember ever 13:39:08
providing weekly updates, right? 13:39:10
A For COVID, no. 13:39:14
MS. GIBSON: Okay. Amy, don't know if you 13:39:19
had a chance to find Exhibit 9, the to do list. 13:39:24
MS. TOBOCO: Yes, I have it up. I had it 13:39:27
up. Let me get it up here again. 13:39:30
MS. GIBSON: Sorry about that. 13:39:32

MS. TOBOCO: That's okay. It should be up now. 13:39:34 13:39:38

BY MS. GIBSON: 13:39:42

Q Okay. If you look at Number A, for me on July 10, 2020, do see there where it says, 13:39:50 13:39:56

"Jerry to provide last remaining details of DA to Constantin. Anticipated date ready to submit 7/17/2020"? 13:39:58 13:40:04 13:40:13

A What are you looking at again, I'm sorry? 13:40:17

Q It would be item A at the very top of this to do list. 13:40:20 13:40:22

A Yes. 13:40:24

Q It says, "Jerry to provide the remaining" -- "Jerry to provide the last remaining details of DA to Constantina," or, excuse me, "Constantin." 13:40:26 13:40:29 13:40:36 13:40:37

A Yes. 13:40:38

Q It says, "Anticipated date 7/17/2020." 13:40:43

A To provide him that information, the last remaining items. 13:40:45 13:40:46

Q And so there was -- there was nothing else after those items that you needed to provide to the City, right? 13:40:53 13:40:56 13:40:58

A Not to my recollection, no. 13:41:01

Q From that list as of July 10th that we 13:41:06

looked at? 13:41:06

A Correct. 13:41:07

Q And it's your testimony that the City did not accept them and run those last six things through until the City Council adopted it sometime in March of 2021, right? 13:41:10 13:41:16 13:41:19 13:41:23

A I would have to say as infrequent as we communicated with the City, due to them being shut down -- I would have to say the delay was on the City's part because they weren't there, so they weren't really responsive. 13:41:28 13:41:31 13:41:33 13:41:36 13:41:38

Q Okay. 13:41:40

A Am I answering your question okay? 13:41:42

Q I -- all can you do is tell the truth. 13:41:45

A Yeah, that's fine. 13:41:47

Q So definitely just tell the truth, and that will be the right way to answer. 13:41:50 13:41:56

MR. HUGHES: The witness is asking if he was responsive to your question. He's already been instructed to tell the truth, and I think he has been so far. 13:41:58 13:42:00 13:42:02 13:42:04

BY MS. GIBSON: 13:42:04

Q Anyway, I think that I did ask a different question, and that was that I believe your testimony was that it took the City from July of 2020 to 13:42:10 13:42:15 13:42:21

March 23, 2021, to accept those six items. 13:42:27

Is that correct? 13:42:28

A No. I believe the timeline is it took from July of 2020, and they accepted it after the City kind of like opened up and started accepting -- communicating again. And then the process took -- from the time that the City opened up after the governor lifted the restrictions, they went back to work, it took them after that time up until March of 2021 for them to -- for it to go through the process of going to -- one thing that I forgot to say was the Architectural Review Board. Thank you for putting that up. I forgot. That's another -- another hurdle that we had to overcome. And then it went to the Planning Commission. Then it went to the City Council for two meetings. 13:42:35 13:42:40 13:42:42 13:42:46 13:42:48 13:42:52 13:42:55 13:43:01 13:43:07 13:43:09 13:43:11 13:43:14 13:43:17 13:43:20

Q Okay. So when did -- when you refer to a couple of things, when are you saying the governor opened up? Is that in January of 2021? 13:43:26 13:43:30 13:43:36

A Correct. 13:43:36

Q Okay. And when you say the City opened up, and accepted these changes, when is that? 13:43:40 13:43:45

A After -- after the governor lifted the restrictions. 13:43:49 13:43:51

Q Okay. So if I understand it, you are 13:43:54

saying that it took from July 2020 to the end of 2020 for the City to -- I'm not talking about the process that followed it, but for the City to accept those six changes? 13:44:02 13:44:06 13:44:09 13:44:10

A For them to communicate, yeah. Again, that time period, the communication was very restricted between the City and myself to work through the details. 13:44:15 13:44:17 13:44:25 13:44:25

Q Okay. So was there back and forth between you and the City, or was it just you submitted the last bit of the details and the City never communicated to you again for over a five-month period? 13:44:29 13:44:31 13:44:36 13:44:41 13:44:42

A No, that's not the case. They did communicate, but it was very infrequent. Whenever they would check their emails from the remote location where they were at, then they would respond back, but it would take, I would say on the average, it took two to three, maybe sometimes four weeks before we'd get any kind of response back from them. 13:44:45 13:44:48 13:44:51 13:44:54 13:44:58 13:45:01 13:45:05

Q And did they like take item A, and they took three or four -- two to three weeks to address item A, and then they took item B, and then they took two to three weeks for that? Was it item by item? Is that why it was five -- over five months 13:45:11 13:45:14 13:45:19 13:45:22 13:45:28

that you knew the answer to those six things? 13:45:31

A Are you referencing the Development 13:45:34

Agreement items? 13:45:36

Q Yes. 13:45:36

A Yes. 13:45:37

Q Okay. 13:45:38

A I wouldn't say that they broke it down 13:45:40

per -- they wouldn't break it down when they're 13:45:43

communicating with me. They wouldn't break it down 13:45:45

and say, "We're only going to respond to item A, and 13:45:48

we are you're going to have to wait for item B and 13:45:51

item C." They would respond back, and then I would 13:45:54

gather the information they needed, and I -- either 13:45:57

myself or James Seegert would provide them with the 13:46:00

information that they needed in order to -- for them 13:46:04

to take it to the next level. 13:46:06

MS. GIBSON: Okay. If we could look at the 13:46:08

to do list, please, Amy. 13:46:13

BY MS. GIBSON: 13:46:15

Q The off-site improvements, that says there 13:46:21

TBD, and that includes the sewer, Cal-Water, PG&E, 13:46:34

electrical and gas, and also an off-site improvement 13:46:39

design. 13:46:41

Is that something that has been done now? 13:46:45

A Yes. 13:46:47

Q And C, the Architectural Review Board. And then it indicates that final information to Brian Firth so he can finalize the ARB package. And all of these dates are around, in terms of anticipated date and ready to submit, are 7/17/2020 again. 13:46:56 13:47:01 13:47:10 13:47:14 13:47:19

Has that been done? 13:47:24

A Yes. 13:47:25

Q Okay. Let's back up to the off-site improvements. When was that completed? 13:47:27 13:47:29

A The plans had been completed, and the water and sewer is under contract right now. And they have installed the pumping station. The sewer project and the water project, if you want to go back up and look at the -- the site plan, it's along Esplanade, and it goes all the way up to Garner Lane. So where Garner Lane meets Esplanade, there's a pumping station that has been installed. And now the next phase is they're going to install a generator in case of a power outage. So that part has been done. 13:47:33 13:47:38 13:47:43 13:47:45 13:47:51 13:47:54 13:48:01 13:48:05 13:48:09 13:48:13 13:48:14

The water construction has started about two weeks ago, and it's bringing water up to Mud Creek. And then from Mud Creek, it's going to hang from the bridge. And then it's going to come up Esplanade and go -- carry on on Garner Lane and 13:48:18 13:48:24 13:48:26 13:48:31 13:48:34

carry on all the way up to that intersection for future hookup. 13:48:38 13:48:40

Q How about the CalTrans study, has that been done yet? 13:48:43 13:48:44

A The what? 13:48:45

Q The CalTrans study, a traffic study, isn't that? 13:48:47 13:48:48

A That was done, yeah. 13:48:49

Q Okay. 13:48:52

A That's been done. 13:48:54

Q Okay. You were saying that you forgot to mention before the ARB review. Was that something that was done last -- at the end of 2020? 13:48:58 13:49:00 13:49:08

A No. That's something that happened at the -- after the City opened up and they resumed their meetings. So Architectural Review Board met. They had the plans. They met, and we got approval from them. 13:49:11 13:49:15 13:49:20 13:49:23 13:49:24

Q And when was that? 13:49:25

A I want to say it was in February, if my memory serves me correctly. 13:49:30 13:49:32

Q Of 2021? 13:49:34

A 2021, correct. 13:49:35

Q And if we look at the site plans on NorthStar/Marlette. Thank you. 13:49:40 13:49:55

In terms of the site plans, were we looking at the finals as Exhibit 8, or were we looking at the preliminary, if you know? 13:50:02 13:50:08 13:50:12

A Can you repeat the question again, please? 13:50:18

Q At Exhibit 8, we were looking at some site plans by NorthStar. Civil plans. Civil plans. 13:50:20 13:50:26

A Yes. 13:50:26

Q Were they -- were we looking at the preliminary or the final? Do you know? 13:50:29 13:50:31

A The -- what you had on the screen, it says preliminary on the lower hand corner -- lower left corner. 13:50:35 13:50:38 13:50:41

Q And so the final, have the final drawings been done? 13:50:46 13:50:46

A Has been done and submitted to the City. 13:50:50

Q Okay. And in terms of the submitting the drain calculation, that's been done, too? 13:50:58 13:51:01

A It's been done and submitted to the City, yes. 13:51:04 13:51:05

Q Okay. And, yeah, if we can go down. The landscape, it says here projected date of August 7th, 2020. 13:51:23 13:51:26 13:51:29

Was that done on August 7th, 2020? 13:51:32

A Yes. It was done August 7th, and that was part of the package that we submitted to ARB, 13:51:35 13:51:38

Architectural Review Board, and that's what they voted on sometime around -- that was part of what they voted on sometime around February of this year. 13:51:42 13:51:45 13:51:49

Q Okay. And let's look at the dealership plans, the BMW/Mercedes-Benz building in terms of the plans for the BMW building, BMW/Mercedes building, there had to be a resubmittal that was still done at this time? 13:51:56 13:52:02 13:52:18 13:52:20 13:52:23

A What this is referencing is the permitting process is you submit your permits to the City, to the jurisdiction, and then they review it, and they've got questions. So they come back with questions. And the contractor and Marlette Associates, which is the architect, respond back to those questions before they submit the final permit. So some of these are architectural. Majority of them were structural questions that they had. 13:52:28 13:52:33 13:52:35 13:52:38 13:52:44 13:52:47 13:52:52 13:52:55 13:52:58

So it's not that we're resubmitting the same plans. It's clarifications that they require in order for them to be able to issue the final permit, which we're hopeful to get it tomorrow. So I believe that that's a normal process. 13:53:01 13:53:04 13:53:08 13:53:12 13:53:16

I believe they went back and forth like a few times. I don't exactly know how much. James Seegert would be the one that could answer that 13:53:18 13:53:21 13:53:24

question for us. But James worked with Fritz Newman, which is our architect, to clarify -- to provide clarification to the City folks. 13:53:28 13:53:31 13:53:34

MS. GIBSON: And, Amy, if we could just page up a little bit, please. 13:53:37 13:53:41

BY MS. GIBSON: 13:53:41

Q Under Subaru, does it say, "could be submitted as is. Approved"? 13:53:53 13:53:55

A Under Subaru? Where are you? 13:54:11

It says "ready to resubmit." Is that what you're -- 13:54:20 13:54:21

Q No. I'm looking at -- under Notes. It says, "could be submitted as is. Approved." 13:54:25 13:54:28

I'm sorry, let me break that up. I can see what I'm misreading for you. 13:54:32 13:54:33

If you look under Subaru, there's one line that says, "City of Chico submittal." Then it says, "Note: Could be submitted as is." And then there's an "Anticipated date: Ready to submit." 13:54:36 13:54:40 13:54:43 13:54:46

And then the next line under "Subaru," it says, "Subaru Submittal. Note: Approved. Anticipated Ready to Submit to City of Chico/deadline: Done." 13:54:47 13:54:53 13:54:56 13:55:00

Okay. Does that help? 13:55:04

A Yeah, I get it. 13:55:06

Q So at this point in July of 2020, there was really nothing more to do on the Subaru in terms of the City except for it could be submitted as it already was, as is done? 13:55:09 13:55:14 13:55:19 13:55:23

A I would have to -- again, this wasn't prepared by me. I would have to say that that is what it says, but having said that, I remember they weren't in the office. The City of Chico was not in the office at the time. 13:55:25 13:55:28 13:55:31 13:55:34 13:55:36

Q And for Volvo, it said the same thing? 13:55:41

A Yes. 13:55:42

Q And if we go down to the Cadillac/Buick-GMC, right next to where it says "Cadillac submittal," it says, "Still pending approval from Gensler." 13:55:44 13:55:51 13:55:54 13:55:55

Who is Gensler? 13:55:58

A Gensler is the architectural firm for General Motors. 13:56:01 13:56:02

Q And so they're like the equivalent of Feltus Hawkins for Subaru, right? 13:56:04 13:56:07

A Correct. 13:56:08

Q So you still didn't have -- in July of 2020, you did not have approval yet from Cadillac, right? 13:56:10 13:56:14 13:56:15

A We had approval to merge Cadillac with 13:56:18

Buick-GMC, until they came up with their design intent drawings or corporate I.D. guidelines. So we had the approval to build. We didn't have what the new ones -- at that time what the new guidelines were going to be. So we did have the approval to merge the two until such time that, if they came up with the -- with corporate I.D. guidelines for us to integrate or not. And that's why I clarified earlier for you. 13:56:22 13:56:30 13:56:32 13:56:34 13:56:36 13:56:41 13:56:47 13:56:51 13:56:53

Q Yeah. And so you did have the Buick-GMC already approved through GM, but you did not have anything final from GM as of July 2020, right? 13:56:57 13:57:03 13:57:08

A We had final approval for us to merge Cadillac with Buick-GMC if need be for us to meet our timelines. 13:57:13 13:57:17 13:57:18

Q Did you have Gensler sign off on any plans, any design plans at this time in July 2020? 13:57:23 13:57:27

A We got signed off from Buick-GMC. 13:57:32

Q Do you have it from Cadillac? 13:57:34

A Cadillac had allowed us to merge it with Buick-GMC until sufficient time that they would come up with the corporate I.D. guidelines. 13:57:38 13:57:41 13:57:43

Q So you didn't have final approval from Cadillac? 13:57:45 13:57:47

A The approval that they gave us allowed us 13:57:49

to merge it with Buick-GMC. 13:57:52

Q So did you -- what were you going to -- 13:57:55

what were you going to build for Cadillac at that 13:57:58

point? 13:57:59

A The same guidelines we had with Buick-GMC. 13:58:02

Q It's going to say Buick on it and a Buick 13:58:09

image? 13:58:09

A Right now the way we're set up here, Buick, 13:58:12

GMC, and Cadillac are in one building. And we sell 13:58:18

all three brands. And they were okay with it in the 13:58:20

new facilities because they knew that they didn't 13:58:23

even have any guidelines. So they were okay with 13:58:25

the -- they had approved us to be able to continue 13:58:29

doing business until they came up with it and were 13:58:34

going to -- 13:58:34

Q Until you got approval from Gensler, would 13:58:38

you have been able to start construction on the 13:58:39

Cadillac building? 13:58:40

A Yes. 13:58:42

Q And then how would you have done so without 13:58:49

approval from Gensler? 13:58:51

A How -- approval from Gensler is approval 13:58:56

from the manufacturer. So the manufacturer allowed 13:58:59

us to merge the two, Buick-GMC and Cadillac, 13:59:04

together and continue doing business until they came 13:59:08

up with it. 13:59:10

Q It says here, "Approval from Gensler," does it not? 13:59:14 13:59:15

A Approval from Gensler is for -- for the Cadillac new guidelines because we didn't have to have Gensler's approval until he came out with the guidelines. 13:59:21 13:59:26 13:59:29 13:59:30

Q And how were you going to construct the building if you didn't have guidelines? 13:59:33 13:59:35

MR. HUGHES: Oh, my God. Asked and answered. 13:59:36 13:59:36

MS. GIBSON: It's never been answered. 13:59:38

MR. HUGHES: It has been answered. He has been approved. You asked if he could bring construction, and the factory said, yes, you can. The Gensler approval would come later from Cadillac. 13:59:39 13:59:42 13:59:46 13:59:49

MS. GIBSON: No. No. He did not say that. He did not say that. And stop coaching the witness. 13:59:50 13:59:52

MR. HUGHES: That's exactly what he said. 13:59:54

Do you want to read it back, Madam Reporter? 13:59:55 13:59:56

MS. GIBSON: What he said is, "I have approval to combine the two dealerships." He did not say he had approval to construct anything. 13:59:57 14:00:00 14:00:03

Every time I've asked him, "Can you build the 14:00:05

building," he says, "I have approval to combine them." 14:00:09 14:00:10

MR. HUGHES: Okay. Then it gets back to your mixed up question. You asked him specifically if was approved to begin construction by GM. He said yes. 14:00:12 14:00:14 14:00:17 14:00:17

Now you're mixing up overall City approval for construction. So do you want to try and ask your question differently? 14:00:18 14:00:20 14:00:21

MS. GIBSON: He has never given me a yes. You have said yes, but he has never. 14:00:23 14:00:25

MR. HUGHES: Okay. Lisa, I'm sorry, can you just ask a more clear, concise question and listen for the answer. 14:00:27 14:00:30 14:00:31

MS. GIBSON: I think I've asked the same question over and over again, and I haven't had a clear and concise answer. 14:00:33 14:00:36 14:00:38

MR. HUGHES: Try it one more time. I think it's been answered, but try one more time. 14:00:39 14:00:42

BY MS. GIBSON: 14:00:42

Q Okay. How are you going to start construction on the building without the guidelines to know how to build a Cadillac building? 14:00:45 14:00:48 14:00:52

A The guidelines were provided by GM to allow us to sell Cadillac, the same guidelines as 14:00:57 14:01:01

Buick-GMC until -- 14:01:05

Q And what were the guidelines that you said 14:01:06

you did not have yet then, when you say you have the 14:01:10

same guidelines for GMC and Buick? 14:01:13

A Repeat the question one more time, please. 14:01:16

Q You testified that you did not yet have the 14:01:21

guidelines from GM in terms of Cadillac. If you did 14:01:27

not have guidelines, what kind of guidelines did you 14:01:32

not have from Cadillac at this time as reflected on 14:01:34

the to do list? 14:01:36

A To receive the corporate I.D. for Cadillac 14:01:39

if we choose to build it with those guidelines. In 14:01:43

the meantime, we had approval from General Motors 14:01:47

for us to be able to sell Cadillac out of the 14:01:51

Buick-GMC store like we're doing it here right now. 14:01:55

MS. GIBSON: Okay. Amy, if we could return 14:02:00

to Exhibit 9, please. 14:02:04

BY MS. GIBSON: 14:02:04

Q And in terms of the Service Center, at this 14:02:23

time in July, was everything all finalized for being 14:02:33

able to build the Service Center? 14:02:35

A Yes. 14:02:39

Q It says that you were waiting for the final 14:02:43

plan and layout from, I hope, El & Design Approval. 14:02:50

What was that? 14:02:55

A That's between the contractors. El is the gentleman that did the layout. His firm is the one that did the layout for the service building. So there may have been some items that were missing that James Seegert had asked El to provide. 14:03:00 14:03:03 14:03:08 14:03:11 14:03:17

Q Okay. And I should have asked. On this list, what does -- when you see JS, who is that? 14:03:21 14:03:25

A That's James Seegert. 14:03:27

Q And when you see NRG, who is that? 14:03:31

A Oh, I think it's the firm -- I think it's a firm -- the Title 24 is energy consumption related, so I believe that's -- that's the CS Electric. NRG must be the company that did the calculations to qualify for Title 24 to be able to make sure that we pass all the criterias. 14:03:45 14:03:48 14:03:58 14:04:00 14:04:04 14:04:09

Q And El, I think you already explained this is the electrical contractor? 14:04:12 14:04:15

A El is the gentleman that was in charge of the floor plan and the design of the shop building. 14:04:18 14:04:22

Q And JH, who is that? 14:04:28

A I don't know. 14:04:35

Q JP, I presume is yourself? 14:04:38

A That's correct. 14:04:39

Q MBC? 14:04:44

A Which one? MBC? 14:04:47

Q That's correct. 14:04:49
A I don't know. 14:04:51
Q DD? 14:04:58
A Dan Doby. He's our structural engineer. 14:05:02
Q And JHVAC? 14:05:10
A Jesse. Mechanical for all of the HVAC. 14:05:17
Jesse -- 14:05:18
Q CES? 14:05:22
A CES is our electrical contractor. 14:05:25
Q Okay. And I think that's J -- 14:05:30
A I. 14:05:30
Q I, yeah. 14:05:32
A That's Joe Imes, plumbing. 14:05:35
Q I think you already told us who JS was. 14:05:40
Who is VP? 14:05:43
A I don't know. 14:05:47
Q "Finalize input with VP on PEMB." 14:05:55
Okay. I think that's -- here we've got a 14:06:02
little bit more in here, if we can page down just to 14:06:05
make sure that we've covered it. 14:06:11
Okay. Is the wash and detail building, is 14:06:25
that part of Phase 1 or Phase 2? 14:06:27
A Phase 1. 14:06:27
Q So everything on this to do list is part of 14:06:31
Phase 1, right? 14:06:33

A Correct. 14:06:34

Q And so far as we page down here, and we can go back up, in terms of the anticipated date of being ready to submit anything, is there anything on here that is later than September of 2020? 14:06:46 14:06:53 14:06:56 14:07:01

A Will you reask me that question? 14:07:08

Q Let's look at the dates. Let's look at the last page first. What's the latest date under Anticipated Date Ready to Submit column? 14:07:10 14:07:14 14:07:17

A On this page, it's September 25th. Is that what you're asking me? 14:07:23 14:07:25

Q Yes, that's correct. Thank you. 14:07:27

A Yeah. 14:07:27

Q If we can go up, same question on this page. 14:07:30 14:07:33

A I see September 25th. 14:07:34

Q Okay. And if we go to the next page. 14:07:49

A I see July 24th. 14:07:55

Q I think August 7th actually is the latest one on there. 14:07:58 14:08:00

If we could, Amy, just one more time look at BMW. There we go. 14:08:04 14:08:07

On July 2020, did you have approval from BMW, or were you still seeking a variance from them for raising the exterior canopy? 14:08:14 14:08:20 14:08:23

A Oh, we just asked for that because we wanted -- aesthetically, Mercedes has got a canopy as well. So we asked if we could just raise it to kind of like match the other one, and they turned us down. 14:08:27 14:08:32 14:08:35 14:08:39 14:08:39

They actually said, "Okay. If you want to take the glazing all the way up there," but you can't take the glazing up there because part of the building is the facade, and you have mechanical units that are on top of the roof. So the roof line was -- would not allow us to take the glazing up. So that was a fast question and it got answered and -- but the plans were approved. We just asked for a variance, and they said "no," and we said "okay." 14:08:42 14:08:44 14:08:46 14:08:49 14:08:52 14:08:56 14:08:59 14:09:03 14:09:06

Q And Mercedes, you had conditional approval there? 14:09:09 14:09:11

A Yeah, these are responses to the City's request, I think. I don't think that's from Mercedes. 14:09:32 14:09:34 14:09:35

Q Okay. So that if we look at the full thing here, "City of Chico Submittal," it's, 14:09:37 14:09:41

"Fritz provided first plan check response. Conditionally approved. Drawings to be updated based on 7/9 email from Fritz." 14:09:44 14:09:47 14:09:50 14:09:51

That's all under the City approval. 14:09:55

A I'm assuming that, yes. 14:09:59

Q And there's nothing to indicate that 14:10:01

Mercedes has any approval whatsoever on their line? 14:10:10

A You cut out the last end of your question. 14:10:13

Would you mind repeating that, please? 14:10:15

Q Okay. If you look under the first column, 14:10:20

we've got, "BMW: City of Chico submittal," and then 14:10:33

you've got "MBZ submittal." There's nothing that is 14:10:38

in the second column to correspond to "MBZ 14:10:43

submittal" on that page. 14:10:45

A Okay. 14:10:45

Q Is that true? 14:10:47

A I don't know because that's communication 14:10:49

between James Seegert and Marlette Associates, so I 14:10:53

don't know what this is referencing quite honestly. 14:10:55

I don't know. 14:10:56

Q So you've never seen this document before? 14:11:00

A I've seen the document, and I did what I 14:11:03

needed to do on my end, but this was a -- this was a 14:11:07

document that was generated by James Seegert of 14:11:11

Modern Building. He sent this out to everybody that 14:11:14

was on the project. That's why I don't recognize 14:11:17

some of the names. 14:11:18

Q And where would he get information about 14:11:21

1	the Mercedes submittals if he needed to get that	14:11:26
2	information?	14:11:27
3	A From Marlette Associates.	14:11:28
4	Q Okay. And so you're not sure if it was	14:11:33
5	ever approved or not?	14:11:36
6	A The plans were approved by Mercedes-Benz.	14:11:38
7	I think this is City of Chico submittal, so they may	14:11:44
8	have had some questions that needed clarification	14:11:46
9	that he's reached out or he's supposed to reach out	14:11:50
10	to Marlette Associates to get the responses back.	14:11:52
11	But I don't want to speculate. That's the way I	14:11:55
12	read it.	14:11:56
13	Q What is the plan check process that -- or	14:12:01
14	response that's being referred to under the "City of	14:12:06
15	Chico Submittal"?	14:12:07
16	A Plan check is when you submit for -- to	14:12:10
17	pull permits. So they do a plan check, and then	14:12:14
18	they come back with questions. And then they go	14:12:17
19	back and get answers to those questions. And that's	14:12:21
20	what a plan check is. It's a City -- I've seen a	14:12:25
21	copy of it. It's got -- and I don't understand any	14:12:28
22	of it quite honestly. It has to do with the	14:12:32
23	architectural. Majority of it is structural	14:12:35
24	questions and then the codes and things of that	14:12:38
25	sort.	14:12:39

So it's line item by line item by line item. Some of them pass, and some of them they require additional information or clarification. That's what plan check is. It's part of permitting process. 14:12:42 14:12:46 14:12:48 14:12:52 14:12:53

Q And who would the plan check response come from? 14:13:00 14:13:00

A It would come from the general contractor is the one that submits for permitting. And he or she is responsible for getting the information on the plan check to get back to the City for their approval. 14:13:04 14:13:09 14:13:14 14:13:16 14:13:17

Q So can -- do you understand from this chart that something was received from the City from the first plan check submittal? 14:13:21 14:13:24 14:13:27

A I'm sure it was because that's why he wants to clarify some of them, but again they were not timely responses. So even though there was communication, but it took forever to get them to respond, until January when they opened up. 14:13:32 14:13:35 14:13:37 14:13:41 14:13:45

Q Have you talked to Mr. Seegert before your deposition today? 14:13:59 14:14:00

A I talk to him on a daily basis, but I did not speak with him today, no. 14:14:06 14:14:08

Q Have you talked to him about his being 14:14:13

1	noticed for his deposition?	14:14:15
2	A He said that he had received one, yes.	14:14:19
3	Q And are you going to ask Mr. Seegert to	14:14:25
4	respond to the notice?	14:14:28
5	A Yes.	14:14:31
6	Q And did Mr. Seegert indicate to you that he	14:14:37
7	was willing to be deposed in this matter?	14:14:41
8	A Yeah, he didn't mind it.	14:14:46
9	Q And have you talked to Mr. Sawley about his	14:14:55
10	notice for deposition in this matter?	14:14:58
11	A I did not have a conversation with him, no.	14:15:04
12	Q Okay. And have you talked to Mr. Stevens	14:15:10
13	about his being noticed for his deposition?	14:15:12
14	A I have not.	14:15:14
15	Q Have you talked to Mr. Newman about his	14:15:17
16	notice?	14:15:18
17	A I have not.	14:15:20
18	Q Have you talked to Mr. Firth about his	14:15:26
19	notice?	14:15:26
20	A Fritz Newman, they're both the same person.	14:15:31
21	Fritz is his first name, and Newman is his last	14:15:35
22	name.	14:15:35
23	Q I'm sorry, it must not have come across	14:15:39
24	clear. Brian Firth, had you talked to Mr. Brian	14:15:43
25	Firth about his deposition notice?	14:15:44

A No, I have not. 14:15:46
Q Have you talked to Mr. Dyrr? 14:15:49
A Who? 14:15:55
Q Let's see, I see his name on here 14:15:57
somewhere. It's spelled D-Y-R-R, I believe. 14:16:03
Mr. -- maybe I'm saying it wrong. Mr. Dyrr. 14:16:08
A I don't know who that is. 14:16:09
MS. GIBSON: Amy, can you just page down a 14:16:12
little bit, please. I know his name is on here. 14:16:17
Maybe we have to go up or down. 14:16:19
Do you see it? It's down, I think. 14:16:24
MS. TOBOCO: I think it might be Erik. 14:16:27
MS. GIBSON: Yeah. That's it, Erik Dyrr. 14:16:29
MS. TOBOCO: Is it on the bottom? 14:16:34
MS. GIBSON: Yeah. 14:16:35
MS. TOBOCO: There it is. 14:16:38
MS. GIBSON: There it is. 14:16:39
BY MS. GIBSON: 14:16:39
Q Yeah, regarding commission planning and 14:16:40
association costs, Erik Dyrr. 14:16:46
A I don't know him. 14:16:47
Q Okay. And who, other than counsel, who I 14:16:54
don't want to know what he said, have you discussed 14:16:56
any of your deposition or testimony today with? 14:17:08
A Besides Diane, nobody. 14:17:11

Q And would you help us schedule these depositions of Mr. Newman, Mr. Seegert, and Mr. Stevens by also requesting that they depose -- that they attend their depositions? 14:17:28 14:17:34 14:17:40 14:17:41

A To the extent that I can, I'll help in any way I can. I can't make them, but I will be happy to help. 14:17:45 14:17:49 14:17:49

Can I make a comment real quick? I'm just looking at Erik Dyrr that you're talking about, commissioning plan. 14:17:51 14:17:54 14:17:56

Q Yeah. 14:17:57

A Commissioning is a process that takes effect once the construction starts. And they're the ones that sign off on certain levels of project completion to make sure that it's built as planned. And they provide the report to the City and also the bank, I'm assuming. But the commissioning plan, I've never met Mr. Dyrr, and I hadn't heard his name. So that's something that the general contractor has put together, and it's on his to do list, I'm assuming, so that's why I don't recognize the name. 14:18:00 14:18:03 14:18:09 14:18:13 14:18:18 14:18:20 14:18:25 14:18:28 14:18:31 14:18:35 14:18:36

Q Okay. And do you now have the Cadillac image guidelines that you didn't have at this time? 14:18:40 14:18:46

A Yes, we do. 14:18:47

Q Okay. And of these manufacturers I think we've gone through -- or franchisors, I think we've gone through one that we know that there is monetary assistance that is beneficial for building these buildings. 14:18:52 14:18:57 14:19:02 14:19:07 14:19:07

Are you going to get any monetary assistance from Subaru for building these buildings? 14:19:10 14:19:14

A There is a program that we need to qualify at once we commence construction. 14:19:19 14:19:24

Q Have you made submission for that? 14:19:28

A We did a preliminary submission, but this was a while back, and that's about as far as it got. 14:19:33 14:19:39

Q And as far as any of the other franchisors, are there any other franchisors that you are going to get financial assistance from? 14:19:43 14:19:50 14:19:53

A Besides the one that Diane talked about earlier with General Motors, BMW is a per vehicle. It's a percentage of what we sell. So we're currently receiving that. 14:19:57 14:20:02 14:20:06 14:20:09

Mercedes-Benz also has a percentage of invoice that we're not receiving until we move into the new dealership. 14:20:13 14:20:16 14:20:18

Volvo we're not -- I don't believe we're receiving anything for the facility since we don't have one. 14:20:21 14:20:24 14:20:27

Q Okay. You have -- with BMW you have a series of milestones that they expect for you to make to receive these -- this percentage of funds that you're receiving. 14:20:41 14:20:46 14:20:51 14:20:53

Is that correct? 14:20:53

A Repeat the question again, please. 14:20:58

Q Okay. Let me just make sure that I understood exactly what you said about BMW. You said BMW you're receiving a percentage of what you expend in the construction costs. 14:21:02 14:21:04 14:21:10 14:21:11

Is that correct? 14:21:12

A No. That's -- 14:21:13

Q And you're receiving that right now. 14:21:15

No? 14:21:17

A No, I'm sorry, that's not correct. We receive a percentage of invoice when we sell a car for facility reimbursement. 14:21:19 14:21:24 14:21:26

Q Okay. And that percentage of invoice that you're receiving right now, is that tied to making any milestones for your construction plans? 14:21:31 14:21:35 14:21:38

A No. Let me rephrase that. We do have milestones that has been set by BMW, but they automatically renewed it by six months when -- at first when pandemic hit. They -- it wasn't just for us. They did it throughout the whole dealer 14:21:44 14:21:49 14:21:54 14:21:57 14:22:02

network, whoever was under construction. And after six months, they're looking at each individual dealers to see about how far they really are because they experienced -- some of the dealers have experienced the same thing as we have nationally. 14:22:04 14:22:08 14:22:11 14:22:13 14:22:18

Q And they only extended it for the pandemic, those milestones? 14:22:25 14:22:25

A They extended it for the pandemic; that's correct. 14:22:28 14:22:28

Q Did they ever extend it prior to the pandemic? 14:22:30 14:22:31

A Yes. 14:22:34

Q Twice before? 14:22:35

A I don't know how many times, but I know definitely when the Camp Fire hit, they extended ours. Obviously, it had nothing to do with the rest of the dealer network, but they extended ours. 14:22:40 14:22:43 14:22:46 14:22:49

Q And when does BMW expect you to complete the building? 14:22:53 14:22:54

A Our timeline is -- I don't have the timelines in front of me, so I don't want to speculate, but we're hoping to be in our new facility by December of 2022. 14:22:58 14:23:00 14:23:04 14:23:09

Q For BMW? 14:23:11

A For all of our brands. 14:23:13

Q And that's based on if you get the permits tomorrow? 14:23:22

A Correct. 14:23:27

MR. HUGHES: Lisa, let me know when you get to a good breaking spot. I think we've been going almost two hours. 14:23:34

MS. GIBSON: Okay. I think this would be a good one. Come back in maybe 15 minutes. 14:23:41

MR. HUGHES: 15 or 10, I don't know. Whatever is good for everybody. 14:23:46

How are you, Madam Reporter? 14:23:50

THE VIDEOGRAPHER: Off the record at 2:23 p.m. 14:23:51

(A recess was taken.) 14:23:55

THE VIDEOGRAPHER: Back on the record. Back on the record beginning Media Unit 7 at 2:50 p.m. 14:23:57

BY MS. GIBSON: 14:24:02

Q Mr. Pajouh, you know you're still under oath, right? 14:43:31

A Yes. 14:50:38

MS. GIBSON: Okay. Amy, could you pull up whatever exhibit the Stipulated Decision is? 14:50:51

MS. TOBOCO: Yes. Let me grab it. 14:50:53

MS. GIBSON: Please. 14:50:53

MS. TOBOCO: For the record, it was Exhibit 3 to the prior deposition. 14:51:22 14:51:32

(Exhibit 3 was previously marked for identification and attached hereto.) 14:51:32 14:51:34

MS. GIBSON: See, I thought that was the GM franchisor one. 14:51:42 14:51:42

MR. HUGHES: Exhibit 3 was the stip'd decision. 14:51:44 14:51:45

MS. GIBSON: There we go. I mismarked it. 14:51:47

MS. TOBOCO: Yeah. Exhibit 4 was the one that you were thinking of that was redacted. 14:51:49 14:51:52

MS. GIBSON: Okay. Let's go to Exhibit 3, please. 14:51:56 14:51:58

Amy, if we could just start there. 14:52:18

BY MS. GIBSON: 14:52:18

Q I know, Mr. Pajouh, you were here for your wife's deposition, and we identified this document as the Stipulated Decision. 14:52:21 14:52:23 14:52:27

And also Exhibit 1 is the Settlement Agreement that was entered into between Courtesy Automotive Group and Subaru of America on March 20th, 2019. 14:52:31 14:52:33 14:52:41 14:52:42

Do you remember that? 14:52:45

A I do. 14:52:46

Q Okay. And I believe you also testified 14:52:52

that the Camp Fire occurred in November of 2018. 14:52:56

Do you remember that? 14:52:59

A I do. 14:53:00

Q Okay. And if we page down to the beginning 14:53:12
of the Settlement Agreement, please, area. 14:53:24

Okay. You're right. Let's stop here. 14:53:27

That's your signature there at the bottom 14:53:28
of the Stipulated Decision portion. 14:53:31

Is that correct? 14:53:31

A Yes. 14:53:33

MS. GIBSON: Okay. And if we go a little 14:53:36
further, Amy. And a little further, please. This 14:53:43
is Exhibit 1 to the Confidential Agreement, to the 14:53:48
part where it says "Unauthorized." Wait. 14:53:53

Yeah. Okay. A little further down after 14:53:55
the factual -- I think it's about -- there we go. 14:54:03
Okay. Thank you. 14:54:06

BY MS. GIBSON: 14:54:08

Q And so in August of 2018 before the Camp 14:54:12
Fire happened, do you recall moving the Subaru 14:54:17
operations without approval from Subaru? 14:54:21

A Yes. Actually, they were -- it wasn't 14:54:27
approved, but they were aware of it because what had 14:54:30
happened is we had lost our lease, and the landlord 14:54:34
had extended it for additional three months, which I 14:54:39

was working with Subaru with that understanding, 14:54:43
until he came in and says, "I have to move in now." 14:54:46
So he gave us a -- I want to say about a week for us 14:54:51
to get out. But they were aware of it, that our 14:54:54
lease was up and we were in negotiations with the 14:54:57
landlord at 896 East Avenue. 14:55:01
Q But they had not approved it? 14:55:05
A They had not approved it. They walked 14:55:07
through it. I took them over there, and I showed it 14:55:10
to them. And they were aware of it, but they had 14:55:14
not approved it. That's correct. 14:55:15
MS. GIBSON: Okay. And if we page down a 14:55:20
little bit more, Amy, so that we get to paragraph 14:55:25
16, please. 14:55:28
BY MS. GIBSON: 14:55:29
Q Is it your understanding, Mr. Pajouh, that 14:55:32
this Settlement Agreement was the basis for 14:55:35
resolving the dispute over that unauthorized 14:55:41
relocation? 14:55:44
Is that correct? 14:55:44
A Yes, that was part of it and also moving 14:55:50
into the new facility and part of getting approval. 14:55:53
Q Okay. And if you look at paragraph 16, 14:56:04
here we talk about the new location, and this is 14:56:07
below the temporary location area of this Settlement 14:56:13

Agreement and would refer to a relocation permanently to parcels of land. 14:56:15 14:56:22

And this is what we're talking about in terms of Highway 99, right? 14:56:24 14:56:28

A Correct. 14:56:30

Q And if we page down a little bit more, and just so that we can see the last milestone. 14:56:37 14:56:42

And pursuant to this Settlement Agreement, you were supposed to complete the permanent facility at the new location by January 31st, 2021, right? 14:56:47 14:56:51 14:56:56

A Yes. 14:56:57

Q And if you weren't going to complete that, should you have told Subaru that you weren't going to be able to complete it by January 31st, 2021? 14:57:04 14:57:10 14:57:16

A I did. I was in direct communications with the Western Region development manager and the VP of our zone. So, yes, I was communicating with them. And during that period of time, and it was due to the Camp Fire, we just couldn't get anything going. 14:57:18 14:57:24 14:57:27 14:57:32 14:57:35

Q I think the Camp Fire occurred two and a half years almost, in 2018, before this. I'm talking about January 31st, 2021, right? 14:57:41 14:57:45 14:57:51

A Oh, yeah. I'm sorry, I thought you were referencing another -- my mistake, I think. 14:57:55 14:58:01

Q Thank you. No, that's okay. Let's get it 14:58:04

straight. 14:58:06

What we see here in terms of milestones 14:58:09
listed in "a" through "f," if you could just read 14:58:13
these very quickly and look at the dates. 14:58:18

A Okay. 14:58:22

(Reviews document.) 14:58:46

Okay. 14:58:47

Q And "a," where it says submit completed 14:58:52
construction drawings and plans to Subaru by 14:58:55
June 1st, 2019, did you submit construction plans to 14:59:02
Subaru for their approval? 14:59:05

A Construction drawings, I don't believe so. 14:59:13
We had submitted -- by June of 2019. Yeah, we 14:59:26
submitted them. We got the approval if that's what 14:59:29
you're referencing. The Feltus Hawkins was involved 14:59:34
with that if I recall correctly. 14:59:37

Q And was that before or after the Camp Fire? 14:59:41

A That was after the Camp Fire. 14:59:43

Q And was that before or after COVID? 14:59:45

A That was before COVID. 14:59:46

Q And "b," obtain necessary zoning permits 14:59:51
and necessary government approvals by December 1st, 14:59:56
2019, do you see that? 14:59:58

I'm just abbreviating it a little bit. 15:00:02

A I do see that, and I had -- we had 15:00:04

submitted the plans to the City. 15:00:07

MR. HUGHES: Lisa, I'm sorry to interrupt. 15:00:09

Did you want to let Amy turn off her notifications? 15:00:13

Her emails keep popping up on the screen, and I 15:00:17

don't want you guys to have to worry about that. 15:00:19

Do you see that? 15:00:21

MS. GIBSON: Uh-huh. 15:00:24

MS. TOBOCO: Does anybody know how to tell 15:00:26

me to do that? How do I do that? 15:00:30

MR. HUGHES: I think when a notification 15:00:33

clicks -- 15:00:33

MS. TOBOCO: No, I don't know how to do it. 15:00:40

I've got to get rid of it. 15:00:42

MR. HUGHES: Maybe search notifications, 15:00:44

how to turn off. 15:00:48

THE REPORTER: Do you want to go off the 15:00:51

record while she does that? 15:00:52

MS. GIBSON: Yes, please. 15:00:53

THE VIDEOGRAPHER: Off the record at 15:00:53

3:00 p.m. 15:00:54

(A discussion was held off the record.) 15:00:59

THE VIDEOGRAPHER. Back on the record, 15:01:54

beginning Media Unit 8 at 3:01 p.m. 15:01:58

BY MS. GIBSON: 15:01:59

Q And, Mr. Pajouh, you know you're still 15:02:01

under oath, right? 15:02:03

A Yes. 15:02:03

Q Okay. And we're looking at little "b," 15:02:07

paragraph little "b." And I'm paraphrasing, but it 15:02:12

says will obtain necessary zoning permits, necessary 15:02:14

government approvals on or about December 1st, 2019. 15:02:20

I believe you were in the process of 15:02:22

answering whether or not that was done. 15:02:27

A The plans had been submitted to the City of 15:02:29

Chico for their approval. We just didn't get the 15:02:32

approval to pull permits. The zoning was done 15:02:39

through the County. So that was the first phase. 15:02:44

That was done before the City annexed it. So it was 15:02:47

zoned for what we needed, but the approval for 15:02:51

permits, it was still the City's -- the City had the 15:02:56

plans. They had not approved the plans yet. 15:02:59

Q You hadn't obtained the necessary zoning 15:03:02

and permits and government approvals by 15:03:04

December 1st, 2019, right? 15:03:07

A Zoning was done but the permits were not 15:03:10

done. 15:03:11

Q Okay. And all of the necessary government 15:03:14

approvals were not done? 15:03:16

A That's correct. 15:03:17

Q Okay. And was December 1st, 2019, before 15:03:21

or after the Camp Fire? 15:03:24

A It was after. 15:03:25

Q And was it before or after COVID? 15:03:30

A It was before COVID. 15:03:32

Q And here, "Chico will commence construction of the facility on or before January 31st, 2020." 15:03:36 15:03:41

Do you see that? 15:03:41

A I do. 15:03:43

Q Okay. And is that before or after the Camp Fire? 15:03:48 15:03:50

A It was after. 15:03:51

Q And was it before COVID? 15:03:52

A It was before COVID, correct. 15:03:55

Q And was it done? 15:03:58

MR. HUGHES: Is there a question pending? 15:04:15

BY MS. GIBSON: 15:04:15

Q Yeah. I asked, "Was it done?" 15:04:17

A Oh, I'm sorry. No, it wasn't done. I beg your pardon. 15:04:23 15:04:23

Q And for those three milestones, was it the Camp Fire then that prevented you from making those milestones? 15:04:31 15:04:36 15:04:37

A It had slowed it down quite a bit. 15:04:44

Q Was there anything else that prevented you? 15:04:49

A No. Just working with the City of Chico 15:04:51

that says "Draft," and it is, you can see, titled "Development Agreement PDF Chico/JP Real Estate Investments, LLC." 15:06:55 15:07:01 15:07:02

There's a date that is blank, a day that's blank, a year of 2019. 15:07:07 15:07:11

If we could page down, please, Amy. 15:07:18

If we could stop right there. 15:07:41

These are redlines from a comment -- commented from an MS1, -2, listed as such, and the redlines here. 15:07:51 15:07:59 15:08:00

Do you recognize this redlined agreement? 15:08:04

A Yes. 15:08:06

Q Would these be redlines from Mike Sawley of the City? 15:08:09 15:08:10

A I would have to assume so, but I don't know. 15:08:17 15:08:19

Q Do you know when you provided these to Mr. Seegert? 15:08:21 15:08:23

A What was the question again? I'm sorry. 15:08:28

Q Do you know when this redline version was provided to Mr. Seegert? 15:08:30 15:08:32

A Mr. Seegert was not involved with the drafting of this Development Agreement. He made those recommendations that you showed in the different exhibit for them to get included in the 15:08:36 15:08:39 15:08:41 15:08:46

Development Agreement in order not to delay the project once we break ground. 15:08:48 15:08:51

Q Okay. Oh, they would have been provided to you? 15:08:54 15:08:54

A They would have been what? 15:08:57

Q So these comments would have been provided to you then? 15:08:59 15:08:59

A Yes. 15:09:01

Q Okay. And do you know, if we can keep on paging down -- 15:09:12 15:09:17

MS. TOBOCO: Would you like me to make it a little bigger? 15:09:27 15:09:27

MS. GIBSON: No. It's okay right now. I mean, I just want to show the amount of redlining to Mr. Pajouh. 15:09:30 15:09:33 15:09:36

BY MS. GIBSON: 15:09:36

Q If, Mr. Pajouh, I represent to you that this is from a file that was dated and produced by your counsel to us, dated May of 2019, would that refresh your recollection that maybe you heard back from the City a little earlier than July? 15:11:43 15:11:46 15:11:51 15:11:54 15:11:58

A Could be, yeah. 15:12:03

Q And do you remember responding to these comments? 15:12:08 15:12:08

A I'm sure I did. 15:12:11

Q Did you respond earlier than July of 2020 to these comments? 15:12:14 15:12:19

A Our responses back to the City was pretty fast as far as I remember. There's no reason why we would have dragged this on at all for any reason. 15:12:23 15:12:27 15:12:31

Q And you would have something like that reviewed by an attorney? 15:12:44 15:12:45

A Yes. 15:12:47

Q Have you over the breaks or lunch or anything remembered who that attorney would be? 15:12:50 15:12:52

A I have not looked it up. But I can, and I will if you want me to. 15:12:55 15:12:56

Q Okay. No, not at this time. I just thought maybe you might have remembered. 15:12:59 15:13:03

And if we could go back to the Stipulated Decision, please, and -- 15:13:07 15:13:20

Did you at the time that you were working on the comments to the -- and negotiating the Development Agreement, did you realize that that was necessary to complete before the permits could be issued or pulled? 15:13:34 15:13:39 15:13:42 15:13:46 15:13:47

A Yes. 15:13:51

Q When did you know that? 15:13:53

A When we communicated with the City in order to be able to build based on County standards in 15:13:57 15:14:02

lieu of the City standards. 15:14:04

Q So would that have been in 2019? 15:14:07

A No. That would have been in 2018. 15:14:11

Q So you knew that that had to be completed before any permits could be pulled in 2018? 15:14:14 15:14:18

A In order for us to build it to the County standard, it had to be, yes. 15:14:22 15:14:25

Q The date of this Stipulated Decision is March 20th, 2019, right? 15:14:28 15:14:30

A Correct. 15:14:33

Q So as you sat there signing this agreement and you knew that the Development Agreement had to be completed before the permits could be pulled and you agreed that the permits would be done by December 1st, 2019, did you worry anything about the Camp Fire and the City's reaction and inaction to complete that? 15:14:37 15:14:42 15:14:46 15:14:51 15:14:56 15:15:04 15:15:04

A I wasn't anticipating such delays. So there's always a need to worry, but I wasn't anticipating such delays. 15:15:07 15:15:10 15:15:11

Q And when you did get delays, did you tell Subaru that it was because the City was not responding to you? 15:15:20 15:15:23 15:15:24

A I did. 15:15:25

Q And how many times did you do that? 15:15:27

A I don't recall. 15:15:28

Q Do you think it was weekly? 15:15:30

A I don't believe it was weekly. 15:15:33

Q Do you think it was monthly? 15:15:35

A It was more than monthly. 15:15:37

Q So you think you were doing it on a twice a week basis? 15:15:41 15:15:42

A About that. 15:15:44

Q Or biweekly, I'm sorry, basis. I didn't mean to be tricky. Biweekly? 15:15:47 15:15:49

A Yes. 15:15:50

Q Okay. And who were you notifying? 15:15:52

A Mr. Smit. 15:15:56

Q And was this in writing? 15:15:58

A No. Phone calls. 15:16:00

Q You would call him up on a biweekly basis to say the City is not responding to me, and I'm going to be late on permits? 15:16:03 15:16:07 15:16:09

A Yes. 15:16:10

Q And were you notifying your other franchisors? 15:16:15 15:16:17

A Yeah. On a regular basis. Not as often as Subaru, but I was, yes. 15:16:21 15:16:24

Q And did you talk to Mr. Smit about anything else when you would call him up on this permit 15:16:31 15:16:35

problem? 15:16:36

A We talked about the chairs that they donated and how we were going to distribute those, which was very nice. 15:16:40 15:16:43 15:16:49

Q And anything else? 15:16:50

A Nothing specific. We're talking two years ago so -- 15:17:00 15:17:01

Q Did you ask for an extension? 15:17:03

A No. He told me to just keep him in the loop. 15:17:06 15:17:07

MS. GIBSON: And in terms of the next exhibit, please, I mean, the same one, the Stipulated Decision, the next milestone, please, Amy. 15:17:15 15:17:17 15:17:23 15:17:25

BY MS. GIBSON: 15:17:25

Q Little "c," "Chico will obtain the final review verification letter." Let's see. No, I'm misreading it. 15:17:40 15:17:46 15:17:47

Little "c," "Chico will commence construction of the facility on or before January 31st 2020." 15:17:50 15:17:53 15:17:56

Did you alert Mr. Smit that you were not going to be able to make that? 15:18:03 15:18:04

A Yes, I did. 15:18:06

Q And when did you do that? 15:18:08

A Prior to that date, we were talking on the phone because he knew that we had not been able to pull a permit yet. 15:18:12 15:18:15 15:18:16

Q And what did he say when you were going to miss that stair step as well, that milestone? 15:18:19 15:18:23

A If I'm not mistaken, I believe he said that he had to issue a letter. And I don't know if it was on that date or the date before, but I think it was on little "c," on January 31st, 2020, which I totally understood because he's got to do what he's got to do. And he did submit a letter of the delay. But I don't remember if that was the date or the milestone that we missed, if that's when he issued a letter, but we did receive a letter from him. 15:18:26 15:18:30 15:18:34 15:18:40 15:18:43 15:18:47 15:18:51 15:18:54 15:18:57

Q And little "d," the facility is not constructed by January 31st, 2021, right? 15:19:05 15:19:09

A Yes. 15:19:11

Q Okay. If we can look at now paragraph 18, please. 15:19:13 15:19:15

You read this agreement before you signed it, didn't you, Mr. Pajouh? 15:19:22 15:19:26

A I did, yes. 15:19:27

Q And in paragraph 18, can you just take a little bit of time to reread it as Amy scrolls it up for you? 15:19:30 15:19:38 15:19:40

A Okay. 15:19:56

Q Okay. And so if I understand your 15:19:57

testimony, you're saying you asked Mr. Smit for a -- 15:20:03

orally for an extension, and he said, "Just keep me 15:20:07

in the loop"? 15:20:08

A I didn't ask him for an extension. He 15:20:10

said, "Just keep me in the loop," because he knew 15:20:13

that we were unable to pull permits yet. 15:20:16

Q Okay. And if we could go down to 19, 15:20:22

please. If you could just read that, please. 15:20:42

A Okay. 15:21:06

Q And let's read 20 while we're at it, 15:21:09

please. 15:21:10

A 20 did you say? 15:21:11

Q Yes, please. 15:21:14

A Okay. 15:21:36

Q Do you understand that any extension would 15:21:40

have to be in writing from the Regional Western Zone 15:21:48

manager? 15:21:49

A Yes. 15:21:50

Q Okay. And looking for the -- 15:22:02

THE VIDEOGRAPHER: This is the 15:22:04

videographer. I'm sorry to interrupt. I do have a 15:22:06

lot of -- some talking in the background. I don't 15:22:08

know where that's coming from. 15:22:10

THE WITNESS: Those are happy customers taking delivery of their car in the showroom, so sorry about that. 15:22:13 15:22:16 15:22:18

THE VIDEOGRAPHER: Oh, okay. 15:22:21

BY MS. GIBSON: 15:22:21

Q In paragraph 19, do you see the second sentence where it says, 15:22:23 15:22:24

"Chico shall provide weekly reports to SOA regarding the status of any governmental delay and the progress, if any, being made on the elimination of the delay and expected duration of the remaining delay"? 15:22:27 15:22:30 15:22:31 15:22:33 15:22:37 15:22:39

And how did you make those weekly reports? 15:22:44

A We -- I'm not so sure if it was weekly, but we did -- 15:22:48 15:22:49

MR. HUGHES: Sorry. Before you answer, object to the form of the question. It's an incomplete reading of the paragraph. 15:22:50 15:22:52 15:22:57

BY MS. GIBSON: 15:22:57

Q I'm just reading the sentence. Go ahead and answer. 15:22:58 15:23:00

A We had communications with Mr. Smit, and I don't know if it was weekly or biweekly. But it was communication all the time so he knew. And I was 15:23:04 15:23:08 15:23:11

aware of this, and that's why we had those communications. 15:23:14 15:23:15

Q On a biweekly basis, would you call Mr. Smit on this biweekly basis? 15:23:18 15:23:20

A Would you mind repeating that? I couldn't hear you. 15:23:24 15:23:25

Q Were you the ones that made the -- were you the one that called Mr. Smit to make the report? 15:23:26 15:23:29

A Yes. 15:23:30

Q And when did you start making these biweekly calls to Mr. Smit? 15:23:35 15:23:37

A When I found out that we were not able to get permitting as of December 1st, 2019. 15:23:39 15:23:42

Q And when did you find that out? 15:23:46

A Timeline is November. 15:23:57

Q So sometime in November of 2019, you called Mr. Smit biweekly before December 1st, so that would be twice? 15:24:04 15:24:10 15:24:12

A Twice what? 15:24:15

Q Well, my calculation is from -- if we take the whole month of November, November 1st to December 1st, that's probably a four-week period. It also includes Thanksgiving. But I just want to make sure that that's when you were doing the biweekly reporting to Mr. Smit was between 15:24:20 15:24:22 15:24:26 15:24:32 15:24:34 15:24:38

November 1st, 2019, and December 1st, 2019. 15:24:44

A And subsequent to that. 15:24:46

Q After you missed the December 1st? 15:24:50

A Yeah. He knew before that. And now keep on thinking in mind, this is in 2019. The exact dates and times I don't recall. To the best of my recollection, that's what I remember. 15:24:53 15:24:56 15:25:00 15:25:03

MS. GIBSON: And, okay, let's just page to the end and look at Mr. Pajouh's signature, please, Amy. 15:25:18 15:25:22 15:25:22

BY MS. GIBSON: 15:25:24

Q And that's your signature once again this time on Exhibit 1 to the Stipulated Decision, right? 15:25:37 15:25:40

A Yes, it is. 15:25:41

MS. GIBSON: Okay. Amy, I think you've got this one. Tell me if you don't. But it is a correspondence with Cadillac. 15:25:48 15:25:54 15:25:58

MS. TOBOCO: It's an email? 15:26:00

MS. GIBSON: Yes, it is. 15:26:01

MS. TOBOCO: Okay. I think I have it. Let me see. 15:26:02 15:26:07

MS. GIBSON: Okay. Let's mark this as Exhibit 11, please. It's a string of emails, and also has embedded attachments, including something called DDP2 resubmittal at 9/22/20. 15:26:32 15:26:42 15:26:49 15:27:01

(Exhibit 11 was marked for identification and attached hereto.)

BY MS. GIBSON:

Q This email is dated October 2nd, 2020. It is between yourself, Mr. Pajouh, and Mr. Seegert.

And if we page down, we have a message being forwarded from a Barrie Allgood. Who is Barrie Allgood?

A She is the representative for the Cadillac brand.

Q And she's writing to you and copying Fritz Newman.

And if we can move on down a little bit, that may be the end of it. I just want to make sure. Is it? Yeah, it looks like it's the end.

Okay. If we can go back up to Ms. Allgood's substance there, we can stop there.

So Ms. Allgood works for Cadillac, right?

A Correct.

Q And she is reporting to you about the Gensler review.

Do you see that?

A Yes.

Q And she's telling you that in here, in October of 2020, that your package has been approved

with comments and that you have to pick them up, these comments, and put them in your construction drawings. 15:28:50 15:28:52 15:28:53

Do you see that too? 15:28:55

A Yes. 15:28:56

Q Okay. And you don't believe that this was something that was necessary to know, that things that you had to change in construction drawings in order for you to construct the Cadillac side of the GM building? 15:29:03 15:29:07 15:29:12 15:29:15 15:29:17

A This is when Cadillac had come up with their corporate I.D. facility guidelines and -- but prior to this, we were approved to sell Cadillac vehicles in the Buick-GMC showroom. 15:29:20 15:29:26 15:29:31 15:29:36

Q And do you have that approval in writing? 15:29:38

A I have to look. I don't know. 15:29:41

Q Would you please look at that and turn it over to your counsel, please? 15:29:50 15:29:51

A If I find it, if I have such thing, I will, sure. 15:29:55 15:29:55

MS. GIBSON: Amy, if we could go up to the attachments, and, yeah, let's look at the checklist, first. 15:30:02 15:30:12 15:30:16

BY MS. GIBSON: 15:30:16

Q Do you see where it says here on the 15:30:39

checklist, "Final Design Review, First Submission not approved 7/31/20"? 15:30:44 15:30:50

A Yes. 15:30:52

Q Okay. And then it says the second submission was approved with comments on 10/1/20. 15:30:54 15:31:02

A Yes. 15:31:04

Q And as far as you're concerned, again, that meant that you were still allowed to build a building without their approval for the final design review. 15:31:13 15:31:16 15:31:20 15:31:21

Is that correct? 15:31:21

A I don't think I understand the question. 15:31:25

Q Is your testimony still -- seeing that you were not approved at the end of July in 2020, is it your testimony still that in July of 2020, you were, in fact, approved to construct a building without the final design review being approved? 15:31:28 15:31:34 15:31:39 15:31:43 15:31:47

MR. HUGHES: Object to the form of the question. 15:31:47 15:31:51

THE WITNESS: Final design review was based on Cadillac's new corporate I.D., not when they approved us at first to be able to sell Cadillac along with Buick and GMC brands. 15:31:52 15:31:56 15:31:59 15:32:03

BY MS. GIBSON: 15:32:03

Q And would that have been when you were 15:32:05

appointed as a GM dealer that you were approved to be a dual with that, other brands? 15:32:08 15:32:10

A Yeah. That's how it is right now. 15:32:14

Q Okay. So it's not something that was new in terms of this approval to be dualed with Buick and GMC. You were always approved to be dualed with Buick and GMC, correct? 15:32:16 15:32:22 15:32:27 15:32:29

A That is correct. 15:32:30

MS. GIBSON: Amy, if we could go back to the other embedded document, please. 15:32:37 15:32:42

BY MS. GIBSON: 15:33:08

Q Okay. Do you know what it means, the DDP to Cadillac? 15:33:17 15:33:22

A I want to say it stands for Design Development Plan. 15:33:26 15:33:28

Q Okay. 15:33:30

A The DDI is Design Development Intent. So these are the plans. 15:33:34 15:33:35

Q These are the plans. And if we look through some of their review comments here, they're giving comments on site requirements, the showroom entry doors, and new car delivery entry doors, the service dropbox, the vehicle display requirements, the concierge desk, the color and trim book, the lighting, lounge requirements, finish plans, 15:33:40 15:33:47 15:33:53 15:33:57 15:34:01 15:34:06 15:34:11

approved variances, including canopy columns on the outside in concrete. 15:34:15 15:34:19

These are all things that you believe could have been done much later on after you just built the building and continued to sell out of the Cadillac/GMC-Buick building, correct? 15:34:23 15:34:27 15:34:34 15:34:37

A That is correct. 15:34:38

Q Including things like concrete columns and other types of building exterior changes, right? 15:34:45 15:34:52

A You know, I don't know what concrete columns they're referencing because their plan doesn't have it, but I haven't looked at the plans in a long time, so I don't know what columns they're talking about. 15:34:55 15:34:58 15:35:02 15:35:04 15:35:07

Our building design, if you look at the showroom buildings, the envelopes are the same for all of them. And we did that for the sake of being able to move the project along faster by having to get approval one time for all of them. 15:35:11 15:35:15 15:35:18 15:35:24 15:35:28

Now, some of them have changes. Not changes. They had elements like canopies and all that that require it to be a little bit more detailed or less detailed, but they're all the same. So the envelope was going to be there, and we were going to sell Buick, GMC, and Cadillac until these 15:35:32 15:35:34 15:35:38 15:35:42 15:35:45 15:35:50

guidelines were published. 15:35:51

Q And if we kind of look at -- let's look at 15:35:58
something that refers to -- let's look at the sheet 15:36:08
A-1.0, please, Amy. It's listed on the left here. 15:36:18

No, it looks like there -- let's just go 15:36:20
through the sheets one by one. Let's just do that. 15:36:27

Okay. Are these plans that were submitted 15:36:41
to Gensler from Mr. Marlette's architect firm? 15:36:48

A I am assuming so, yes. Yes. 15:36:53

Q Okay. And seeking approval of these 15:36:56
construction drawings, right? 15:36:57

A I haven't looked at all of them, but I 15:37:01
would have to say yes. 15:37:03

MS. GIBSON: Okay. And the next one, Amy, 15:37:08
if we could just look at the next one. 15:37:11

BY MS. GIBSON: 15:37:11

Q And this is the partial site exit plan, 15:37:18
right? 15:37:20

A What is it? 15:37:23

Q It says "Partial Site Exit Plan," I believe 15:37:25
in the bottom right-hand corner. 15:37:27

A Bottom right-hand corner. 15:37:29

Q Maybe it's sideways. 15:37:30

A It's partial site, yes. 15:37:32

MS. GIBSON: Okay. And if we could look at 15:37:37

1	the next one please, Amy.	15:37:40
2	BY MS. GIBSON:	15:37:42
3	Q And this is how the floor, the showroom,	15:37:51
4	should look?	15:37:51
5	A The floor plan, yes.	15:37:53
6	Q And could you tell me what the design	15:37:55
7	elements are here that you're trying to get	15:37:58
8	approved?	15:37:59
9	A I think just some layout of the plan,	15:38:03
10	colors of tile, the walls, and that's it.	15:38:12
11	Q Where do you see the colors of the tile?	15:38:15
12	A You don't see it on here, but that's part	15:38:18
13	of the corporate I.D. guidelines that they publish	15:38:21
14	and they give it to you.	15:38:22
15	MS. GIBSON: Okay. Amy, let's look at the	15:38:26
16	next one, please.	15:38:29
17	Okay. That's back, yeah. Okay.	15:38:37
18	BY MS. GIBSON:	15:38:37
19	Q This is the reflective ceiling plan. So	15:38:41
20	that would be part of the design guidelines?	15:38:45
21	A Yes.	15:38:47
22	Q And you would later on just add this	15:38:48
23	reflective ceiling after you've already built the	15:38:52
24	building, right?	15:38:53
25	A Yeah, you can always add ceilings, yes.	15:38:56

Q And the next one, please. 15:39:01

And in terms of this, this is the exterior elevations, correct? 15:39:10 15:39:13

A Yes. 15:39:15

Q Okay. And these are things that you would not need to know ahead of building the building, right? 15:39:23 15:39:26 15:39:27

A I don't think I understand the question. These are not the things you would need to know before what? 15:39:38 15:39:40 15:39:41

Q Before you would want to start construction on this building, it was not necessary for you to have these guidelines in terms of how the exterior elevations are going to look. That was not necessary, right? You could build the building before you had all this? 15:39:43 15:39:46 15:39:49 15:39:52 15:39:54 15:39:56

A That's correct because we were not building the Cadillac showroom. We were build -- we were going to sell Cadillac out of the Buick-GMC. 15:39:58 15:40:01 15:40:06

Q Now, when you say you were going to build Cadillac out of the Buick-GMC, does that mean where you currently are? You were just going to continue to sell where you currently were, or does that mean you were going to build a new building and then later add all this detail that we're looking at 15:40:09 15:40:12 15:40:15 15:40:18 15:40:20 15:40:23

right now? 15:40:24

A That's correct. If you recall what I said 15:40:25
earlier, the envelope of all of these buildings are 15:40:28
the same. So we were going to finish the Buick-GMC 15:40:34
side and continue selling Cadillacs out of that 15:40:37
facility in order to meet our timelines. And when 15:40:39
these became published, we were going to model or 15:40:43
remodel the side that was going to be dedicated to 15:40:45
Cadillac. 15:40:47

MS. GIBSON: Okay. Can we look at the next 15:40:51
one too, please, Amy. 15:40:54

And the next one, please. 15:41:04

And let's just go through them all so we 15:41:20
can -- okay. 15:41:27

MS. TOBOCO: There's a few more. I don't 15:41:28
know if you want it open. 15:41:31

MS. GIBSON: Oh, I didn't realize there 15:41:32
were more. Yeah, let's just go through them all. 15:41:37

MS. TOBOCO: Four more. 15:41:37

BY MS. GIBSON: 15:41:37

Q Okay. And what timelines were you trying 15:41:55
to meet, Mr. Pajouh, that you would have built the 15:42:01
GM building before having all these guidelines? 15:42:04

A Same timeline as I have given before the 15:42:10
COVID. And we were trying to achieve those 15:42:14

timelines, and it just got delayed because of our Development Agreement getting stuck in the works with the City not being able to pull permits. 15:42:18 15:42:20 15:42:25

Q I'm sorry, I still did not understand that answer. What timelines? Was it the Subaru timelines that you were trying to meet? Is that what I understand? 15:42:37 15:42:40 15:42:44 15:42:46

A Yes. Timelines are the same for Subaru. Subaru is the one that came out with the timelines. We were trying to meet all of the manufacturers with those timelines as Subaru. 15:42:49 15:42:52 15:42:55 15:43:01

Q So with all of the manufacturers, you would agree to complete the construction of the facility by January 31st, 2021? 15:43:05 15:43:08 15:43:12

A That was our goal. 15:43:14

Q But was that what you agreed to with all of the manufacturers? 15:43:19 15:43:19

A I would -- I've got to look at the timelines, but I think Subaru was the most aggressive one. 15:43:22 15:43:24 15:43:27

Q Why do you think Subaru was the most aggressive one? 15:43:51 15:43:52

A Well, from the beginning they wanted to have a new facility, which was our goal. And we agreed to that. So looking at the timelines, it was 15:43:55 15:44:01 15:44:06

1	the most aggressive.	15:44:09
2	Q And do you think it had anything to do with	15:44:15
3	the facilities that Subaru was in compared to the	15:44:18
4	other manufacturers?	15:44:21
5	MR. HUGHES: Objection. Calls for	15:44:21
6	speculation.	15:44:23
7	MS. GIBSON: I'm asking him what he thought	15:44:26
8	in terms of it.	15:44:29
9	MR. HUGHES: You're asking him what he	15:44:30
10	thought your client thought. So it calls for	15:44:33
11	speculation.	15:44:33
12	MS. GIBSON: No, I did not. I did not. I	15:44:36
13	said does he think it might be because of the	15:44:40
14	facility that Subaru was in?	15:44:45
15	THE WITNESS: It's my belief that Subaru	15:44:47
16	always had the nicest facility as compared to the	15:44:51
17	other facilities we were in. They had the newest	15:44:54
18	showroom before we moved, and they have the nicest	15:44:59
19	sales facility right now.	15:45:01
20	BY MS. GIBSON:	15:45:02
21	Q So you're saying the facility that was	15:45:06
22	behind all of the other showrooms on Cohasset was	15:45:13
23	the nicest facility of all your franchises?	15:45:18
24	MR. HUGHES: Objection. Misstates	15:45:18
25	testimony.	15:45:21

THE WITNESS: Yeah, that's not the way -- I overheard you talking with Diane about that, and maybe, yeah, she wasn't clear enough. All of our facilities are lined up on Cohasset Road. When we bought the facility, there were three different buildings. They were all on Cohasset Road. So they all have address of Cohasset Road. There's not one facility that's behind or in front of the other. There are three buildings that are lined up along on the east side of Cohasset Road. 15:45:25 15:45:27 15:45:30 15:45:33 15:45:35 15:45:41 15:45:45 15:45:47 15:45:50 15:45:52

We lost the lease on the Subaru building, so we moved it to the corner of Cohasset and East Avenue, and that still has the frontage. That's why I said it's the nicest. It's the newest and it's the most modern building that we operate out of. And, if anything, the exposure of the Subaru building was the same as before. Now it has a better exposure on East Avenue and Cohasset Road, the intersection. 15:45:54 15:46:00 15:46:03 15:46:07 15:46:10 15:46:14 15:46:17 15:46:22 15:46:24

BY MS. GIBSON: 15:46:24

Q And then you disagree with what your wife said about there being three locations for Subaru since you entered into the agreement in 2015? 15:46:30 15:46:33 15:46:37

A No. You said it was three locations. I think that you're counting when we vacated the 15:46:40 15:46:44

Subaru building that was on Cohasset Road and I brought it over to the other two buildings, in the interim while we were working on securing that facility, the new 896 East Avenue facility and going through the remodel. 15:46:48 15:46:51 15:46:53 15:46:58 15:47:01

Q And that was the nicest facility that you relocated it to? 15:47:05 15:47:07

A The 896 East Avenue is the nicest facility that we currently have. 15:47:10 15:47:13

Q How about the one that was the site of the unauthorized relocation? Was that the nicest facility? 15:47:15 15:47:18 15:47:19

A No. But when Subaru -- when we bought Subaru, it was in one of the nicest of the three buildings that were on Cohasset Road. 15:47:27 15:47:30 15:47:33

Q How come you lost the Subaru lease? 15:47:37

A Our lease was up, and I thought I had an extra three months. But the landlord said no. That's when we were going through the process of getting approval from the landlord across the street, you know. 15:47:44 15:47:47 15:47:50 15:47:52 15:47:55

Q And what did -- I'm sorry. 15:47:57

A Go ahead. 15:47:57

Q And what did the landlord put in its place? 15:48:01

A It's a Hyundai facility. 15:48:08

Q And is it the same landlord that you have for the GM franchises and the Mercedes and the BMW franchises? 15:48:14 15:48:20 15:48:21

A No, it's not. 15:48:24

Q Even though they were all next to each other, they were different landlords? 15:48:27 15:48:30

A Correct. 15:48:30

Q And that's the way it was when Mr. Ward and Mr. Anderson sold it to you? 15:48:34 15:48:36

A Actually, Mr. Anderson was our landlord at first for the Subaru building, and unbeknownst to me, he sold the facility to the local Hyundai dealer. And that was right after we purchased the franchise. 15:48:40 15:48:43 15:48:47 15:48:53 15:48:57

Q Okay. And who's the landlords for the Mercedes, BMW, and GM buildings? 15:49:01 15:49:05

A It's a trust. It's Robert Raphael Trust. 15:49:10

MS. GIBSON: Okay. I think I would like to look at my notes and consult with Amy. 15:49:26 15:49:34

Can I have 15 minutes, please? 15:49:37

MR. HUGHES: Okay. 15:49:39

MS. GIBSON: Okay. Let's get back at -- let's just get back at 4:00, and go off the record now. 15:49:42 15:49:45 15:49:45

Sorry for interrupting, Mr. Videographer. 15:49:47

MR. HUGHES: 4:00. Okay. 15:49:50

THE VIDEOGRAPHER: Off the record at 15:49:50

3:49 p.m. 15:49:52

(A recess was taken.) 15:49:55

THE VIDEOGRAPHER. Back on the record, 16:10:52

beginning Media Unit 9 at 4:10 p.m. 16:10:56

MS. GIBSON: Thank you. 16:11:00

BY MS. GIBSON: 16:11:00

Q Mr. Pajouh, you know you're still under 16:11:02

oath, right? 16:11:03

A I do. 16:11:04

Q Okay. Isn't it correct that you would not 16:11:20

be able to start the Subaru buildings unless you 16:11:25

could start construction on all of the buildings 16:11:31

that includes the GM and the BMW and Mercedes 16:11:39

buildings as well? 16:11:43

MR. HUGHES: Object to the form of the 16:11:44

question. 16:11:45

THE WITNESS: Our Subaru -- 16:11:45

MR. HUGHES: Sorry. 16:11:46

I object to the form of question. It's 16:11:48

vague and ambiguous and it's an incomplete 16:11:49

hypothetical. 16:11:51

BY MS. GIBSON: 16:11:51

Q Okay. Let me try this. I believe you 16:11:53

testified before that you would start all of the buildings together. 16:11:55

Is that right, Mr. Pajouh? 16:11:57

A Correct. 16:11:59

Q Okay. Is there any doubt in your mind that you would not have started one building without being able to start all of them together? 16:12:06

A Correct. 16:12:15

Q Meaning the project had to be all permitted all together before you could start any one of the buildings. 16:12:20

Is that correct? 16:12:26

A That's correct. If you look at the site plan and if you look at the way that the buildings are all laid out, Subaru is part of our big picture, so you can't really just do one and as compared to the other. 16:12:29

Q Okay. And what would you do if Subaru prevailed in this action, and you were terminated as a Subaru dealer? 16:12:51

MR. HUGHES: Objection. Calls for speculation. 16:13:03

THE WITNESS: What do you mean what would I do? 16:13:07

/// 16:13:08

BY MS. GIBSON: 16:13:08

Q Would you stop the whole project? 16:13:11

A Subaru is an integral part of our business at Courtesy Automotive Center. It's the biggest volume, and we've done everything to promote it. So I haven't had to think about that, so I don't know how to answer that question. 16:13:15 16:13:18 16:13:23 16:13:25 16:13:27

Q Okay. So you don't know what you would do if Subaru prevailed in its seeking to terminate you? 16:13:31 16:13:40

A No, I don't know what I would do. 16:13:44

Q And that would mean that you could possibly just not build anything? 16:13:49 16:13:52

A I doubt it. I still would move forward with the rest of the project. But like I said earlier, Subaru is a major part of our business and we've done everything we can, and we have done this to grow the Subaru business in our community and with good reputation, which is unlike what my predecessors had. And it's going to -- as far as I'm concerned, it's going to remain our focus and part of our future. 16:13:58 16:14:02 16:14:06 16:14:09 16:14:12 16:14:17 16:14:21 16:14:24 16:14:27

Q And in terms of the other franchises, which is the most profitable franchise that you have? 16:14:37 16:14:41

A Are you talking about dollars? 16:14:48

Q Gross profits. 16:14:51

A Gross profits, General Motors. 16:14:55

Q Much more profitable than Subaru? 16:15:03

A Yes. 16:15:05

MS. GIBSON: Okay. And I just want to send something to Amy that she can put up unless she has it. 16:15:16 16:15:23 16:15:25

Amy, do you have to be able to show -- no, I don't think you have this. Chico Bates stamp 000447 going up to -- no, I'm sorry. It's not that one. It's the one that starts Chico 5290. 16:15:33 16:15:43 16:15:54 16:16:06

Maybe I should send it to you. Maybe that would be quicker. 16:17:32 16:17:33

MS. TOBOCO: I'm looking at the title of it. 16:17:35 16:17:37

MS. GIBSON: Sorry to everybody. 16:17:42

It says 2020/09/10 regarding BMW or Chico project number 12. Let me send it. You might not have it. 16:17:54 16:17:58 16:17:59

BY MS. GIBSON: 16:17:59

Q Okay. While Amy is waiting for that, Mr. Pajouh -- 16:18:05 16:18:08

And I'm going to send you one other one. So whenever you get the first one, let's -- 16:18:36 16:18:39

Maybe we should go off the record for just a second, please. Sorry about this. 16:18:48 16:18:50

THE VIDEOGRAPHER: Off the record at 4:18 p.m. 16:18:51 16:18:56

(A discussion was held off the record.) 16:19:04

THE VIDEOGRAPHER: Back on the record beginning Unit 10 at 4:24 p.m. 16:24:21 16:24:24

BY MS. GIBSON: 16:24:24

Q Okay. Mr. Pajouh, you're still under oath, correct? 16:24:31 16:24:31

A Yes. 16:24:32

Q Okay. Do you know -- and this is not a name I'm going to probably pronounce correctly. But do you know a Christian Nierenkoether? 16:24:35 16:24:38 16:24:43

A I don't know him personally. He's a vendor for BMW of North America providing tile. 16:24:45 16:24:51

Q Okay. And if we mark this as Exhibit -- I think it should be Exhibit 12. Correct me if I'm wrong, Mr. Videographer. 16:25:01 16:25:09 16:25:09

THE REPORTER: I have Exhibit 12 as well. 16:25:10

MS. GIBSON: Okay. Thank you. 16:25:14

Mark this as Exhibit 12. This is a chain of emails. This is produced in Protestant's production. 16:25:17 16:25:23 16:25:27

(Exhibit 12 was marked for identification and attached hereto.) 16:25:27 16:25:27

/// 16:25:27

BY MS. GIBSON: 16:25:27

Q Is -- okay. I can't be paging it down, 16:25:33
that's right. There we go. It's a chain of emails. 16:25:37
Let's to the bottom email first, please. 16:25:47

And here we have -- let's stop at 16:25:51
July 27, an email from you to Christian introducing 16:25:57
yourself. 16:25:58

Maybe Amy can page it down a little bit so 16:26:03
you can read it. 16:26:04

And I don't know if you want to -- yeah. 16:26:19

Okay. Do you remember writing that email 16:26:22
introducing yourself to the vendor? 16:26:27

A I -- yes, that's my email. 16:26:30

Q Okay. And if we can page up a little bit. 16:26:33
And the date of that email is in July 2017. 16:26:42

A Yes. 16:26:43

Q Is that correct? 16:26:44

Okay. And later on in July, it appears 16:26:52
there is a follow-up email from you about whether 16:26:57
they offer the showroom tiles for BMW as well. So 16:27:02
is this a vendor for more than just BMW? 16:27:07

A You know, I don't know if he offers for 16:27:08
other brands. The reason we communicated is he does 16:27:14
offer the tile that goes inside the service 16:27:17
department for BMW. And that's why I -- apparently 16:27:22

I met him at the National After Sales Conference which is something similar to NADA, but it's for BMW dealers only. So I was there with Ron Floriani. He was my service director at the time. So that's why I inquired to get more information from him. 16:27:25 16:27:30 16:27:35 16:27:38 16:27:41

Q Okay. If we could page up. This is still July 2017. 16:27:44 16:27:47

In February of 2019, he's writing back to you asking you for an update nearly two years later, correct? 16:27:52 16:27:55 16:27:58

A Yeah. 16:28:02

Q And you tell him to check in around June of 2019. 16:28:09 16:28:10

Do you have any idea -- it says, "All moving forward, but very slowly." 16:28:15 16:28:19

Why did you tell him to check again in June? Do you recall? 16:28:24 16:28:25

A I don't recall. 16:28:28

Q Okay. And if we could page up a little bit more. 16:28:32 16:28:37

This is in August of 2019. He's asking again if there's any new documents. 16:28:42 16:28:45

And if you page up again, and a little bit more on the side. 16:29:00 16:29:01

Oh, here we go. I'm sorry. "We're almost 16:29:04

done with the construction drawings. Contact me in 30 days." 16:29:06 16:29:07

A little bit more. That's August 2019. 16:29:14

September, "Checking in. How are things progressing?" In 2019 from the vendor to you. 16:29:17 16:29:26

Who is Klinker? 16:29:30

A Klinker is the name of the tile that he sells for the service department. 16:29:32 16:29:34

Q And if we page up again, he responds, "Looking good." Paraphrasing that. 16:29:46 16:29:50

If we can go up again. October 2019, he's writing to you and saying, "Is there an update?" 16:29:55 16:30:04

And keep on going up, please. Here we have April 15, 2020. Quite a bit of time has passed again. 16:30:15 16:30:18 16:30:18

"Hope all is well. I'm following up on this project. Do you have any update for us?" 16:30:21 16:30:24

And if we can page up a little bit. We have an email from James Seegert to the vendor, the tile vendor, and he said, "We are continuing to work through the details. Through the process, I had a few questions." And he presents questions. And then that's in May of 2020. 16:30:31 16:30:44 16:30:47 16:30:50 16:30:54 16:30:57

And then if we page up a little bit more, I think there's feedback from Mr. Nierenkoether. 16:31:01 16:31:10

And then a little further up, and this is again in May 2020. 16:31:16 16:31:23

And we can go one more email up, please, Amy. 16:31:27 16:31:30

And now the vendor is communicating more with Jim Seegert about what's going on. We are in July of 2020. 16:31:36 16:31:41 16:31:42

A little further up here, it says that Mr. Seegert talked to you recently and this is dated September of 2020. And you mentioned that things might be a bit delayed. 16:31:47 16:31:51 16:31:55 16:31:57

Do you recall telling Mr. Seegert in September of 2020 that things might be a bit delayed? 16:32:02 16:32:06 16:32:06

A This is not from me. That's from Christian. 16:32:11 16:32:13

Q I understand. But he said he had just talked to you. Excuse me. I think I said Mr. Seegert. But he said that he had just talked to you, and that you had told him things might be a bit delayed. I'm just asking you, not this email. This email says what it says. Do you remember telling Christian that things would be a bit delayed in September of 2020? 16:32:16 16:32:18 16:32:21 16:32:26 16:32:29 16:32:33 16:32:37 16:32:39

MR. HUGHES: Object. Lack of foundation 16:32:42

that it actually happened in September. 16:32:44

BY MS. GIBSON: 16:32:45

Q Do you remember ever telling -- no. Do you remember in September 2020 telling Christian that it was -- something was going to be delayed? 16:32:48 16:32:53 16:32:55

A I don't remember, no. 16:32:59

Q You don't remember. 16:33:00

Is it possible that you told him things would be delayed in September 2020? 16:33:02 16:33:06

MR. HUGHES: Objection. Calls for speculation. 16:33:07 16:33:08

THE WITNESS: This was dead smack in the middle of the pandemic, so if I did talk to him, I don't see why I wouldn't say that because we didn't know what was happening. We were working day-to-day. I had no idea when it was going to be over. I had no idea when we were going to get responses back from the City. So I may have said it. But quite honestly, I don't remember even talking to him. 16:33:11 16:33:13 16:33:16 16:33:18 16:33:20 16:33:24 16:33:26 16:33:28 16:33:30

BY MS. GIBSON: 16:33:30

Q Okay. Do you think he's lying here that he talked to you? 16:33:35 16:33:36

A I don't -- I'm not saying he's lying, but I don't remember talking to him. 16:33:41 16:33:43

Q Okay. 16:33:43

A I'm not saying that I didn't talk to him. 16:33:45

If I did, it was September 2020. We got shut down 16:33:49

in March of 2020. And we were operating our 16:33:51

business day-to-day not knowing when things were 16:33:54

going to open up, what's going to happen tomorrow. 16:33:57

So if I did speak with him, I don't remember. 16:34:00

Q And it was also the most profitable year of 16:34:05

your dealership career? 16:34:06

A Correct. But that didn't tally up until 16:34:10

December of 2020. You know, we were working our way 16:34:13

through the pandemic. 16:34:14

Q You had no idea in September that it was 16:34:16

going to be a good or bad year? 16:34:19

A We were running the dealership day-to-day 16:34:23

so -- 16:34:26

MS. GIBSON: Amy, now, if we could put 16:34:32

up -- let's see what I sent you -- the one that says 16:34:47

2021/01/14, Courtesy Auto Development Agreement 16:34:54

Permit Proc and Timing. I think that means process 16:35:03

time. 16:35:07

THE WITNESS: Can we take a quick break, 16:35:56

please? I have Mike Sawley calling me from the 16:35:59

City. 16:36:00

MS. GIBSON: Okay, please. 16:36:01

THE VIDEOGRAPHER: Off the record at 4:35 p.m. 16:36:02 16:36:08

(A discussion was held off the record.) 16:36:10

THE VIDEOGRAPHER. Back on the record, beginning Media Unit 11 at 4:46 p.m. 16:46:50 16:46:55

BY MS. GIBSON: 16:46:55

Q Mr. Pajouh, you're aware you're still under oath, right? 16:47:00 16:47:01

A Yes. 16:47:02

Q Wait. Before going off the record, you had just received a call from Mr. Mike Sawley. I believe we identified him before. But he's a City employee? 16:47:04 16:47:08 16:47:10 16:47:12

A Yes. He's one of -- he's in the development department. 16:47:14 16:47:16

Q Okay. And you were in the process of telling us what you and Mr. Sawley just discussed. Would you mind telling us what that was? 16:47:19 16:47:23 16:47:26

A Sure. He made a call to make sure that I knew that we had to pay for a boundary line modification recording fee to make sure that that's taken care of. 16:47:29 16:47:32 16:47:37 16:47:38

And so once I had him on the phone, I wanted to kind of like confirm to see everything is lined up for us to pull a permit tomorrow. And he 16:47:41 16:47:43 16:47:47

said everything was lined up. We need to get a biologist up there to inspect the property and look at the trees and make sure there is nothing nesting in that before we disturb anything. And he says usually that takes about a week or so. But he didn't think that that's going to stop them from issuing the permits tomorrow. 16:47:49 16:47:52 16:47:56 16:47:59 16:48:02 16:48:05 16:48:07

Q So as far as you know right now, you believe that you will have permits to build and start construction tomorrow? 16:48:10 16:48:17 16:48:18

A As far as I know, yes. 16:48:19

Q Okay. And will you update us, please, when you actually get those permits tomorrow? 16:48:24 16:48:26

A Absolutely will. 16:48:28

MS. GIBSON: Okay. If we could, Amy, pull up the -- since we're talking about Mr. Sawley, his email rather than the one that we started with and we'll mark that as Exhibit 13, please. 16:48:33 16:48:38 16:48:40 16:48:47

(Exhibit 13 was marked for identification and attached hereto.) 16:48:47 16:48:47

BY MS. GIBSON: 16:48:47

Q Okay. We'll mark as Exhibit 13, if we could just go to the top of this email, please, this is a chain of emails, the first one from Mike Sawley to James Seegert, dated August 21, 16:48:53 16:48:56 16:49:03 16:49:07

2020, where he indicates to Mr. Sawley that he's forwarding an email he sent Jerry earlier, and that he said that he was going to call him to see what might be done with the west elevations. 16:49:18 16:49:25 16:49:27 16:49:31

If we page down just a little bit, to the next email, here we have an email from Mr. Sawley to you, Mr. Pajouh. And it is dated August 21st, 2020. And let's just take a second. 16:49:38 16:49:43 16:49:52 16:49:54

Do you remember this email? 16:49:56

A No. But allow me to read it. Maybe it will jog some memory. 16:49:59 16:50:01

Q Okay. 16:50:05

A Can you scroll up, please? 16:50:31

Scroll up, please? 16:51:07

Okay. 16:51:32

Q Okay. If we could just page up a little bit. 16:51:35 16:51:38

Does this refresh your recollection that maybe somewhere before you -- it was indicated by the tile vendor that you had indicated there was a delay, the project was going to be delayed, and that email was dated in September 2020? 16:51:40 16:51:49 16:51:52 16:51:59 16:52:02

Does that refresh your recollection, looking at this email from Mr. Sawley to you indicating that there would be -- the project will 16:52:04 16:52:07 16:52:10

need major conditions in order to be approved, as possibly something that was holding up the project in that same time frame? 16:52:13 16:52:17 16:52:20

A It could have been. 16:52:24

Q And in terms of these major conditions that Mr. Sawley is talking about, if we could page down, please, to where it says "Placement," what did you understand he was asking you to do there? 16:52:33 16:52:40 16:52:49 16:52:52

A He was informing us that the service building has to be 50 feet -- has to have a 50-foot setback from Garner Lane on the west elevation, which would completely destroy the whole site plan. 16:52:56 16:53:02 16:53:06 16:53:11

So but the City is the one that found the solution for that and recommended that we do a boundary line modification, and we did that through our civil engineer. And that's what he's -- he wanted us to pay for the fee for it to get recorded because it's all been approved now. 16:53:16 16:53:21 16:53:25 16:53:29 16:53:35 16:53:38

Q Okay. Is he asking you to pay the fee today for that? 16:53:42 16:53:43

A Correct. 16:53:44

Q Is that -- okay. But here he's just giving you a major condition, and he's actually saying now two main issues. There was the placement and the west elevation of the Service Center, right? 16:53:46 16:53:53 16:53:56 16:53:59

A Correct. 16:54:00

Q And if we go down and we look at the west 16:54:03

elevation part more in its entirety, thank you, 16:54:10

he's indicating that there's an architectural issue 16:54:13

for the City with the appearance of that building, 16:54:22

right? 16:54:23

A Correct. 16:54:25

Q Okay. And he said, "I will call you now to 16:54:38

discuss next steps." Do you recall whether or not 16:54:41

you had a conversation with him about next steps? 16:54:44

A I'm sure we did, yes. 16:54:48

Q Okay. Was this the first time you had ever 16:54:51

heard of these issues? 16:54:53

A Yes. 16:54:54

MS. GIBSON: Amy, if we can page down a 16:54:59

little bit. 16:55:01

BY MS. GIBSON: 16:55:01

Q This is an email from Mike Sawley to 16:55:10

James Seegert, and this is in June of 2020. And 16:55:21

here, Mr. Sawley is telling Mr. Seegert that -- that 16:55:30

he concurs with the providing the signage details to 16:55:35

consider the site design and architecture. 16:55:40

And if we page down just a little bit, 16:55:45

please. 16:55:45

And then from the checklist from the 16:55:47

attached application, he said, "Please provide the following items." 16:55:52 16:55:54

And is this one issue under site plan, is this also having to do with the location of the buildings in terms of whether or not there is enough setbacks and other things and sidewalk and trash, et cetera? 16:56:05 16:56:15 16:56:23 16:56:31 16:56:31

A I believe site plan -- under site plan, I don't believe that that's -- that has anything to do with the -- with the 50-foot setback that was required for the shop building. 16:56:34 16:56:38 16:56:42 16:56:44

The site plan had different issues that the contractor and the civil engineer and that Mr. Sawley worked through all of these here. 16:56:50 16:56:56 16:56:59

This is before we went in front of the Board that is referenced, and if I'm not mistaken, he's talking about the Architectural Review Board. 16:57:02 16:57:06 16:57:10

Q And the other items were not part of the Architectural Review Board process in September? 16:57:13 16:57:17

A I'm sorry? 16:57:18

Q Or the August 2020 email, that was not also for the ARB? 16:57:21 16:57:25

A I believe that they were all for ARB, or he may have brought all of the issues up because, you know, we weren't communicating that well so every 16:57:28 16:57:32 16:57:35

time we got something, it was more detailed than having single emails pertaining to different subjects. So he may have combined them all together. 16:57:37 16:57:40 16:57:44 16:57:44

But when he said the Board and what I'm reading here, as far as the trees and the ten-foot parking lot setback, and all of that, I believe that's all -- that's all in regards to the Architectural Review Board. 16:57:46 16:57:50 16:57:53 16:57:58 16:58:01

Q Okay. And when he's referring in the landscape plan to EFLA, do you know who that is? 16:58:03 16:58:08

A You indicated that EFLA will -- I don't know who that is. 16:58:13 16:58:18

Q Okay. Here he mentions elevations, "as well as the elevations for the service building." 16:58:22 16:58:27

Do you think that's at all related to the same issue that he brings up in August of 2020? 16:58:29 16:58:33

A Yeah, I believe what he is referencing here is not necessarily the elevation that showed on the plans. We had mocked up some rendering of the elevations of all of the buildings, and I think that's what he's requesting here because the Architectural Review Board doesn't read plans. They just want to see what it looks like. And I believe that's what he's referencing here. 16:58:36 16:58:41 16:58:46 16:58:49 16:58:52 16:58:56 16:58:58 16:59:02

Q And the Materials Board, what are they wanting? 16:59:07 16:59:08

A I think he's referencing to like exterior cladding, those kind of materials that he wanted to present to the Board. 16:59:18 16:59:21 16:59:25

Q Okay. And he's bringing these to your attention in June of 2020? 16:59:28 16:59:32

A Yeah, whatever the date of the email was. And I thought this was to -- was it to me or was it to James Seegert? 16:59:35 16:59:39 16:59:42

Q It's to Mr. Seegert. So you never saw this email? 16:59:48 16:59:50

A I believe he forwarded it to me. If you scroll all the way up, you'll see that he has forwarded the whole chain of emails to me. James has. 16:59:53 16:59:57 17:00:01 17:00:02

Q Okay. 17:00:06

A But I'm pretty sure I had communicated with James as he was going through all this as we were all pushing to go try and get as much done as we possibly could when we had them responding. 17:00:09 17:00:12 17:00:16 17:00:19

MS. GIBSON: And, Amy, if we could look at the review, the Development Agreement review process email. 17:00:26 17:00:37 17:00:40

Okay. There we go. 17:00:59

Is this -- this is the first one. 17:01:07

Okay. We have an email here from James 17:01:15
Seegert to you. It appears that he's forwarding an 17:01:20
email from Mike Sawley to him. 17:01:26

Do you remember seeing this email that 17:01:29
Mr. Seegert forwarded to you that he received from 17:01:32
Mr. Sawley? 17:01:35

A I don't remember the specifics, but 17:01:38
obviously, it was addressed to me, and I've seen it 17:01:41
at the time. 17:01:42

Q Okay. And if we could, just here in 17:01:52
January 14, 2021, did you have any problems with the 17:01:59
staff in the City? 17:02:03

A Besides the fact that they were not present 17:02:06
during 2020, some of them would come in one day and 17:02:12
return emails, and then the rest of the -- rest of 17:02:17
the people that worked in the same department that 17:02:19
they needed to communicate weren't there. So I 17:02:21
didn't have any issues with anybody at the City. 17:02:25
It's just they were not available. They were not 17:02:27
present and available. 17:02:28

Now after -- after the restrictions were 17:02:31
lifted is when we started getting communication from 17:02:35
the City. 17:02:38

Q And you don't think this has anything to do 17:02:42

with what he says at the end here, that says -- that outlines about a three-month process that can begin once staff and Courtesy reach generally acceptable terms? 17:02:46 17:02:50 17:02:52 17:02:54

A Yeah, I think that's a general statement. 17:02:57

Q So you don't think there was any issue in terms of your negotiations on the DA, the Development Agreement, in terms of being able to negotiate acceptable terms to the City? 17:03:02 17:03:08 17:03:11 17:03:14

A No. That part of it, even though it took a long time, it was -- it wasn't anything that really got in the way. And a lot of recommendations were done by the City, you know, as to how they could provide a package that they could support in front of the -- in front of the City Council, and the Council acts based on their recommendation. 17:03:19 17:03:23 17:03:26 17:03:31 17:03:36 17:03:39 17:03:44

Q If we can page down a little bit. 17:03:50

This email was also forwarded to you. 17:04:09

Do you recall seeing this email from Mr. Seegert to Mike Sawley? 17:04:15 17:04:19

A What it sounds to me is he's getting the -- what the process is with the City because I don't know how often he does a Development Agreement or deals with a customer that requires a Development Agreement. It sounds to me that James was asking 17:04:53 17:04:56 17:05:00 17:05:03 17:05:06

for clarification. 17:05:08

Q And do you see the part where he says, 17:05:10

"Am I correct to assume the building 17:05:12

permit cannot be issued until the DA 17:05:15

is approved by the City Council"? 17:05:17

Is that correct? 17:05:17

A I see that in the email. 17:05:19

Q Yeah. You already knew that. You said you 17:05:21

knew that in 2018, right? 17:05:24

A I knew what? 17:05:26

Q You knew that the Development Agreement had 17:05:28

to be finalized and approved by the City before the 17:05:34

permits could be issued, correct? 17:05:36

A That's correct because that's what the City 17:05:38

had recommended when we were -- when our plans were 17:05:42

based on County standards. In order to be able to 17:05:46

build it in the City, we had to have a Development 17:05:52

Agreement. And that was based on the City's 17:05:54

recommendation so they could overrule the City codes 17:05:58

and be able to build based on the County 17:06:01

codes -- County standards, I'm sorry. 17:06:03

Q But you never told Mr. Seegert that had to 17:06:08

be done before the building permit could be issued? 17:06:11

A He knows that, but I think if you read this 17:06:14

a little bit more carefully, he's trying to get the 17:06:16

City to commit that are these the things that we need to do in order to be able to pull a permit? 17:06:21 17:06:25

Q And you don't think he's just asking them, "Do I need to have this agreement done in order to issue a building permit?" You think it's something more in terms of saying that he is asking the City to issue it without the Development Agreement? Is that it? 17:06:27 17:06:31 17:06:34 17:06:44 17:06:48 17:06:48

A I don't understand the question. I think that's more of a statement than a question. 17:06:51 17:06:55

Q Strike that. Let's go down a little bit. 17:07:01

Okay. That's the end of it. 17:07:05

Amy, I thought there was one other one, but maybe I'm wrong, between Mr. Sawley and Mr. Seegert. Do you know what I'm talking about? 17:07:18 17:07:27 17:07:29

THE REPORTER: While she's looking at that, can I clarify what exhibit number this is that's on the screen? 17:07:31 17:07:31 17:07:31

MS. GIBSON: Oh, thank you. That's going to be Exhibit 14, please. 17:07:42 17:07:44

THE REPORTER: Thank you. 17:07:44

(Exhibit 14 was marked for identification and attached hereto.) 17:07:44 17:07:44

BY MS. GIBSON: 17:07:46

Q Okay. That may be one that we will save 17:08:00

for Mr. Seegert. 17:08:03

I have no further questions. 17:08:07

MR. HUGHES: Give me like five minutes. I only need five minutes. I just want to talk to Jerry real quick and you, Robert, and look at my notes. And I'm going to be very quick. 17:08:15 17:08:18 17:08:22 17:08:24

MS. GIBSON: No worries. 17:08:25

THE VIDEOGRAPHER: Off the record at 5:08 p.m. 17:08:26 17:08:27

(A recess was taken.) 17:08:31

THE VIDEOGRAPHER. Back on the record at 5:13 p.m. beginning Media Unit 12. 17:13:37 17:13:42

17:13:42

EXAMINATION 17:13:42

BY MR. HUGHES: 17:13:42

Q All right, Jerry. I want to just be quick and try and get you out of here. 17:13:46 17:13:49

If the permits are issued tomorrow as you testified you hope they will be, is there anything else that -- any other obstacle that you're going to have to overcome to start construction of the building? 17:13:52 17:13:55 17:13:59 17:14:02 17:14:03

A To the best of my knowledge, no. 17:14:06

Q Have all of the manufacturers approved the plans for all of the buildings? 17:14:07 17:14:09

A Yes. 17:14:10

Q All right. Are there any other outstanding 17:14:13
government approvals, I mean other than DMV 17:14:16
licensing you at that location, any other government 17:14:19
approvals that you're aware of? 17:14:22

A None that I'm aware of. 17:14:23

Q Okay. And we looked at an exhibit earlier, 17:14:27
but is the financing secured and available for you 17:14:30
to fund this project? 17:14:32

A Yes, it is. 17:14:34

Q Okay. And your general contractor is going 17:14:37
to commence? Are the subs lined up or is he waiting 17:14:41
until the permits are issued? 17:14:44

A I believe he's been talking to them. Now, 17:14:47
this was a design built project, so the majority of 17:14:50
the subs were part of the development of the 17:14:54
project. So like our mechanical, electrical, 17:14:56
plumbing, those have all been on board since day 17:15:02
one. When they can start construction, that's 17:15:05
between them and the general contractor. 17:15:08

Q But -- 17:15:09

A So the answer to your question is, yeah, 17:15:11
they're pretty -- he's been in communication with 17:15:14
them. 17:15:15

Q All right. If the permits are issued 17:15:17

tomorrow, do you have any idea how long it's going to take to get a formalized construction or project schedule in place? 17:15:20 17:15:24 17:15:25

A We talked about that earlier. Based on the timelines, probably 60 to 90 days. 17:15:29 17:15:34

Q Okay. 60 to 90 days for what, to work out scheduling the subs and materials and all of that stuff? 17:15:37 17:15:40 17:15:41

A Based on -- yeah, based on what I'm told and to line everything up and get a critical path lining everything up with all of the subs. 17:15:43 17:15:45 17:15:49

Q Okay. All right. Thank you. 17:15:54

I don't have anything else. 17:15:57

A Okay. 17:15:58

MS. GIBSON: I don't have anything further. 17:16:02

THE VIDEOGRAPHER: Off the record, concluding today's deposition at 5:16 p.m. 17:16:04 17:16:07

(The deposition concluded at 5:16 p.m.)

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DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

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

Executed this_____day of_____, 2021, at_____, California.

_____

SHAHRAM MIHANPAJOUH

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY of LOS ANGELES)

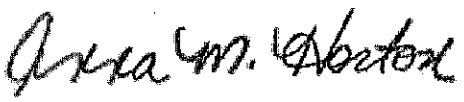
I, Anna M. Horton, Certified Shorthand Reporter for the State of California, hereby certify:

THAT the witness named in the foregoing deposition was duly sworn by me to testify the truth, the whole truth and nothing but the truth;

THAT said deposition was written by me in stenotype and was thereafter reduced to printed matter under my direction and supervision, and I hereby declare that said deposition is a full, true and correct transcript of my shorthand notes so taken.

I FURTHER CERTIFY that I am in no way interested in the outcome of said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of May, 2021.



ANNA M. HORTON, RPR, CSR 6950

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California Code of Civil Procedure

Article 5. Transcript or Recording

Section 2025.520

(a) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the Original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time.

(b) For 30 days following each notice under subdivision (a), unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or

refuse to approve the transcript by not signing it.

(c) Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition.

(d) For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

(e) The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person.

(f) If the deponent fails or refuses to approve the transcript within the allotted period, the

deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent.

(g) Notwithstanding subdivision (f), on a seasonable motion to suppress the deposition, accompanied by a meet and confer declaration under Section 2016.040, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

(h) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition under this section, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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23N1L17078
Subaru of America Inc.

EVIDENCE 24

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
Carlos Cabrera, INVESTIGATOR #560

From:	Jerry Pajouh <jpajouh@me.com>
Sent time:	03/27/2020 04:38:55 PM
To:	Smit, Ray
Subject:	Deposit

Respondent's Exhibit
R-105
Protest No. PR-2570-18

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,

As you are aware California is on "Shelter in Place" order. This past Tuesday City of Chico's Code Enforcement came onto our Sales Showrooms and shut our sales operation down. Our Sales Department generates an average of $250k/mo in gross profit plus all the below the line money we receive for a total of $400k/mo while generating almost $5M in monthly cash flow. This revenue stream stopped this past Tuesday. Since then we have been looking for ways to maintain course without having to lay off our employees we've work so hard to assemble as a team. We have cut back on miscellaneous expenses, minimized all government payments (until we get further instructions on the impact of the new law), stopped all automatic payments from our bank accounts and Credit Card companies (other than the manufacturers), participated in our banks programs regarding deferral of principal payments plus interest on our loans, deferral of curtailments of inventory while we are conserving cash and have applied for the new SBA loan that just became available to name a few. While taking these steps to stay afloat we still don't have any timelines for anything that is currently happening so we remain overly cautious about the cash coming in vs. cash going out.
One major source of cash we currently have is the $750k deposit with SOA as a commitment to complete our Subaru facility located at Garner Lane and Highway 99. I respectfully request the refund of this cash to help us get through these rough times.

Please let me know if I need to provide any additional information and await your quick response.

Thank you,

Jerry Pajouh
CEO / Dealer Principal
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