



STATE OF CALIFORNIA

DECISION COVER SHEET

☒ ACTION BY: Public Members Only

☐ ACTION BY: All Members

To : BOARD MEMBERS

Date: July 17, 2025

From : ADMINISTRATIVE LAW JUDGE: Dwight V. Nelsen

CASE: KPAUTO, LLC, dba PUTNAM FORD OF SAN MATEO v. FORD MOTOR COMPANY
Protest No. PR-2826-23

TYPE: Vehicle Code section 3065 Warranty

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: May 25, 2023
- MOTIONS FILED:
 - Protestant's "Motion to Compel Respondent to make its Party Witnesses Available for Testimony" (denied)
 - Protestant Request for Post-Hearing Deposition Designations (granted in part and denied in part)
- ZOOM HEARING: August 6-8, 12-13, and 15-16, 2024 (7 days); November 7, 2024, resumption of hearing to admit Protestant's post-hearing deposition designations (Exs. P-154 to P-161), Exhibit P-147, and Respondent's counter-designations (Exs. R-349 to R-356).
- COUNSEL FOR PROTESTANT: Gavin M. Hughes, Esq.
Robert A. Mayville, Jr., Esq.
Law Offices of Gavin M. Hughes
- COUNSEL FOR RESPONDENT: Steven M. Kelso, Esq.
April C. Connally, Esq.
H. Camille Papini-Chapla, Esq.
Greenberg Traurig, LLP

EFFECT OF PROPOSED DECISION: The Proposed Decision sustains Protestant's warranty protest.

SUMMARY OF PROPOSED DECISION:

- The burden of proof is upon Respondent to show by a preponderance of the evidence that Respondent did not (1) "select" Protestant for the Audit or (2) "perform" the Audit in a punitive, retaliatory, or unfairly discriminatory manner. (Vehicle Code section 3065.)
- Respondent's selection of Protestant for the Audit commenced on March 3, 2023, when Steven Kelso, Esq., Respondent's attorney from the law firm of Greenberg Traurig, sent an email to Protestant's Global Warranty Systems Manager, with the subject line of: "Legal Request – Putnam Ford in San Mateo – Servicing Ford Vehicles at Nissan Facility."
- Upon receiving Mr. Kelso's email, Respondent entered the allegation into to Respondent's allegation tracker identifying Greenberg Traurig, LLP, as the source of the allegation.
- The allegation was a top priority. Mr. Kelso's email was an urgent request to proceed with the allegation investigation.
- When Mr. Kelso sent the email to Respondent, Mr. Kelso was Respondent's attorney in Protest No. PR-2759-21 *KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company*. The Protest had a scheduled hearing date.
- The preponderance of the evidence does not establish that Respondent did not "select" Protestant for the audit in a "punitive, retaliatory, or unfairly discriminatory manner."
- On March 27, 2023, Respondent assigned the allegation to a warranty auditor for performance of the audit.
- Respondent's auditor reviewed Protestant's warranty claims for warranty work completed by Protestant at a location referred to as the "Barn" that had not been authorized by Respondent as required by the franchise agreement. The "Barn" was part of Putnam's Nissan Facility.
- The franchise agreement and Respondent's Warranty and Policy Manual requires that all service work by Protestant be performed at an authorized location.
- Respondent's auditor found that Protestant's service work on 551 of Protestant's warranty claims to have been performed at the "Barn." Respondent's auditor determined a total disallowance amount of \$502,821.56.

- The preponderance of the evidence established that Respondent performed the audit of Protestant in a manner that was not punitive, retaliatory, or unfairly discriminatory.
- However, the failure of Respondent to establish that it did not “select” Protestant for the Audit “in a punitive, retaliatory, or unfairly discriminatory manner” negates the performance of the Audit that followed. The punitive or retaliatory manner of Respondent’s selection of Protestant for the Audit is not cured by Respondent’s auditor’s performance of the Audit.

RELATED MATTERS:

- Related Protest: Protest No. PR-2759-21 *KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company*
- Related Case Law:
 - *Howitson v. Evan Hotels, LLC* (2022) 81 Cal. App.5th 475
 - *Cummings v. Stanley* (2009) 177 Cal.App.4th 493
- Applicable Statutes:
 - Evidence Code sections 776, 913.
 - Vehicle Code sections 331.1, 331.2, 3050, 3065, 3065.2, 3065.4.