

NEW MOTOR VEHICLE BOARD
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CERTIFIED MAIL

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of
IVS NorCal LLC, d/b/a Kuhn INEOS Grenadier,

Protestant,
v.
INEOS Automotive Americas, LLC,

Respondent.

Protest Nos. PR-2856-24

**PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS PROTEST**

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1 This matter came on regularly for telephonic hearing on Thursday, June 19, 2025, before Tammy
2 Bayne, Administrative Law Judge (“ALJ”) for the New Motor Vehicle Board (“Board”). Gavin M.
3 Hughes, Esq. and Robert A. Mayville, Jr., Esq. of the Law Offices of Gavin M. Hughes represented
4 Protestant. Louis Chronowski, Esq. and Marlow Svatek, Esq. of Barack Ferrazzano Kirschbaum &
5 Nagelberg LLP represented Respondent.

6 **FACTUAL AND PROCEDURAL BACKGROUND**

7 1. IVS NorCal LLC, dba Kuhn INEOS Grenadier (“Kuhn INEOS” or “Protestant”), is a
8 “franchisee” within the definition of Vehicle Code section 331.1¹ and INEOS Automotive Americas, LLC
9 (“INEOS” or “Respondent”), is a “franchisor” within the definition of Section 331.2. (Protest, ¶¶ 1, 2)
10 Kuhn INEOS and INEOS are parties to a “franchise” as defined in Section 331. (Stipulated Copy of
11 Franchise File, Exhibit 1; see also Respondent’s Motion to Dismiss Protest as a Matter of Law, Exhibit C)

12 **Notice of Termination**

13 2. On April 2, 2024, pursuant to Section 3060, INEOS issued a 60-day notice of termination
14 alleging, in part, the following:

15 INEOS is issuing this Notice on several grounds, including that Dealer has failed to comply
16 with several of its obligations under the Dealer Agreement. Dealer was obligated to secure
17 floorplan financing and complete specific service- and parts-related milestones that were
18 necessary for Dealer to conduct sales and service operations. Dealer has not done so and, as
19 a result, is in breach of the Dealer Agreement. Also, because Dealer has not begun
operations at its current location and now claims that it intends to relocate (but has not
identified a relocation site), INEOS reasonably believes that either Dealer does not intend
to perform or is incapable of performing its obligations.

20 . . .
21 Dealer has breached several provisions of the Dealer Agreement, including but not limited
22 to: (1) Dealer’s obligation to secure floorplan financing (Section 32 of the Dealer
23 Agreement); (2) Dealer’s obligation to hire and train qualified technical personnel to
perform aftersales work for INEOS products, including pre-delivery vehicle inspections,
maintenance and repair services, and replacement parts sales (Sections 16.3, 23.1, and 47.1
of the Dealer Agreement); and (3) as a result of the aforementioned breaches, Dealer is
unable to operate and is therefore breaching its sales and service obligations (Sections 16.1,
19.1, 19.3, and 20.1 of the Dealer Agreement).

24 . . .

25 Under Section 52.1 of the Dealer Agreement, INEOS has multiple grounds to terminate
26 the Dealer Agreement in these circumstances . . .

27 . . .

28 INEOS has “good cause” to terminate Dealer’s franchise under California Vehicle Code

¹ All statutory references are to the California Vehicle Code unless otherwise indicated.

1 §§ 3060–61 based on Dealer’s material breaches of the Dealer Agreement as described
2 above, as well as Dealer’s failure to conduct sales and service operations for more than
3 seven consecutive business days under California Vehicle Code § 3060(a)(1)(B)(v). . . .
(Notice of Termination, pp. 1, 2, 4 and 5)

4 3. The Board and the Protestant received the 60-day Notice of Termination via email on April
5 2, 2024. (Protest, ¶ 4)

6 4. On or about June 3, 2024, Protestant filed a substitution of attorney substituting
7 representation of Kuhn INEOS through Matthew Jude Kuhn and David Witner to the Law Offices of
8 Gavin M. Hughes. (Protestant’s Substitution of Attorney.)

9 **The Protest**

10 5. On April 30, 2024, Protestant filed with the Board a Section 3060 termination protest
11 against INEOS.

12 6. In its protest, Protestant denies each allegation asserted in the written Notice of
13 Termination.

14 7. Protestant contends that Respondent does not have good cause to terminate the franchise
15 considering the existing circumstances, including but not limited to the following:

16 (a) Amount of business transacted by the franchisee, as compared to the business available to
17 the franchise.

18 (b) Investment necessarily made and obligations incurred by the franchisee to perform its part
19 of the franchise.

20 (c) Permanency of the investment.

21 (d) Whether it is injurious to the public welfare for the franchise to be terminated.

22 (e) Whether the franchise has adequate motor vehicle sales and service facilities, equipment,
23 vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the
24 motor vehicles handled by the franchisee and has been and is rendering adequate service to the public.

25 (f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be
26 performed by the franchisee.

27 (g) Extent of franchisee’s failure to comply with the terms of the franchise. (Protest, ¶ 6)

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MOTION TO DISMISS PROTEST

Respondent's Assertions in its Motion to Dismiss Protest

8. On March 28, 2025, INEOS filed “Respondent’s Motion to Dismiss Protest as a Matter of Law.” This motion asserts that the protest should be dismissed as a matter of law because Kuhn INEOS “(1) never opened a franchised dealership, (2) never sold one of Respondent INEOS[‘s] . . . vehicles, (3) has no dealership property from which to operate a franchise, (4) never secured a floor plan, (5) has no current investments in the franchise, and (6) has no employees in California. Although [Mr.] Kuhn signed a dealer agreement to become an INEOS dealer, it never actually served as one.” (Motion, p. 1, line 21 through p. 2, line 1)

9. Respondent relies on the holding in *Duarte & Witting, Inc. v. New Motor Vehicle Bd.* (2002) 104 Cal.App.4th 626, 637, “[T]he Board has implied authority to dismiss a protest where the undisputed facts demonstrate good cause for franchise termination as a matter of law and afford no basis for preventing termination of the franchise.” Respondent contends that based on the undisputed facts, testimony of Mr. Kuhn, dealer principal and CEO, there is no need to conduct an evidentiary hearing. Kuhn [INEOS] has not performed and is not performing its obligations under the INEOS franchise agreement. (Motion, p. 4, lines 11-17)

10. INEOS argues that in *South County CDJR LLC dba South County Chrysler Dodge Jeep Ram Fiat v. FCA USA, LLC*, Protest Nos. PR-2666-20, PR-2667-20, PR-2668-20, PR-2669-20², “[T]he Board granted the Respondent’s motion to dismiss because the dealer closed in March 2020 and never reopened. . . . Dismissal with prejudice is even more warranted here because Kuhn [INEOS] never opened in the first place.” (Motion, p. 4, line 18 through p. 5, line 2)

11. Additionally, Respondent states “[t]here is no order that could result in Kuhn [INEOS] ‘continuing to operate’ as an INEOS dealer as it never operated as one in the first place and Kuhn [INEOS] has no dealership premises upon which to operate. . . . Indeed, Kuhn [INEOS] has no intention of even operating an INEOS dealership unless another INEOS dealership located over 40 miles away is

² INEOS’s motion references the Board Decision in *South County CDJR LLC dba South County Chrysler Dodge Jeep Ram Fiat v. FCA USA, LLC*, Protest Nos. PR-2666-20, PR-2667-20, PR-2668-20, PR-2669-20. This Decision has not been designated by the Board as a precedent decision pursuant to Government Code Section 11425.60, so it will not be relied upon in this Proposed Order.

dissolved.” (Motion, p. 7, lines 7-11)

12. Respondent contends that the existing circumstances and the good cause factors favor INEOS because: (a) Kuhn INEOS “has never transacted any business as an INEOS dealer;” (b) “[A]ny investments made by Kuhn [INEOS] were lost before the Notice of Termination was issued due to no fault of INEOS;” (c) “The only investment that Kuhn [INEOS] allegedly maintains are hand tools that Mr. Kuhn could not identify or even locate;” (d) “Any harm to the public occurred before the Notice of Termination was issued as Kuhn [INEOS] never opened as a dealer. . . . [T]he public may benefit as it will allow INEOS to replace Kuhn [INEOS], if it so desires.” (e) Kuhn INEOS “has no sales and service facilities and has no employees in California;” (f) Kuhn INEOS “never fulfilled any warranty obligations and has no way to fulfill such obligations;” (g) Kuhn INEOS “has failed to comply with any aspect of the franchise . . . [and] has breached every term of the franchise as alleged in the Notice of Termination. (Motion, p. 6, line 6-26) Respondent asserts there is good cause to terminate Protestant’s INEOS franchise as a matter of law.

Protestant’s Assertions in its Opposition

13. Protestant filed its Opposition to the motion on May 23, 2025. Protestant contends that “Respondent’s Motion should be denied because the Board has jurisdiction to order Protestant’s franchise remains [*sic*] in full force and effect despite Respondent’s efforts to re-rout [*sic*] pre-sales from Kuhn [INEOS] to other INEOS franchisees, Respondent’s failure to assist Kuhn [INEOS] in obtaining floorplan assistance and actively interfering in those efforts, and Respondent’s unreasonable refusal to approve Kuhn [INEOS] operations at an already operational dealership facility.” (Opposition, p. 2, lines 5-10)

14. Protestant, like Respondent, cites to the holding in *Duarte, supra*, 128 Cal.App.4th at p. 637, “[T]he Board has implied authority to dismiss a protest where the undisputed facts demonstrate good cause for franchise termination as a matter of law *and* afford no basis for preventing termination of the franchise.” (Italics in original; Opposition, p. 4, lines 6-9) However, it contends the Board’s authority in *Duarte* “is not unbounded, and granting Respondent’s Motion would violate the holding in *Frost v. State Personnel Board* (1961) 190 Cal.App.2d 1, holding ‘motions based upon want of evidence to make a prima facie case are not an authorized part of administrative procedure.’” (Opposition, p. 3, lines 18-22)

15. Additionally, Protestant asserts that Respondent’s reliance on *South County CDJR LLC* “is

1 misplaced because, not only is the decision a non-precedential Board decision, but also because there was
2 never a voluntary termination of Kuhn [INEOS]’s franchise unlike in *South County CDJR*.” (Opposition,
3 p. 3, line 26 through p. 4, line 2)

4 16. According to Protestant, “[w]hile INEOS’s Motion argues Kuhn [INEOS] did not open
5 operations as contemplated by the dealer agreement, INEOS ignores its own involvement in undermining
6 Kuhn [INEOS]’s ability to open the dealership as planned. INEOS failed to approve dealership operations
7 in Morgan Hill which would have been [*sic*] enabled Kuhn [INEOS] to utilize a property already designed
8 for dealership operations; INEOS interfered with Kuhn [INEOS]’s ability to obtain a flooring source and
9 refused [Mr.] Kuhn’s offer to pay for vehicles with cash as a viable alternative; and INEOS re-routed
10 significant numbers of customers who were waiting on Kuhn [INEOS] to obtain a flooring source and
11 start operations to other INEOS dealers.” (Opposition, p. 5, lines 22-28)

12 17. Protestant maintains, “there is a need to weigh the evidence in deciding whether
13 Respondent has met its burden of proof to show good cause to terminate Protestant’s franchise, including
14 consideration of the existing circumstances. Respondent argues none of the existing circumstances nor
15 [*sic*] good cause factors support Protestant’s Protest, however, . . . Protestant maintains there are existing
16 circumstances and good cause factors which support sustaining the Protest. Respondent’s Motion should
17 be denied because motions for nonsuit, based on want of evidence to make a prima facie case, may not be
18 entertained and passed on to agency boards.” (Opposition p. 5, lines 13-19)

19 **Respondent’s Assertions in its Reply to the Opposition**

20 18. Respondent filed its Reply on June 13, 2025. The basis for INEOS’s motion to dismiss is
21 that Kuhn INEOS “was never operational and does not even intend to become operational. Because no
22 order of the Board could result in Protestant becoming operational and serving the public, the Board
23 should dismiss the protest with prejudice as a matter of law.” (Reply, p. 1, line 27 through p. 2 line 2)

24 19. Respondent argues that “Protestant claims that INEOS undermined Protestant’s ability to
25 become operational by failing to approve the Morgan Hill facility, interfering with Protestant’s ability to
26 obtain a floorplan, and re-routing customers to other INEOS dealers” do not relate to any of the good
27 cause factors. Further, Respondent asserts that “it is undisputed that each of the good cause factors
28 support termination here. . . . Even more importantly, these arguments are irrelevant because they do not

change the fact that Protestant never became operational and does not intend to become operational, and therefore the Board cannot order any meaningful relief in this case.” Respondent contends “that alone is sufficient reason to dismiss the protest with prejudice.” (Reply, p. 4, lines 2-11)

20. INEOS contends “[i]n light of Protestant’s failure to become operational, it is undisputed that each and every one of the good cause factors support termination . . . [Protestant] does not refute that and does not identify any disputed facts rooted in any of the good cause factors that would afford a basis to sustain the protest. Accordingly, as in *Duarte*, the undisputed facts show good cause for termination and there is no need for the Board to hold a hearing to weigh any evidence.” (Reply, p. 2, lines 11-17)

APPLICABLE LAW

21. Section 331 provides in part as follows:

(a) A “franchise” is a written agreement between two or more persons having all of the following conditions:

(1) A commercial relationship of definite duration or continuing indefinite duration.

(2) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail new motor vehicles . . . manufactured or distributed by the franchisor or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

(3) The franchisee constitutes a component of the franchisor’s distribution system.

(4) The operation of the franchisee’s business is substantially associated with the franchisor’s trademark, trade name, advertising, or other commercial symbol designating the franchisor.

(5) The operation of a portion of the franchisee’s business is substantially reliant on the franchisor for a continued supply of new vehicles, parts, or accessories.

22. Section 331.1 defines a franchisee as follows:

A “franchisee” is any person who, pursuant to a franchise, receives new motor vehicles subject to registration under this code, new off-highway motorcycles, as defined in Section 436, new all-terrain vehicles, as defined in Section 111, . . . from the franchisor and who offers for sale or lease, or sells or leases the vehicles at retail or is granted the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

23. Section 331.2 defines a franchisor as follows:

A “franchisor” is any person who manufactures, assembles, or distributes new motor vehicles subject to registration under this code, new off-highway motorcycles, as defined in Section 436, new all-terrain vehicles, as defined in Section 111, . . . and who grants a franchise.

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24. Section 3050 provides, in part, as follows:

The board shall do all of the following:

...

(c) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060 . . .

...

25. Section 3060 provides, in part, as follows:

(a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, no franchisor shall terminate or refuse to continue any existing franchise unless all of the following conditions are met:

(1) The franchisee and the board have received written notice from the franchisor as follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue.

...

(2) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section 3066. . . .

(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.

26. In determining whether good cause has been established for terminating a franchise, Section 3061 requires the Board to “take into consideration the existing circumstances, including, but not limited to, all of the following:

(a) Amount of business transacted by the franchisee, as compared to the business available to the franchisee.

(b) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.

(c) Permanency of the investment.

(d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.

(e) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public.

(f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.

(g) Extent of the franchisee's failure to comply with the terms of the franchise."

DEALER AGREEMENT (FRANCHISE)

27. On September 5, 2023, Kuhn INEOS Automotive Partners III, LLC, a Limited Liability Company executed an INEOS Sales and Service Agreement ("Dealer Agreement"). (Stipulated Copy of Franchise File, Exhibit 1) Matthew Kuhn signed the Dealer Agreement as Dealer Principal/Chief Executive Officer. (Stipulated Copy of Franchise File, Exhibit 1). The "Standard Provisions" in the Dealer Agreement as referenced in the Notice of Termination are as follows:

6. Dealer's Premises

6.1 Dealer's Premises shall be the premises set forth in Attachment B to this Agreement and no other location. Dealer shall operate the Business only at Dealer's Premises. The Dealer's Premises shall satisfy all applicable provisions of this Agreement and the Additional Dealer Documents.

6.3 The Dealer shall not, without providing INEOS with at least sixty (60) days' prior written notice and obtaining INEOS' prior written consent: (a) make any major structural change in or substantially alter or modify any of Dealer's Premises; (b) cease to operate the Business from Dealer's Premises or change the location of any portion of Dealer's Premises, including changing the location of any of Dealer's Premises within the same address or property location; (c) establish any additional facilities, including facilities within the same address or property location, for the Business, or (d) reduce the size or change the location or positioning of any floor space-dedicated to INEOS Products within Dealer's Premises.

...

16. Sale and Promotion

16.1 The Dealer shall actively, truthfully and effectively promote and sell INEOS Products, Original Spare Parts, and Merchandise and After Sales Services within its Primary Market Area in accordance with the terms of this Agreement and the Additional Dealer Documents. The Dealer must achieve the best sales performance possible in the Dealer's Primary Market Area.

...

16.3 The Dealer shall employ suitably trained and qualified personnel to achieve the objectives set out in Sections 16.1 and 16.2. (Underline in original.)

19. After Sales Services³

19.1 The Dealer agrees to provide After Sales Services in respect of INEOS Products as Prescribed and in accordance with the Service Bulletins and/or otherwise at INEOS' direction, regardless of where a Customer's INEOS Product and/or Original Spare Part was originally purchased and/or serviced and whether or not under Warranty.

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³ Section 19.3 was referenced in the Notice of Termination, but it does not seem applicable.

1 **20. Warranty Work, Service Actions, and Recall Campaigns**

2 20.1 In addition to any obligations required under Section 19, by Applicable Law or by
3 contract, with respect specifically to the Warranty, a Service Action, or a Recall
4 Campaign, Dealer shall promptly provide support and assistance to Customers and
5 perform any necessary investigation, repairs, and any other work, regardless of
6 whether that Customer purchased an INEOS Product or Original Spare Part from
7 the Dealer. (Underline in original.)

8 **23. Pre-Delivery Inspection**

9 23.1 Prior to the delivery of any INEOS Product sold by the Dealer to a Customer, the
10 Dealer shall:

- 11 (a) fully and efficiently carry out the Prescribed pre-delivery inspection and
12 service of that INEOS Product; and
13 (b) ensure that the INEOS Product complies in all respects with the Customer's
14 requirements as set out in the Customer's order.

15 **29. Dealer's Premises**

16 29.1 If the Dealer wishes to relocate its Business to a new location other than the
17 Dealer's Premises, it shall first:

18 29.2 notify INEOS of its intention in writing at least sixty (60) days prior to the proposed
19 date of such relocation;

20 29.3 supply INEOS with such information as INEOS may request in its discretion
21 concerning the proposed relocation and the proposed new location; and

22 29.4 obtain INEOS' prior written consent to such relocation and the proposed new
23 location.

24 29.5 The Dealer shall not sell INEOS Products from the proposed premises unless and
25 until approved by INEOS in writing.

26 **32. Capital; Floorplan Line of Credit**

27 32.1 The Dealer agrees to comply with such financial requirements as Prescribed by
28 INEOS periodically, including establishing and maintaining actual net working
29 capital in an amount not less than the minimum net working capital Prescribed by
30 INEOS.

31 32.2 The Dealer agrees to obtain and maintain at all times in such amount as Prescribed
32 by INEOS periodically a confirmed and adequate wholesale line of credit with a
33 bank or financial institution or other method of financing acceptable to INEOS to
34 enable the Dealer to perform its obligations pursuant to this Agreement. INEOS
35 may increase the required amounts of flooring or lines of credit, and the Dealer
36 agrees promptly to establish and maintain the increased amount. Subject to
37 foregoing obligations, the Dealer is free to do its financing business, wholesale,
38 retail or both, with whomever it chooses and to engage in retail financing activity to
39 the extent it desires.

40 ///

1 **47. Training**

2 47.1 The Dealer shall ensure that its repair and sales staff and Technical Personnel
3 attend, at the Dealer's expense, Prescribed training courses that INEOS may
 organize directly or indirectly from time to time.

4 **52. Termination By INEOS**

5 52.1 INEOS may terminate this Agreement by written notice to the Dealer with
6 immediate effect, by sending notice of termination to the Dealer, if any of the
 following should occur:

7 ...

8 (b) in the reasonable opinion of INEOS, the Dealer does not intend to perform,
9 or has become incapable of performing, any of its obligations under this
 Agreement, the Additional Dealer Documents, or any Remedial Action
 Plan;

10 ...

11 (e) Dealer's failure, for a period of ten (10) consecutive Business Days, to have
 any license necessary for the conduct of the Business;

12 ...

13 (h) the Dealer is in breach of this Agreement, the Additional Dealer Documents,
 the Data Use and Protection Policy, or the Trademark License and:

14 ...

15 (iii) the breach was capable of being remedied and INEOS has given a
16 prior notice to the Dealer requiring that the Dealer remedy such
17 breach within a specified time period which is to be reasonable but
 will not in any eventuality exceed sixty (60) days from the Dealer's
 receipt of the notice and the Dealer has failed to remedy the breach
 within that specified time period;

18 ...

19 (m) the Dealer fails to maintain a wholesale line of credit or other financing as
20 required in this Agreement and the Additional Dealer Documents for a
 period of thirty (30) days;

21 ...

22 **FACTS THAT HAVE BEEN ESTABLISHED BY INEOS AND**
 NOT DISPUTED BY KUHN INEOS

23 28. The only approved location of the Kuhn INEOS Grenadier dealership is 380 Convention
24 Way, Redwood City, CA 94063. (Stipulated Copy of Franchise File, Exhibit 1, Attachment B)

25 29. The Redwood City dealership never opened for business. (Motion, Exhibit A, Mr. Kuhn's
26 Deposition (herein "Mr. Kuhn's Deposition"), p. 74, lines 16-18)

27 30. Kuhn INEOS no longer has a lease for the Redwood City property. (Mr. Kuhn's
28 Deposition, p. 89, lines 18-20). The Redwood City property has been leased to another tenant and is no

longer available to Kuhn INEOS. (Mr. Kuhn's Deposition, p. 187, lines 3-9)

31. Kuhn INEOS does not intend to operate an INEOS dealership in or around Redwood City unless the other INEOS dealership in Northern California is dissolved.⁴ (Mr. Kuhn's Deposition, p. 57, lines 1-19)

32. Kuhn INEOS does not have a California dealer's license. (Mr. Kuhn's Deposition, p. 58, lines 7-15)

33. Kuhn INEOS never secured floor plan financing. (Mr. Kuhn's Deposition, p. 129, lines 19-24, p. 140, lines 2-16 and lines 21-23, p. 161, lines 6-14, p. 191, lines 8-11, p. 194, lines 16-19)

34. Kuhn INEOS never performed warranty repairs on customer-owned vehicles and cannot perform warranty service. (Mr. Kuhn's Deposition, p. 75, lines 13-16, p. 95, line 23 through p. 96, line 1)

35. Kuhn INEOS never delivered any INEOS vehicles to customers. (Mr. Kuhn's Deposition, p. 75, lines 2-4).

36. Kuhn INEOS never hired a full-time technician for the INEOS dealership. (Mr. Kuhn's Deposition, p. 132, lines 23-25)

37. Kuhn INEOS has no employees in California. (Mr. Kuhn's Deposition, p. 96, lines 13-24)

ANALYSIS

38. There is no dispute that the Board has the inherent power to dismiss a protest (without a hearing on the merits of the protest) if the Board lacks jurisdiction over the parties or the protest. This may be due to the absence of a "franchise" (as defined in the Vehicle Code) or because the protest was not timely filed.

39. And there is no dispute that the Board has the implied power to summarily dismiss a protest based upon the "existing circumstances" as was done by the Board and upheld in *Duarte*. In *Duarte*, the franchise for Plymouth vehicles was being terminated as the franchisor (one of the prior Chrysler entities) had ceased production of the Plymouth line-make.

40. In *Duarte*, a Board order sustaining the protest would have been a useless act and meaningless as the franchisor could not, by order of the Board, resume providing Plymouth vehicles to

⁴ The other INEOS dealership is in San Rafael, approximately 40 miles from the Redwood City location.

1 the franchisee. No order of the Board could prevent the loss of the Plymouth dealership and allow it to
2 continue to serve the public in that market area. This protest is similar to *Duarte*, in that no order of the
3 Board could result in Kuhn INEOS operating as an INEOS dealership. In the instant case, a Board order
4 sustaining the protest cannot open a dealership, cannot order a dealership in San Rafael to dissolve, and
5 cannot allow the dealership to serve the public in the market area.

6 41. The purpose of Section 3060 is to protect franchisees from unjustified terminations of
7 franchises that would result in the loss of the dealerships and loss of the investment of the owners as well
8 as to protect public access to dealerships that are needed and doing a good job in providing for the
9 essential needs of the public. Although a franchise is merely the written agreement between the parties, it
10 is essential for the franchisee to operate the dealership. Thus, in the case of an operating dealership, the
11 loss of the franchise would result in the loss of the dealership with all the possible adverse consequences
12 that would flow from such a loss. Ordinarily, the dealership is in operation but will be required to cease
13 operation if the franchise is terminated. Here the situation is different; the dealership was never
14 operational. Although the franchise, the written agreement, technically continues to exist all the adverse
15 consequences associated with a nonoperational dealership have already occurred. These consequences
16 cannot be remedied or ameliorated by any order of the Board precluding INEOS from terminating the
17 written agreement.

18 42. If the Board has jurisdiction over the protest, the Board is without power to do anything
19 other than to overrule or sustain the protest. Sustaining the protest would mean only that Respondent
20 cannot terminate the franchise - the written agreements that contain the contractual rights and duties of the
21 parties. However, as stated above, ordering that the contractual relationship continue to exist will not
22 result in the opening of the dealership nor will requiring Respondent to maintain its contractual
23 relationship with Kuhn INEOS change the fact that Kuhn INEOS has no assets that would be lost by the
24 termination of the franchise. Sustaining the protest and preventing termination of the franchise (the
25 written agreements) will result in maintaining the status quo which will leave the parties and the
26 consuming public where they have always been – with no INEOS sales being made, with no service
27 available to the public, no warranty obligations of Respondent being performed on customers' vehicles,
28 and no benefits to the public that would accrue if the dealership had been operational.

43. Sustaining the protest would not further the legislative intent of the statutes, which, unless there is good cause to do so, is to prevent the loss of the benefit of the dealership to the community interests affected by and dependent upon such ongoing enterprises. In most cases, the franchise is the heart of the dealership and if the franchise is terminated, the dealership dissolves. In this instance, the franchise is not the heart of the dealership because no operational dealership was ever established. Whether it was caused in whole or in part by circumstances beyond the control of the franchisee is irrelevant to the issues before the Board as the existing circumstances are that the dealership has never opened for business.

44. An order of the Board requiring INEOS to continue in its franchise relationship with Kuhn INEOS would not protect Kuhn INEOS from an unfair termination of its franchise nor would there be any protection of the interests of the public or otherwise further the intention of the legislature in the enactment of the statutes at issue.

45. In summary, INEOS is correct in contending that the facts are such that there is no relief available before the Board and thus going to a hearing to determine whether there is good cause to terminate the franchise would be an exercise in futility. This is because Kuhn INEOS has never operated and is not now operating as a dealership, conducting business as an INEOS franchisee. Consequently, a Board order that INEOS may not terminate the franchise will not further the legislative intent of requiring that a franchisor establish good cause before allowing termination of the franchise thus protecting the public interest in preserving an operational dealership and maintaining its existence for serving the consuming public. In this case, sustaining the protest will not prevent the loss of the dealership, will not prevent any unfair forfeiture to Kuhn INEOS or its owners, will not protect employees, the community or the consuming public that would be served by the dealership.

46. Under the existing circumstances, deciding whether INEOS has good cause to terminate the franchise is unnecessary as a Board order would be meaningless. All the adverse effects of a nonoperational dealership have already occurred, and no order of the Board will prevent or even mitigate their impact.

47. Section 3061 requires that the franchisor establish good cause to terminate the franchise taking into consideration “the existing circumstances” including several specific areas of inquiry as will

1 be discussed.

2 48. The most important “existing circumstances” here are that: Kuhn INEOS was never an
3 operational INEOS dealership; the franchisee does not have a “valid” license to operate as a new motor
4 vehicle dealership; Kuhn INEOS never secured floorplan financing; termination of the franchise (the
5 written documents) will not cause any additional loss to the franchisee; the consuming public has never
6 had an operating INEOS dealership in Redwood City; INEOS will not be able to appoint a new franchisee
7 who will establish a new dealership in Redwood City until the Kuhn INEOS franchise (the written
8 agreement) is terminated pursuant to an order of the Board; and the franchisee is not contributing to the
9 economy and is not generating any tax revenue for Redwood City or the county.

10 49. In addition to the general language of “existing circumstances,” Section 3061 also lists
11 seven more specific circumstances that must be considered in determining whether good cause exists for
12 terminating a franchise. These circumstances and the pertinent facts are as follows:

13 (a) Amount of business transacted by the franchisee, as compared to the business
14 available to the franchisee.

15 50. As indicated above, Kuhn INEOS has never conducted any business as an INEOS dealer.

16 (b) Investment necessarily made and obligations incurred by the franchisee to perform
17 its part of the franchise.

18 51. Whatever investments may have been made by Kuhn INEOS were lost prior to the Notice
19 of Termination.

20 (c) Permanency of the investment.

21 52. Whatever investment Kuhn INEOS may have had attempting to establish a dealership was
22 lost prior to the Notice of Termination being issued.

23 (d) Whether it is injurious or beneficial to the public welfare for the franchise to be
24 modified or replaced or the business of the franchisee disrupted.

25 53. The harm to the public occurred prior to the Notice of Termination being issued and the
26 termination of the franchise will not cause any additional injury to the public welfare. In fact, the
27 termination of the franchise may benefit the public as it will allow INEOS to replace the Kuhn INEOS
28 dealership with another franchisee or franchisees, if it so desires.

- 1 (e) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment,
2 vehicle parts, and qualified service personnel to reasonably provide for the needs of the
3 consumers for the motor vehicles handled by the franchisee and has been and is rendering
4 adequate services to the public.

5 54. Kuhn INEOS has no sales or service facilities, vehicle parts, equipment, or employees in
6 California and has not been rendering any services to the public let alone services that are “adequate.”

- 7 (f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be
8 performed by the franchisee.

9 55. Kuhn INEOS has not been fulfilling any of INEOS’s warranty obligations and therefore
10 has failed in this regard. Owners or lessees of INEOS vehicles have not been able to have warranty
11 work performed in the Redwood City market area.

- 12 (g) Extent of franchisee’s failure to comply with the terms of the franchise.

13 56. It is undisputed that Kuhn INEOS has breached the terms of the franchise as stated in the
14 Notice of Termination.

15 57. INEOS has provided more than sufficient evidentiary documents to support the above
16 conclusions and Kuhn INEOS has submitted no evidence that would contest the above facts.

17 58. It is therefore determined that INEOS has established as a matter of law that there is good
18 cause to terminate Kuhn INEOS’s franchise.

19 **ANALYSIS OF CLAIM THAT THE BOARD HAS IMPLIED AUTHORITY**
20 **TO DISMISS THE PROTEST**

21 59. The Board, relying on the opinion in *Duarte*, concludes that it has the implied authority to
22 dismiss this protest because the undisputed facts show good cause as a matter of law for termination of
23 Protestant’s INEOS franchise. It is therefore determined that there is good cause for dismissal of Kuhn
24 INEOS’s protest with prejudice.

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IVS NorCal LLC, d/b/a Kuhn INEOS Grenadier v. INEOS Automotive Americas, LLC, Protest Nos. PR-2856-24 is dismissed with prejudice.

DATED: July 11, 2025

By Tammy Bayne
TAMMY BAYNE
Administrative Law Judge

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