IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

STATE OF MISSOURI, ex rel. MISSOURI AUTOMOBILE DEALERS ASSOCIATION, et al. Plaintiffs/Relators, vs. NIA RAY, Director, Missouri Department of Revenue, Serve at: Harry S Truman Office Building, Room 670 Jefferson City, MO 65101, and THE MISSOURI DEPARTMENT OF REVENUE, Serve at: Harry S Truman Office Building, Room 670 Jefferson City, MO 65101, Defendants/Respondents,	)	Case No. _____ Division No. _____

SUGGESTIONS IN SUPPORT OF
PETITION FOR WRIT OF PROHIBITION

Pursuant to Missouri Rule of Civil Procedure 97.03, Relators State of Missouri, ex rel. Missouri Automobile Dealers Association, Reuther Ford, Inc., and Osage Industries, Inc. ("Relators"), submit these suggestions in support of their Petition for Writ of Prohibition.[1]

I. Introduction

This lawsuit challenges the granting and renewal of new motor vehicle dealer licenses by the Respondents, where the statutory requirements for issuing and renewing

[1] These suggestions are filed with regard to Count II of the Petition, as required by Rule 97.03.

those licenses were plainly not met. For many years, new motor vehicles have been sold in Missouri using a tried-and-true structure: manufacturers do not sell cars themselves, but do so through a network of licensed dealers. This structure of separate roles for manufacturers and dealers is established by statute and reflects wise public policy. Customers have a locally-owned business to turn to for service, resolution of problems with their vehicle and other concerns. It is far easier for a customer to deal with a problem vehicle through a local dealer than a large corporation that could be anywhere in the world. The dealer system promotes competition and fair pricing for consumers. For example, if a customer wants to buy a particular make and model, he or she can bargain with multiple dealers to get the best price.

Although the statutes are clear and unambiguous that an applicant can obtain a dealer license only when all the statutory requirements are met, the Respondents failed to follow them. They issued and renewed a dealer license to an entity that is not a dealer at all. The entity, Tesla Motors, Inc., is a manufacturer with a company-owned store (not, by any means, a "dealership") in University City, Missouri. The law is plain that a dealer license holder must be the franchisee of a manufacturer; Tesla Motors, Inc. is not. The law is plain that an applicant for a dealer license must file a franchise agreement; Tesla Motors, Inc. did not (because no such document exists). The law is plain that a dealer license shall be issued only where the operation is a "bona fide dealer" meeting physical plant requirements; Tesla Motors, Inc. did not.

Because no license should ever have been issued to Tesla Motors, Inc., and because it should not have been renewed, Relators bring this lawsuit to obtain a

declaration that the law means what it says (Count I), to prohibit the Respondents from continuing to issue unlawful licenses (Count II), to vindicate the equal protection rights of the Relators (Count III), and to seek redress for the unpromulgated policy statement permitting licensure (Count IV).

These suggestions are filed in support to Count II, in accordance with Missouri Rule of Civil Procedure 97.03, which requires suggestions in support to be filed with a Petition for Writ of Prohibition.

II. Preliminary Order requested

Pursuant to Rule 97.05, a preliminary order of prohibition "shall order the respondent to file an answer within the time fixed by the order and may order the respondent to refrain from all action in the premises until further review." Relators are herein seeking only a preliminary order requiring Respondents Nia Ray and Missouri Department of Revenue to answer Count II of the Petition in the above-entitled cause within 30 days of this Court's preliminary order. Relators are not seeking any additional temporary relief at this time.

III. Facts

Tesla Motors, Inc. ("Tesla") is a foreign corporation registered to do business in Missouri. Tesla holds a license issued by Respondents as a manufacturer, and it, in fact, manufactures vehicles. Tesla's manufacturer license is not at issue in this lawsuit.

Instead, as described below, Tesla (the very same corporate entity) also has been issued a Missouri new motor vehicle *dealer* license by Respondents. On information and belief, Tesla is the only entity in the State of Missouri with both a dealer and

manufacturer license. The issue in this lawsuit is the unlawful granting and renewal of dealer licenses to Tesla.

In March 2013, the Department received an Application from Tesla on DOR Form 4682 ("Application for Dealer, Auction, or Manufacturer License and Number Plate(s)"). A true and accurate copy of that Application is attached to the Petition as Exhibit A. On the March 2013 Application, Tesla asserted that its "Type of Operation" is "MV/Powersport Dealer," and that it would sell "New MVs." *See Exhibit A*. The address Tesla listed on Exhibit A was 8664 Olive Blvd., Suites C & D, University City, MO 63132.

DOR Form 4682 requires an oath or affirmation that the "application is made to conduct business as a bona fide dealer, auction or manufacturer as provided by Sections 301.550 through 301.573, RSMo [and] that the information set forth herein is true and accurate." *Exhibit A (capitalization in original removed)*. In multiple letters to DOR, Tesla has stated "Tesla Motors, Inc. is the manufacturer of TESLA vehicles and will sell its vehicles directly to the general public."

On March 11, 2013, Tesla filed with DOR a document titled "FRANCHISE AGREEMENT CONFIRMATION." A true and accurate copy of this document is attached to the Petition as Exhibit B. The FRANCHISE AGREEMENT CONFIRMATION states that "Tesla Motors, Inc. . . authorizes Tesla Motors, Inc., to sell the following: TESLA." The document further states: "The franchise agreement shall be effective December 31, 2012, and shall [be] non-expiring."

In April 2013, DOR issued to Tesla a new motor vehicle dealer license number, D649, and also issued to Tesla a manufacturer license, number DM368. Motor vehicle dealer licenses expire on December 31. On information and belief, Respondents have renewed Tesla's dealer licenses for 2014 and 2015.

Respondents' actions in issuing Tesla dealer license number D649 and then renewing it violate the law because Tesla was never entitled to the license. Tesla's application failed to meet the statutory requirements for a dealer license in the following respects:

a. Tesla's Application did not meet the requirement in Section 301.559.3(3), RSMo that the application be accompanied by a copy of the franchise agreement setting out the appointment of the applicant as a franchise holder. Tesla cannot comply with this requirement because there is no franchisor-franchisee relationship between Tesla and Tesla.

b. Tesla's Application is internally inconsistent and contradictory in that one entity purports to fill two roles (dealer and manufacturer) that are mutually exclusive.

c. The FRANCHISE AGREEMENT CONFIRMATION document that Tesla filed with DOR is inaccurate. There is no "Franchise Agreement" between Tesla and Tesla to be "confirmed." Second, the document inaccurately states effective dates for a franchise agreement that does not exist.

d. Tesla's Application did not establish that it meets the statutory requirement in Section 301.560.1(1), RSMo to be a bona fide dealer. The photographs

that Tesla submitted with its Application reveal that the University City location contains no showroom, contains no lot on which vehicles can be displayed, has no capability for servicing vehicles, and has inadequate signage.

Because Tesla does not meet the requirements for a new motor vehicle dealer license, Respondents' actions in granting and renewing license number D649 were unlawful.

IV. This Court should enter a preliminary writ of prohibition ordering Respondents to answer the Petition within 30 days

The Missouri Supreme Court has held that prohibition lies where a party will suffer an absolute and irreparable harm that would otherwise escape review on appeal and the aggrieved party may suffer considerable hardship and expense. *State ex rel. Riverside Joint Venture v. Mo. Gaming Commission*, 969 S.W.2d 218, 221 (Mo. banc 1998).

Likewise, in *State ex rel. Noranda Aluminum, Inc. v. Rains*, the Missouri Supreme Court described the basis for issuing a writ of prohibition against an administrative agency's action:

> This category often acts as a mechanism for deciding an important legal question that routinely escapes this Court's attention because of the litigation process and the lack of interest in some instances to prosecute an appeal at a client's expense. It might be noted that there are no interlocutory

> appeals in civil cases in Missouri, which in other jurisdictions might cover some of the situations in this third category. Thus, where there is an issue which might otherwise escape this Court's attention for some time and which in the meantime is being decided by administrative bodies or trial courts whose opinions may be reason of inertia or other cause become precedent; and, the issue is being decided wrongly and is not a mere misapplication of law; and, where the aggrieved party may suffer considerable hardship and expense as a consequence of such action, we may entertain the writ for purposes of judicial economy under our authority to "issue and determine original remedial writs." Mo. Const. art. V, § 4.1.

706 S.W.2d 861, 862-863 (Mo. 1986).

The circumstances articulated in *State ex rel. Noranda Aluminum* and *State ex rel. Riverside Joint Venture* are present here as to Relators. Relators face the prospect of spending considerable sums of money and significant time to comply with the licensing requirements outlined in the Petition, while a similarly situated entity has been unlawfully shielded from those same requirements by the Respondents. As Missouri taxpayers, Relators also oppose the unlawful expenditure of State resources that will be incurred through the continued issuing of new dealer licenses to entities that are not entitle to such licenses under the law. Without a preliminary writ requiring the

Respondents to answer the Petition, and ultimately preventing this unlawful use of taxpayer resources, these taxpayer expenses will never be recovered.

WHEREFORE, Relators respectfully request this Court's preliminary order requiring Respondents to answer Count II of the Petition in the above-entitled cause within 30 days of this Court's preliminary order.

Respectfully submitted,

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