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01-15-2025
Clerk of Circuit Court
Outagamie County
2025CV000075

STATE OF WISCONSIN **CIRCUIT COURT**
OUTAGAMIE COUNTY

TESLA, INC.
1 Tesla Road
Austin, TX 78725,

Petitioner,

v.

WISCONSIN DEPARTMENT OF TRANSPORTATION
4822 Madison Yards Way
Madison, WI 53705,

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION, DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way
Madison, WI 53705,

Respondents,

and

WISCONSIN AUTOMOBILE AND TRUCK DEALERS ASSOCIATION
150 E. Gilman Street, Suite A100
Madison, WI 53703,

Interested Party.

Case No.

Case Code: 30607

Review of Administrative Agency Action

PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION

Petitioner Tesla, Inc. ("Tesla") petitions this Court pursuant to Wis. Stat. §§ 227.52 and 227.53 to review a final decision dated December 17, 2024, issued by the Wisconsin Division of Hearings and Appeals (the "Final Decision," attached hereto as Exhibit A). The Final Decision

denies Tesla's request to open dealerships in Outagamie, Dane, and Milwaukee counties, with the result that Wisconsin will not currently permit Tesla to sell its vehicles in Wisconsin.

For the reasons that follow, this Court should reverse or set aside the Final Decision, and order that Tesla be permitted to open the requested dealerships; reverse and remand to the Division for further action correcting the errors in the Final Decision; or in the alternative, reverse and remand to the Division with instructions to commence a new hearing before an impartial adjudicator.

In support of this petition for judicial review, Tesla alleges and states as follows:

PARTIES AND VENUE

1. The Petitioner, Tesla, is a foreign corporation, with its home office and principal place of business located at 1 Tesla Road, Austin, Texas, 78725.

2. The Respondent, the Division of Hearings and Appeals (the "Division"), has its principal place of business at 4822 Madison Yards Way, Fifth Floor North, Madison, Wisconsin 53705. The Division is named as the Respondent as provided in Wis. Stat. § 227.53.

3. The Division hears contested case proceedings for various state agencies, including reviews of decisions related to an automobile manufacturer's application for a motor vehicle dealer's license under Wis. Stat. § 227.0121(3m)(c).

4. The Division is attached to the Wisconsin Department of Administration ("DOA"), as described in Wis. Stat. § 15.103(1). DOA is a state agency as that term is defined by Wis. Stat. § 227.01(1) and has its principal place of business at 101 East Wilson Street, Madison, Wisconsin, 53703.

5. Respondent State of Wisconsin, Department of Transportation ("WisDOT"), an Interested Party, is an agency of the State of Wisconsin, with its principal offices located at 4822 Madison Yards Way, Madison, Dane County, Wisconsin 53705.

6. The Wisconsin Automobile and Truck Dealers Association ("WATDA"), an Interested Party, is a trade association of Wisconsin auto dealers. On information and belief, WATDA has offices located at 150 E Gilman Street, Suite A100, Madison, Wisconsin, 53703.

7. Venue for this proceeding is proper in Outagamie County, Wisconsin, under Wis. Stat. § 227.53(1)(a)(3), because that is the location of the "the property affected by the decision"—Tesla's proposed dealership. For the same reason, Outagamie County is the location "where the dispute arose." *Id.*

BACKGROUND FACTS AND HISTORY OF PROCEEDING

8. Tesla is an American automotive and clean energy company. Tesla's mission is to accelerate the world's transition to sustainable energy through the development, manufacture, and sale of all-electric vehicles ("EVs") and clean energy products. Tesla is the largest seller of EVs in the United States by a substantial margin, accounting for nearly 50% of U.S. EV sales annually.[1]

9. Tesla also operates service centers that provide repair and maintenance for its EVs, as well as the world's largest network of direct-current fast charging stations, known as "Superchargers."

[1] Cox Automotive, *Electric Vehicle Sales Report* (Q3 2024), https://www.coxautoinc.com/wp-content/uploads/2024/10/Kelley-Blue-Book-EV-Sales-Report-Q3-2024-revised-10-14-24.pdf.

10. There are over thirteen-thousand Tesla vehicles registered in Wisconsin. There are also 36 Tesla Supercharger installations in the State.

11. Unlike traditional motor vehicle manufacturers, Tesla sells its vehicles directly to customers throughout the U.S. As a result, Tesla has no franchised dealerships in any state.

12. Tesla is a licensed motor vehicle dealer in 30 states and the District of Columbia.

13. Tesla is not licensed as a motor vehicle dealer in Wisconsin, and as a result, Wisconsin law provides that it cannot own a dealership in Wisconsin unless approved to do so under an exemption to Wisconsin's restrictions on manufacturer-owned dealerships.

14. Wisconsin residents who wish to purchase a new Tesla vehicle cannot do so in Wisconsin. They must travel out of state—usually to Illinois or Minnesota—to purchase a vehicle.

15. Tesla operates two non-sales galleries in Wisconsin: one in Milwaukee, and one in Madison. In a gallery, visitors can learn about Tesla's products, including vehicles, but they cannot purchase vehicles.

16. On March 8, 2024, Tesla submitted to WisDOT a request to obtain dealer licenses in order to sell Tesla vehicles at four locations in Wisconsin, as contemplated in Wis. Stat. § 218.0121(3m)(c). Tesla requested to open dealerships in Grand Chute (or thereabouts), Glendale, Madison, and Milwaukee.

17. Wisconsin law limits the circumstances in which an automobile manufacturer (or "factory") can own a dealership in the state. Wis. Stat. § 218.0121(2m) states: "A factory shall not, directly or indirectly, hold an ownership interest in or operate or control a motor vehicle dealership in this state."

18. However, that restriction is not absolute. Under Wis. Stat. § 218.0121(3m)(c), Tesla, as a manufacturer, may open a manufacturer-owned dealership if there is no "prospective independent dealer available to own and operate [those locations] in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of" Tesla.

19. Thus, for Tesla to be *denied* the right to operate the proposed dealerships, three things must be true: (1) an independent dealer must be "available" to operate a Tesla dealership, (2) the operation of the independent dealership must be consistent with the public interest; and (3) the independent dealer must be able to operate the dealership in a manner that meets Tesla's reasonable standard and uniformly-applied qualifications.

20. WisDOT referred Tesla's application for dealer licenses to the Department of Administration, Division of Hearings and Appeals("DHA"). The case was assigned Case No. DOT-24-0015, and referred to Administrative Law Judge Kristin Fredrick (the "ALJ").

21. On April 4, 2024, WATDA moved to intervene. Tesla opposed WATDA's intervention on the ground that WATDA lacked a substantial interest that may be affected by the decision. The ALJ granted WATDA's intervention motion on April 19, 2024.

22. An evidentiary hearing was conducted at the offices of the Division in Madison, on May 21 and 28, 2024. Tesla presented testimony from four company witnesses, a law professor, and eight members of the Wisconsin public. WATDA presented four representatives of large Wisconsin dealership chains and the president of their trade group, who opposed Tesla's application. WisDOT did not participate in the hearing.

23. On October 10, 2024, the ALJ issued a proposed decision recommending that Tesla's application for licensure be denied.

24. The proposed decision was accompanied by a cover letter that referenced Wis. Stat. § 227.46(2m), which describes the ALJ decision and review process. The ALJ's letter directed the parties to follow the exceptions process set forth in Wis. Stat. § 227.46(2m).

25. Wis. Stat. § 227.46(2m) provides that, following an ALJ's proposed decision, "[a] party adversely affected by the proposed decision shall be given an opportunity to file objections to the proposed decision within 15 days, briefly stating the reasons and authorities for each objection, and to argue with respect to them before the administrator of the division of hearings and appeals."

26. On October 25, 2024, Tesla provided the Administrator with its objections to the ALJ's proposed decision. Tesla stated five objections: (1) the ALJ committed an error of law in rejecting Tesla's argument that its non-franchising business model forecloses the availability of any franchised dealer; (2) the ALJ's conclusion that an independent dealer is "available" lacked evidentiary support; (3) the ALJ's decision rested entirely on evidence proffered by an improperly admitted party; (4) the ALJ's conclusion that an independent dealer could operate consistent with the public interest rested on legal error; and (5) if required, the DHA Administrator should provide Tesla with a new hearing before an impartial ALJ.

27. On November 8, 2024, while Tesla's objections remained pending with the Administrator, Tesla submitted an open records request to the Division, pursuant to the Wisconsin Public Records Law, Wis. Stat. § 19.31 *et seq.*, seeking communications pertaining to Tesla's case, not including communications between the ALJ and her staff. The Division initially responded by supplying only pleadings and orders from the proceeding, which were already in Tesla's possession.

28. Concerned that the Division's response to its open records request was incomplete, Tesla requested more information, and also submitted additional formal public records requests.

29. After Tesla's follow-up requests, the Division provided additional responsive information.

30. The Division's responses revealed that the ALJ had shared the draft proposed decision with the Division's Assistant Administrator and then its Administrator, soliciting their substantive input before sharing the proposed decision with the parties. The Assistant Administrator and Administrator both reviewed the ALJ's draft decision and provided comments before the ALJ issued the proposed decision to the parties, and before the parties had an opportunity to file objections to the ALJ's decision with the Administrator.

31. On December 4, 2024, Tesla submitted supplemental objections to the Administrator, objecting that the collaboration between the ALJ, Administrator, and Assistant Administrator impermissibly departed from the hearing procedure set forth in Wis. Stat. § 227.46(2m), and collapsed the statutory two-phase hearing and review process, depriving Tesla of the benefits of both. Tesla was deprived both of an independent hearing, and of a meaningful review of the ALJ's decision, insofar as the Administrator had already reviewed and prejudged the case.

32. On December 17, 2024, the Administrator issued the Final Decision upholding the ALJ's proposed decision.

GROUNDS FOR REVIEW

33. Tesla re-alleges and incorporates herein as if fully stated all of the allegations contained in Paragraphs 1 through 32 above.

34. Tesla is aggrieved by the Final Decision because Tesla has an interest in opening dealerships in Wisconsin to sell its vehicles directly to consumers, and the Final Decision impedes Tesla ability to do so.

35. The Division committed errors of fact, law, and procedure, and abused its discretion when it denied Tesla's application to become a licensed dealer under Wis. Stat § 218.0121(3m)(c). See Wis. Stat. § 227.57(4), (5), (6), and (8). Under a correct understanding of the facts and law, Tesla should have been granted a license, for the reasons described in Paragraphs 37 through 90 below. At minimum, Tesla is entitled as a matter of due process to a new, procedurally proper hearing before an impartial adjudicator.

36. In addition, the Division's denial of a license to Tesla was unconstitutional. If Wis. Stat § 218.0121(2m) applies to non-franchising dealers like Tesla, it violates the equal protection clause of the Wisconsin Constitution. Wis. Const., art. I, § 1. The Division did not consider any arguments regarding the constitutionality of Wis. Stat § 218.0121(2m), because it understood itself to lack the statutory authority to grant Tesla a license, regardless of any Constitutional problems with the scope of Wis. Stat. § 218.0121(2m). Final Decision at 12-13.

ISSUES FOR REVIEW

Issue 1: The Division committed an error of law in rejecting Tesla's argument that its non-franchising business model forecloses the availability of any franchised dealer

37. It is Tesla's uniformly applied standard that Tesla sells directly to consumers, and owns and operates its sales outlets directly. Unlike most motor vehicle manufacturers, Tesla has

maintained that practice for its entire history and throughout the United States. This standard is a reasonable one: As Tesla's evidence demonstrated, Tesla's Wisconsin customers prefer Tesla's uniform retail pricing and transparent, middleman-free car-buying experience.

38. As a result, an unaffiliated dealer cannot meet Tesla's uniformly applied standard qualifications within the meaning of Wis. Stat § 218.0121(3m)(c).

39. The Final Decision did not dispute that Tesla uniformly sells its vehicles directly to customers, and did not rule that this uniformly applied practice is "unreasonable."

40. Rather than take issue with these facts, the Final Decision rejected Tesla's argument based on a flawed legal premise. The Final Decision states: "Tesla's position requires interpreting the factory store rule expansively to create an additional exemption for a non-franchising manufacturer whereby all independent dealers are disqualified from being considered 'available' merely because they are independent." Final Decision at 2. It further states that "the effect of Tesla's reasoning *renders the statute meaningless if refusing to enter into franchise agreements can circumvent or negate the statute*." *Id*. (emphasis added).

41. The Final Decision thus refuses to apply the plain language of the statute to the undisputed facts, based on the Administrator's apparent concern about how the statute could be applied in future cases.

42. Besides the fact that the Administrator refused to simply apply the statute to the facts in order to avoid consequences he perceived to be undesirable, the fear of those consequences reflects an error of law. The statute is not rendered "meaningless" if Tesla is permitted to own a dealership in Wisconsin: In order to obtain a similar exemption, another manufacturer would need to similarly present evidence that it *uniformly and reasonably* owns its dealerships.

43. The overwhelming majority of vehicle manufacturers (including all the manufacturers represented by WATDA's dealer-witnesses at the hearing) could *not* truthfully state that they uniformly own their sales outlets.

44. Thus, contrary to the flawed logic in the Final Decision, Wis. Stat § 218.0121(3m)(c) could be applied to allow Tesla to sell directly to customers in accordance with Tesla's reasonable and uniformly-applied standards, and the statute would continue to pose a meaningful constraint on manufacturers owning dealerships.

45. This interpretation—which the Division summarily disregarded—comports with the purpose of Wisconsin's factory store restriction, which aims to protect independent dealers from exploitation at the hands of their own manufacturers. *See Forest Home Dodge, Inc. v. Karns*, 29 Wis. 2d 78, 85 (1965) (factory store rule, which is "construe[d] … in light of its purpose," was "enacted in recognition of the long history of the abuse of dealers by [their] manufacturers"). No equivalent concern exists where a manufacturer has no independent dealers to exploit.

46. Because of the Final Decision's legal error in interpreting and applying Wis. Stat. § 218.0121(3m)(c), the Final Decision should be reversed.

Issue 2: The ALJ's conclusion that an independent dealer is "available" is not supported by substantial evidence in the record

47. The term "available," as used in Wis. Stat. § 218.0121(3m)(c), requires more than for a dealer to appear at hearing and express an abstract willingness to operate a dealership. The dealer must actually be able to profitably run the dealership as a going concern. The Division has recognized this in its prior application of Wis. Stat. § 218.0121(3m)(c). *See In the Matter of Petition of LDV, Inc*., Case No. TR-04-0022 (Nov. 12, 2004).

48. Tesla presented robust evidence that no franchised dealer could profitably operate a Tesla dealership—and thus no dealer was "available" within the meaning of Wis. Stat. § 218.0121(3m)(c). First, Tesla presented evidence that it sells vehicles at a uniform retail price throughout the United States, and that this pricing model is critical to Tesla's business. Because of that pricing model, no franchised dealer could sell Tesla vehicles for a meaningful markup, because customers would simply travel to a neighboring state to purchase a vehicle directly from Tesla to avoid paying that markup. Any independent dealer would thus be unable to recoup its inventory costs, and therefore unable to operate profitably.

49. Tesla presented further evidence that other income streams—like servicing vehicles—could not make up for the losses dealers would incur on vehicles sales. EVs in general—and Tesla's EVs in particular—have lower-than-typical service needs, which would prevent service and extended warranties from making the overall independent dealership profitable.

50. Neither WATDA nor any of its dealer-witnesses presented any evidence showing how, under the above circumstances, an independent dealer could profitably operate a Tesla dealership.

51. Rather, WATDA's evidence that independent dealers could operate a sustainable independent Tesla dealership consisted of a few conclusory statements by two of its witnesses. For example, this statement by WATDA witness John Hogerty of Bergstrom Automotive:

Q: My question is, would you want to be a dealer for Tesla if we're not discounting our vehicles at all?

A: I think we would—yeah. Yes, we would find a way to make sure it made sense.

Tr.1 263:11-15.

52. The Final Decision accepted these vague and conclusory assertions at face value, stating incorrectly that "*numerous* independent dealer owners presented sworn testimony to refute Tesla's assertion that independent dealers could not be profitable selling Tesla vehicles." Final Decision at 2 (emphasis added).

53. The Final Decision's determination that a dealer could run an independent Tesla dealership as a going concern, and so therefore is available to Tesla, was not supported by substantial evidence, and must be reversed. *See* Wis. Stat. § 227.57(6) ("The court shall … set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record.").

54. Moreover, if dealers' conclusory assertions that they are "available" and able to operate profitably were somehow sufficient to render the factory store exception inapplicable, that would run afoul of the Fourteenth Amendment's Guarantee of Due Process.

55. As the U.S. Court of Appeals for the Seventh Circuit has explained, "an offshoot of the constitutional nondelegation doctrine that is applicable to the states forbids them to authorize private persons to deprive other private persons of life, liberty, or property without due process of law. The standard example is a law that empowers landowners to determine, by whim, how a neighbor may use his own property." *Beary Landscaping, Inc. v. Costigan*, 667 F.3d 947, 950 (7th Cir. 2012).

56. The Final Decision's application of Wis. Stat. § 218.0121(3m)(c) allowed Tesla's competitors to determine by whim whether Tesla may own a dealership or sell its vehicles to consumers in Wisconsin. Indeed, the Final Decision permitted Tesla's competitors to *prevent* Tesla from selling vehicles to customers in the State, based on conclusory and unsubstantiated assertions by Tesla's competitors that they are "available" to run a Tesla dealership as a going

concern. In effect, the Final Decision gave Tesla's competitors a private veto over Tesla's right to operate in Wisconsin.

57. Although Tesla raised the nondelegation issue both to the ALJ and to the Administrator, neither the proposed decision nor the Final Decision engaged with this issue in any depth.

58. Because the Division's application of Wis. Stat. § 218.0121(3m)(c) was unsupported by substantial evidence and violated Constitutional nondelegation precedent, the Court should reverse the Final Decision.

Issue 3: The ALJ's conclusion that an independent dealer could operate consistent with the public interest rests on legal error and is unsupported by substantial evidence

59. Tesla presented evidence that permitting Tesla to sell vehicles directly would benefit the public interest. Among other things, Tesla offered evidence that its sales model reduces prices for consumers, whereas franchised dealers make prices higher and less transparent. Tesla further offered evidence that direct sales, in contrast with franchise dealers, produce positive customer experiences and help facilitate the growth of EV sales.

60. WATDA itself appeared to concede that Tesla's business model "allows it to make its vehicles 'more affordable'" to customers than the franchise model does. WATDA Reply to Tesla's Opposition to Motion to be Admitted as a Party at 7 (Apr. 18, 2024). By its own admission, WATDA seeks to *prevent* consumers from enjoying those savings, complaining that those consumer savings would "come at the expense of Wisconsin's independent dealers." *Id*.

61. The Final Decision nevertheless concludes that "there was no credible evidence submitted to establish that consumers are worse off when independent dealers sell Tesla vehicles; rather, that assertion is mere speculation." Final Decision at 3.

62. This finding disregarded the testimony of eight Wisconsinites who testified in support of Tesla's application and is not backed by substantial evidence in the record. Several witnesses testified in detail why they preferred the direct sale experience to the franchised dealer experience, and highlighted aspects of the franchised dealer experience that they disliked.

63. Tesla submitted further evidence and testimony from its company witnesses—including, for example, testimony about their interactions with customers frustrated by franchise dealers' sales tactics—demonstrating that the public interest is served by a direct sales experience, which was likewise disregarded.

64. The Administrator erroneously held that Tesla's evidence on the public interest was legally irrelevant. According to the Administrator, whether "the public interest is better or best served by a manufacturer owned dealership" was "not the standard." Final Decision at 11. As the Administrator read the statute, an independent dealer's operations could be "consistent with the public interest" even if those operations left the public worse off than in a world with Tesla-operated dealerships.

65. That was legal error. Under Wis. Stat. § 218.0121(3m)(c), the operation of a franchised dealer necessarily means that Tesla will not operate its own stores in Wisconsin—so an inescapable feature of a franchise dealer's operations is that those operations foreclose direct sales by Tesla. Whether those operations are consistent with the public interest thus turns, at least in part, on whether that result helps or hurts consumers.

66. The Final Decision thus committed legal error in refusing to analyze the relative benefits to the public of Tesla-owned dealerships as compared to franchised dealerships. This error requires reversal. And because the evidence shows that the public interest is not served by allowing franchised Tesla dealerships, Tesla was entitled to a license to open its own dealerships.

Issue 4: The Final Decision rested entirely on evidence proffered by an improperly admitted party

67. Even if WATDA's evidence were sufficient to support the Final Decision, reversal would still be warranted because all the underlying evidence was proffered by an improperly admitted party.

68. Only an entity with a "substantial interest [that] may be affected by the decision following the hearing" may be "admitted as a party." Wis. Stat. § 227.44(2m). The Final Decision erroneously concluded that WATDA possessed such an interest, and on that basis relied upon WATDA's evidence. If that evidence is removed from the record, as it should have been in the first instance, there remains no evidentiary support for the Final Decision.

69. Neither WATDA nor its members could be directly injured by the result of a hearing, in the sense of losing an opportunity to serve as a Tesla franchisee. Tesla does not use franchises, so there is no business opportunity for a dealer to lose if Tesla is allowed to open a dealership in Wisconsin.

70. Rather, the only possible injury a dealer could face is the fact that a competitor would be allowed to serve consumers in Wisconsin, selling a completely different line of new vehicles from any dealer in the State. Indeed, that is one of the primary theories on which WATDA relied when it sought to intervene—that Tesla's business model "allows it to make its vehicles 'more affordable'" to consumers, which comes "at the expense of Wisconsin's

independent dealers" and their profits. WATDA Reply to Tesla's Opposition to Motion to be Admitted as a Party at 7 (Apr. 18, 2024).

71. The potential competitive harm that a dealer could experience as a result of a new participant entering the market within the State is an inadequate basis for standing. It was likewise an inadequate basis for a party's admission under Wis. Stat. § 227.44(2m).

72. To the extent that Wis. Stat. § 218.0121(3m)(c) protects any interest of WATDA's, it is only the interest of its members in being free from exploitation by their franchising manufacturers—not their interest in being free from economic competition from totally unrelated market participants.

73. Under the reasoning of the Final Decision, every person in an industry would have standing to intervene in any licensing proceeding under Wisconsin law, merely because they prefer to have fewer competitors.

74. The Final Decision failed to engage with Tesla's objections that abstract competitive harm was an inadequate basis for WATDA's standing.

75. Because WATDA and its dealers could show no harm other than an abstract desire to avoid competition, it should not have been admitted as a party, and as a result, the Final Decision should be reversed. And because there is no admissible evidence that a dealer is "available," the court should order Tesla's licenses be granted.

Issue 5: If Wis. Stat. § 218.0121(2m) bars non-franchising manufacturers like Tesla from selling vehicles directly to consumers, it violates the Wisconsin Constitution

76. Article I, Section 1 of the Wisconsin Constitution protects the fundamental right to, among other things, "earn [a] livelihood by any lawful calling" and "to pursue any livelihood or avocation." *State v. Kreutzberg*, 90 N.W. 1098, 1100 (Wis. 1902).

77. To the extent that Wis. Stat. § 218.0121(2m) bars Tesla from engaging in the sale of cars in Wisconsin, it unconstitutionally intrudes on the fundamental right of economic liberty protected by the Wisconsin Constitution.

78. The Equal Protection Clause of the Wisconsin Constitution also bars *any* government classification "'that has no reasonable purpose or relationship to the facts or a proper state policy.'" *Mayo v. Wisconsin Injured Patients & Fams. Comp. Fund*, 383 Wis. 2d 1, 29 (2018)).

79. Under the U.S. Constitution's similar rational basis framework, multiple federal courts of appeals have squarely rejected the idea "that mere economic protection of a particular industry is a legitimate governmental purpose" capable of satisfying rational basis review. *St. Joseph Abbey v. Castille*, 712 F.3d 215, 222 (5th Cir. 2013); *see also Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002); *Merrifield v. Lockyer*, 547 F.3d 978, 991 n.15 (9th Cir. 2008).

80. Banning non-franchising manufacturers from selling cars directly to customers irrationally singles out those manufacturers for disfavored treatment. The law treats similar parties differently by distinguishing non-franchising car manufacturers from franchise dealerships when it comes to selling cars. And that distinction is irrational, as it serves no purpose other than pure protectionism.

81. The sole legitimate rationale for factory store restrictions like Wisconsin's is to protect franchisees from abuse at the hands of their own manufacturers. But that rationale is completely inapplicable to non-franchising manufacturers like Tesla, who have no franchisees they could possibly exploit.

82. The only possible purpose behind banning non-franchising dealers like Tesla from direct sales is to protect Wisconsin's local, in-State franchised auto dealers from economic

competition. Indeed, WATDA itself urged the ALJ to enforce Wis. Stat § 218.0121(2m) against Tesla precisely because allowing "Tesla's direct sales strategy [would] come at the expense of Wisconsin's independent dealers." WATDA's Reply to Tesla's Opposition to Motion to Be Admitted as a Party at 7. That is not a legitimate interest that can justify an otherwise irrational statute. As a result, Wis. Stat § 218.0121(2m) is unconstitutional to the extent it reaches non-franchising manufacturers like Tesla.

Issue 6: The Division improperly collapsed two independent stages of the review process and thus deprived Tesla of an impartial hearing and review

83. Wis. Stat. § 227.46(2m) envisions that a party appearing before the Division will first receive a hearing before an independent ALJ, and then subsequently an independent review of that decision by the Administrator. Because the Division improperly collapsed these two stages of the review process in Tesla's case, Tesla received neither.

84. Rather, the ALJ sought the Administrator's pre-approval of her decision. And the Administrator obliged, prejudging Tesla's case and depriving Tesla of an impartial adjudicator on review.

85. Wis. Stat. § 227.46(2m) provides that the "hearing examiner presiding at the hearing"—not the Administrator or Assistant Administrator of the Division of Hearings and Appeals—"shall prepare a proposed decision." Then, the parties may file objections to the proposed decision. Only after that independent decision and the filing of any objections does the Administrator of the Division take on a role: deciding whether to adopt or modify the examiner's proposed decision.

86. In that respect, the Administrator's role is akin to an appellate court, exercising his independent judgment to determine whether to adopt or undo the result reached by an earlier decision maker.

87. Further, this divergence from correct process denied Tesla an impartial adjudicator, as required under Wisconsin law and as a matter of due process.

88. Wis. Stat. § 227.46(2m) provides that the "functions of persons presiding at a hearing or participating in proposed or final decisions shall be performed in an impartial manner." The constitutional principle that a "'fair trial in a fair tribunal is a basic requirement of due process' … 'applies to administrative agencies which adjudicate as well as to courts.'" *Guthrie v. Wisconsin Emp. Rels. Comm'n*, 111 Wis. 2d 447, 454 (1983).

89. While the facts already show an impermissible departure from correct procedure warranting a new hearing, Tesla requests further discovery under Wis. Stat. § 227.57(1), which may present a fuller picture of the Division's mishandling of Tesla's case.

90. Because the Division violated its procedures in Wis. Stat. § 227.46(2m) and deprived Tesla of due process and impartial adjudicators, Tesla is entitled to a new hearing before an impartial adjudicator.

RELIEF REQUESTED

WHEREFORE, Tesla requests that this Court grant the following relief:

A. A declaratory judgment that Tesla is entitled to obtain a license as a motor vehicle dealer as a matter of law.

B. In the alternative:

1. Finding proper cause pursuant to Wis. Stat. § 227.57(1) and allowing for discovery and a hearing before the Court regarding

the procedural irregularity of the ALJ and Administrator's pre-decision communications about Tesla's case;

2. reversal and remand of the decision of the Division of Hearings and Appeals for further proceedings correcting the errors of the Final Decision;

3. and, if necessary, a new hearing before an impartial ALJ.

C. An award of all of Tesla's allowable fees and costs.

D. Such other relief as may be just and proper under the circumstances.

Dated this 15th day of January, 2025.

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EXHIBIT A

Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Tesla, Inc. Case No: DOT-24-0015

FINAL DECISION

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Tesla, Inc. (Petitioner), by

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Wisconsin Department of Transportation (Department)

No appearance

PRELIMINARY RECITALS

On October 9, 2024, the Division of Hearings and Appeals (DHA), by Administrative Law Judge Kristin Fredrick, issued a Proposed Decision denying Tesla Inc.'s petition for exemption under Wis. Stat. § 218.0121(3m)(c). Pursuant to the process described in Wis. Stat. § 227.46(2m), Tesla timely filed objections to the Proposed Decision. The Wisconsin Automobile and Truck Dealer's Association, Inc. submitted a letter setting forth its position as to why the Proposed Decision should be affirmed.

Tesla, Inc. raises five objections to the Proposed Decision. First, Tesla asserts that it was an error of law to find that Tesla's non-franchiser business model does not create an exemption from compliance with Wisconsin's factory store law within Wis. Stat. § 218.0121(3m)(c).

Specifically, Tesla argues that its business model practice of not entering into franchise agreements should be considered a sufficient reasonable "standard" and uniformly applied "qualification" thus rendering all independent dealers unavailable to operate a Tesla dealership. Under Tesla's argument, there are no standards and/or qualifications an independent dealer could meet *because* they are independent. Tesla's circular reasoning is unpersuasive. Moreover, Tesla's position requires interpreting the factory store rule expansively to create an additional exemption for a non-franchising manufacturer whereby all independent dealers are disqualified from being considered "available" merely because they are independent, i.e. not wholly owned by Tesla. The law, as written, simply does not support the conclusion Tesla seeks. Moreover, the effect of Tesla's reasoning renders the statute meaningless if refusing to enter into franchise agreements can circumvent or negate the statute. Not only does the Division of Hearings and Appeals not function as a court of equity, but it is without authority to create exemptions that the legislature has not expressly set forth under the law. An administrative hearing body is "an arm of the government, which in the course of its administration of a law is empowered to ascertain some questions of fact and apply the existing law thereto, and in so doing acts quasi judicially; but it is not thereby vested with judicial power in the constitutional sense." *See Borgnis v. Falk Co.*, 133 N.W. 209, 218 - 219, 147 Wis. 327 (Wis. 1911).

Tesla's second objection is that there is insufficient evidentiary support to find any independent dealers "available" based upon anticipated limits to their profitability. Tesla cites to a prior exemption case, *In the Matter of Petition of LDV, Inc.*, Case No. TR-04-0022 (Nov. 12, 2004) as an example of the Division of Hearings and Appeals previously finding that no prospective independent dealer was available due, in part, to evidence showing "it would not be financially feasible for an independent dealer to operate" the proposed dealership. However, as recognized in the proposed decision, no prospective independent dealers testified in the *LDV* case to refute the petitioner's evidence of financial infeasibility. Thus, the weight of the credible evidence favored the petitioner. In the present matter, Tesla argued its fixed pricing methods would limit the profitability of independent dealers. [1] However, as set forth in the decision below, numerous independent dealer owners presented sworn testimony to refute Tesla's assertion that independent dealers could not be profitable selling Tesla vehicles. (Hearing testimony of Hogerty, Darrow and Zimbrick). Thus, weighing the credible evidence, the ALJ correctly found based upon a preponderance of the evidence that Tesla had not met its burden to establish that its pricing method amounts to a reasonable and uniformly applied qualification or its burden to establish that no prospective independent dealer was available.

Tesla's third objection is that WATDA should not have been admitted as a party under Wis. Stat. § 227.44(2m) and thus, all evidence presented by WATDA independent dealer witnesses was erroneously considered by the ALJ. Under Wis. Stat § 227.44(2m), "[a]ny person whose substantial interest may be affected by the decision following the hearing *shall*, upon the person's request, be admitted as a party" (italicized emphasis added). In the present matter, WATDA requested to be added as a party based upon the substantial interest of its members, independent motor vehicle dealers. WATDA presented a valid argument in support of admission under Wis.

[1] In support of adopting the proposed decision, WATDA also reiterated an argument raised in post-hearing briefing that Tesla's pricing methods may violate other sections of Wisconsin law, which this decision need not address in reaching a conclusion that Tesla did not meet its burden to justify exemption under Wis. Stat. § 218.0121(3m)(c).

Stat. § 227.44(2m) and was properly admitted. The underlying statute at issue in this case, Wis. Stat. § 218.0121(3m)(c), requires consideration of the availability of prospective independent dealers. Therefore, refusing to allow independent dealers to participate or present testimony would contradict the statute's directive. Tesla's argument further fails to recognize the long-standing practice in administrative proceedings affording member organizations standing to protect their members' interests if there are "facts sufficient to show that a member of the organization would have had standing to bring the action in [their] own name." *Wisconsin's Envt'l Decade, Inc. v. PSC*, 69 Wis. 2d 1, 17, 230 N.W.2d 243 (1975); see also, *Friends of Black River Forest v. Kohler*, 2022 WI 52, 402 Wis. 2d 587. WATDA is an organization representing the interests of its dealership members. Sufficient facts are present to establish that independent dealers have a substantial interest that would be affected by a decision in an exemption proceeding under Wis. Stat. § 218.0121(3m)(c). The testimony of the independent dealers was obviously relevant to the determination in this matter. Tesla has failed to set forth any legal basis to establish that WATDA was improperly admitted as a party let alone to exclude the testimony of the independent dealers.

Tesla's fourth objection is that it is legal error to find that an independent dealer could operate consistent with the public interest. Tesla suggests that testimony from numerous individuals describing the benefits of Tesla's direct sale model should amount to proof that consumers are worse off if independent dealers are allowed to sell Tesla vehicles. However, there was no credible evidence submitted to establish that consumers are worse off when independent dealers sell Tesla vehicles; rather, that assertion is mere speculation. Moreover, one independent dealer testified that they also use a price transparency model similar to Tesla and two more independent dealers testified they would be willing to follow Tesla's sales and pricing model. The ALJ considered testimony and evidence that demonstrated independent dealers could also meet the public interest and, after weighing the credible evidence, found that Tesla failed to meet its burden to prove that independent dealers could not operate a Tesla dealership consistent with the public interest.

Tesla's fifth and final objection suggests that the ALJ's decision was influenced by the Administrator and, as a result, was not impartial. On December 4, 2024, Tesla submitted a letter requesting to supplement its objection based upon documents received from the Division of Hearings and Appeals pursuant to its open records request. In other words, Tesla is seeking to schedule a hearing and reopen the record for the introduction of new evidence after the proposed decision has been issued but before the final decision has been issued. Wis. Stat. § 227.46(2m) does not contemplate the reopening of the record and new hearing. The statute is prescriptive and requires the Administrator to review the proposed decision – findings of fact, conclusions of law, order and opinion – and issue the final decision after explaining any variances. Tesla's argument analogizes the administrative process to that of a court of appeals. This is misguided and unsupported. The process followed here was an administrative tribunal following a process to get to a final decision. Wis. Stat. § 227.43(1)(c) explicitly charges that the Administrator shall "[s]upervise hearing examiners in the conduct of the hearing and the rendering of a decision, if a decision is required." The documents Tesla seeks to introduce show the Administrator doing his job and do not support its claim that the Administrator's review rendered the proposed decision lacking in impartiality. There is a presumption of honesty and integrity of those who serve as adjudicators in state administrative proceedings. *Bracegirdle v. State Dept. of Regulation and*

Licensing, 159 Wis. 2d 402, 415 (Ct. App. 1990). A challenger must make a "strong showing" to rebut that presumption. *Id.* Accordingly, Tesla has not demonstrated that the ALJ in this matter was not impartial or that Tesla is entitled to a new hearing.

Accordingly, the Administrator hereby adopts the Proposed Decision as DHA's Final Decision, as follows:

PROCEDURAL HISTORY

On March 8, 2024, Tesla, Inc. (Tesla) sought approval from the Wisconsin Department of Transportation to open four motor vehicle dealerships. Tesla's request for hearing seeking an exemption under Wis. Stat. § 218.0121(3m)(c) was submitted to the Division of Hearings and Appeals on March 26, 2024. Administrative Law Judge Kristin P. Fredrick was assigned to the matter. On April 4, 2024, the Wisconsin Automobile and Truck Dealers Association (WATDA) filed a motion seeking to be admitted as a party under Wis. Stat. § 227.44(2m). Following briefing, a prehearing conference was conducted on April 19, 2024 at which time WATDA's motion was granted and the matter was set for hearing on May 21, 2024. The hearing commenced on May 21, 2024 and continued on May 28, 2024. The Department of Transportation did not participate in the hearing. The parties submitted post-hearing briefs in lieu of closing arguments. The record in this matter includes: the request for hearing; digitally recorded hearing; Tesla's Exhibits 002, 005-022; WATDA's Exhibits 100, 102, 103, 106, and 107; and the parties' respective pleadings and briefs.

ISSUE

Whether a prospective independent dealer is available to own and operate a Tesla dealership in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the Tesla factory.

FINDINGS OF FACT

1. Tesla, Inc. ("Tesla") is a Texas based corporation in operation since 2003. Tesla's business includes, in part, the manufacturing and selling of battery powered electric vehicles (EVs). It operates multiple manufacturing facilities in the United States and globally. While Tesla is not licensed to operate a motor vehicle dealership in Wisconsin, it is licensed to operate dealerships in 27 other states. (Hearing testimony of Zachary Kahn, Tr. day 1)

2. Tesla does not utilize a franchise business model with independent dealers; rather, the Tesla business model involves consumers purchasing customized EVs online, which are then manufactured and shipped direct from the Tesla factory. The sales process involves no price haggling; instead, the price is fixed at a national level but driven by the market and is structured to include Tesla's profit without variation by dealership or location across the United States. (Kahn hearing testimony; Exs. 002, 103)

3. Tesla currently offers six models of EVs and sells approximately 670,000 EVs per year in the United States. Last year Tesla sold between 3,000-4,000 EVs to Wisconsin consumers,

which were delivered outside of the State; but Tesla expects to sell more vehicles if direct sales are allowed to occur in Wisconsin. (Kahn hearing testimony; Ex. 100)

4. Tesla does not maintain traditional dealership facilities and does not maintain a large inventory of EVs available to purchase to walk-in customers. Instead, Tesla builds the EV to a customer's order and specifications at its factory before shipping them directly to the consumer or the consumer's chosen delivery location. (Kahn hearing testimony)

5. Tesla seeks to minimize vehicle costs to customers by servicing EVs only as necessary. EVs require less maintenance than typical gas-powered internal combustion engine (ICE) vehicles. As a result, maintenance and servicing of EVs is not profitable for Tesla. Tesla does sell optional extended warranties to customers but did not present evidence of the cost, profit, or what percentage of owners purchase extended warranties. (Hearing testimony of Christopher Barchet, Tr. day 2 rebuttal; Ex. 102)

6. While Tesla does not maintain any dealerships in Wisconsin and does not sell EVs direct to Wisconsin consumers within the State, Tesla does operate two "service centers" in Wisconsin, which function more as gallery/show rooms where consumers are educated on Tesla vehicles and can view vehicle options online. In addition, Tesla maintains ninety-three EV charging stations, including 34 Supercharger stations that generate revenue, throughout Wisconsin. (Kahn hearing testimony; Exs.002, 007)

7. Tesla EVs are ordered online and shipped directly to the consumer or to a delivery location for pick up. However, Tesla customers who reside more than 220 miles from a dealership can choose to receive their EVs via "carrier direct" for an extra $2,500 delivery fee. Based upon a recent survey, only 0.2% of customers choose to pay the extra $2,500 carrier direct fee to have their vehicle shipped directly to them. Ninety-eight percent of Tesla customers reside within 220 miles of a Tesla dealership and the majority of customers are willing to travel farther distances to pick up their Tesla EV and avoid the extra $2,500 carrier direct fee. (Hearing testimony of Andrew Ashley; Tr. day 2; Ex. 021)

8. On March 8, 2024, Tesla sought approval from the Wisconsin Department of Transportation (Department) to operate dealerships in Madison, Milwaukee, Grand Chute, and Glendale, Wisconsin. (Ex. 006)

9. There are currently no independent dealerships in Wisconsin that sell new Tesla vehicles. (Kahn hearing testimony)

10. Tesla stores employ between 25-50 individuals and require an initial $2.5 million dollar start up capital investment. (Kahn hearing testimony; hearing testimony of Rochelle Giardina, Tr. 1; Ex. 002)

11. Multiple licensed independent motor vehicle dealerships in Wisconsin currently sell and service used Tesla vehicles, along with both new and used EV and ICE vehicles, including in the communities where Tesla seeks to open and operate dealerships. (Hearing testimony

of John Hogerty; hearing testimony of Michael Darrow; Tr. day 1; hearing testimony of Thomas Zimbrick, Tr. day 2; Ex. 107)

12. On April 4, 2024, the Wisconsin Automobile and Truck Dealers Association (WATDA) filed a notice of appearance and motion to be admitted as a party to Tesla's request. WATDA is a trade group comprised of 53 members including independent motor vehicle dealerships in Wisconsin. (Hearing testimony of William Sepic, Tr. 1)

13. Numerous prospective Wisconsin licensed independent vehicle dealerships with locations in the Madison, Milwaukee and Grand Chute communities are available to own and operate a Tesla dealership. (Hogerty hearing testimony; Darrow hearing testimony; Zimbrick testimony)

14. The available prospective independent dealerships have the financial capability, available infrastructure, existing distribution channels, sufficient staffing, and electric vehicle sales/service experience to make owning and operating an independent Tesla dealership economically feasible. (Id.)

15. The operation of Tesla dealerships in Wisconsin serves the public interest regardless of whether they are owned and operated by Tesla or independent dealerships. (Kahn hearing testimony; hearing testimony of M. Klimkosky; hearing testimony of E. Bronikowski; hearing testimony of M. McGatlin; hearing testimony of S. Mathews; hearing testimony of J. Gross; hearing testimony of R. Kalter; hearing testimony of J. Forbes Kearns; hearing testimony of J. Lassen; Sepic hearing testimony; Hogerty hearing testimony; Darrow hearing testimony, Tr. Day 1; and Zimbrick testimony, Tr. Day 2)

DISCUSSION

Both motor vehicle dealers and manufacturers in the State of Wisconsin must be licensed by the Wisconsin Department of Transportation. Wis. Stat. § 218.0114. However, under Wis. Stat. § 218.0121(2m), a manufacturer is not allowed to also own or operate a motor vehicle dealership in the State of Wisconsin. This is commonly referred to as "the Factory Store rule". There are four exceptions to the Factory Store rule:

> (3m) This section does not prohibit any of the following:
>
> (a) A factory from holding an ownership interest in or operating a dealership for a temporary period, not to exceed one year, during the transition from one owner or dealer operator to another.
>
> (b) A factory from holding an ownership interest in a dealership, if all of the following apply:
>
> 1. The dealer operator of the dealership is an individual who is not an agent of the factory.

2. The dealer operator of the dealership is unable to acquire full ownership of the dealership with his or her own assets.
3. The dealer operator of the dealership holds not less than 15 percent of the total ownership interests in the dealership within one year from the date that the factory initially acquires any ownership interest in the dealership.
4. There is a bona fide written agreement in effect between the factory and the dealer operator of the dealership under which the dealer operator will acquire all of the ownership interest in the dealership held by the factory on reasonable terms specified in the agreement.
5. The written agreement described in subd. 4. provides that the dealer operator will make reasonable progress toward acquiring all of the ownership interest in the dealership, and the dealer is making reasonable progress toward acquiring all of the ownership interest in the dealership.
6. Not more than eight years have elapsed since the factory initially acquired its ownership interest in the dealership, unless the department, upon petition by the dealer operator, determines that there is good cause to allow the dealer operator a longer period to complete his or her acquisition of all of the ownership interest in the dealership held by the factory and the longer period determined by the department has not yet elapsed.

(c) The ownership, operation or control of a dealership by a factory that does not meet the conditions under par. (a) or (b), if the division of hearings and appeals determines, after a hearing on the matter at the request of any party, that there is no prospective independent dealer available to own and operate the dealership in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the factory.

(d) The holding or acquisition, solely for investment purposes, of an ownership interest in a publicly traded corporation by an employee benefit plan that is sponsored by a factory.

Wis. Stat. § 218.0121(3m).

In the present matter, petitioner Tesla meets the definitions of both a manufacturer and a factory under Wisconsin law. See, Wis. Stat. §§ 218.0101(2) and 218.0121(1m)(e). Thus, Tesla must establish by a preponderance of the evidence that it meets an exemption from Wisconsin's "Factory Store rule" pursuant to Wis. Stat. § 218.0121(3m) in order to obtain a motor vehicle dealer license to sell Tesla vehicles directly to consumers in the State of Wisconsin. Tesla proposes establishing four retail dealership locations in Wisconsin, including in the Madison, Milwaukee, Glendale and Grand Chute communities. (Kahn hearing testimony; Exs. 002 and 006)

Tesla manufactures battery operated electric vehicles (EVs) and sells the vehicles directly to consumers in 27 states across the United States. (Kahn hearing testimony; Ex. 002) Approximately 3,000-4,000 Tesla EVs are purchased by Wisconsin consumers annually. (Kahn hearing testimony; Ex. 100) However, because there are no Tesla dealerships presently licensed in Wisconsin, consumers in this state must arrange to acquire their Tesla vehicles from neighboring states. Tesla's business model eschews the use of traditional franchise agreements between manufacturer and independent distributor/dealerships. And unlike typical car dealerships, Tesla dealerships generally do not maintain an inventory of in-stock vehicles; rather, consumers shop online to customize a purchased EV, which is shipped directly from the Tesla manufacturer. (Kahn hearing testimony) Further, Tesla's retail sales model uses a nationwide uniform pricing method removing any ability to haggle or negotiate over prices of its vehicles. (Id.)

Tesla puts forth two primary arguments in support of its exemption request: (1) that Tesla meets the exception found under Wis. Stat. § 218.0121(3m)(c) because it believes no independent dealer is available to own and operate the dealership in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the factory; and, alternatively, (2) that Wisconsin law does not apply or bar a non-franchising manufacturer like Tesla from operating a dealership. (Tesla Post-hearing Brief) These two arguments are addressed below.

At the hearing, Tesla presented testimony from four Tesla employees, a professor of law at the University of Michigan, and eight Wisconsin residents who own Tesla EVs. The general theme of the evidence presented by Tesla was to demonstrate how its business operates differently than the traditional vehicle dealership sales experience. WATDA presented five witnesses, including four licensed Wisconsin dealers and the president of WATDA to rebut Tesla's arguments that there are no independent dealers available to operate a Tesla dealership in a manner consistent with the public interest or that can meet Tesla's reasonable standards and uniformly applied qualifications.

I. WHETHER TESLA HAS ESTABLISHED THAT IT IS ENTITLED TO AN EXCEPTION TO THE FACTORY STORE RULE.

A. Availability of Prospective Independent Dealers

Tesla cannot prevail unless it can show that there are no independent dealers *available* to operate a Tesla dealership in Wisconsin. To support this claim, Tesla advances several arguments. First, Tesla asserts that no independent dealers are available because Tesla, as a policy choice, does not enter into franchise agreements with independent dealers. However, if manufacturers can avoid application of the Factory Store rule merely by refusing to enter into franchise agreements, then Wis. Stat. § 218.0121(3m)(c) is rendered meaningless. Statutory interpretation should not result in rendering portions meaningless. See e.g., *Fleming v. Amateur Athletic Union of United States, Inc*., 2023 WI 40 at ¶ 31, 407 Wis. 2d 273, 990 N.W.2d 244, citing *Belding v. Demoulin*, 2014 WI 8, ¶ 33, 352 Wis. 2d 359, 843 N.W.2d 373.

Second, Tesla asserts that an independent dealer should not be considered available because operating a Tesla dealership would not be profitable for an independent dealer. In support of this assertion, Tesla cites both a 2004 decision issued by the Wisconsin Division of Hearings and Appeals, *In the Matter of Petition of LDV, Inc*., Case No. TR-04-022, and a 2021 decision from the State of Virginia department of motor vehicles that granted a request for Tesla to open a dealership in that State. The Wisconsin *LDV* decision was not factually similar in that it involved a highly specialized vehicle of which only 6 or 7 sales occurred in Wisconsin per year. Thus, there was obvious limited opportunity or availability of independent dealers to generate income from the sale of such specialized vehicles. And unlike the present the matter, no independent dealers testified at the *LDV* hearing that they were available to own and operate an LDV dealership. The Virginia case involved a similar, but not identical, law that prohibits vehicle manufacturers from owning and operating a vehicle dealership except in limited circumstances. The exception at issue in the Virginia case allowed a manufacturer to own and operate a dealership if "there is not a dealer independent of the manufacturer…available in the community or trade area to own and operate the franchise in a manner consistent with the public interest." *Hearing Decision of Virginia Department of Motor Vehicles*, File No. 2020-007 (2021); Compare Wis. Stat. § 218.0121(3m)(c) with Va. Code § 46.2-1572(4).

Tesla argues that the term "available" in Wis. Stat. § 218.0121(3m)(c) should require more than the testimony from prospective dealers expressing a willingness and availability to operate a Tesla dealership. (Tesla Brief, p. 11) Yet, in the Virginia case cited by Tesla, the department of motor vehicles found that two dealerships were available based upon their location near the proposed Tesla dealership along with testimony and evidence regarding the independent dealers' staffing proposals, detailed explanations of financial stability, and commitment to and experience with electric vehicles, which that decision found was sufficient to demonstrate the independent dealers' availability to operate a Tesla dealership. (Tesla Brief, Attachment 1)

Tesla further asserts that independent dealers should not be considered available because they would not be able to make a profit selling Tesla vehicles. Tesla presented evidence demonstrating that Tesla does not make a profit from servicing vehicles unlike traditional car dealerships, which typically generate profit from service departments. In addition, Tesla asserts that its fixed pricing model would limit an independent dealer's profit. Tesla's business model of not utilizing franchise agreements eliminates an independent dealer's ability to obtain vehicles at discounted wholesale prices. Thus, an independent dealer would need to purchase the EVs from the Tesla factory for the same cost as a consumer, which limits an independent dealer's ability to make a profit from marking up the sales prices given that consumers will always be able to purchase the Tesla vehicle directly from Tesla at the lowest price. Tesla also presented witness testimony that the price of Tesla EVs can fluctuate rapidly depending upon the market.

Tesla points out that no independent dealers have submitted business plans to Tesla seeking to operate an independent Tesla dealership. However, multiple independent Wisconsin licensed dealers presented testimony to support their availability, willingness and financial capability to operate a prospective Tesla dealership. (Hearing testimony of Hogerty, Darrow and Zimbrick) These independent dealers operate multiple successful vehicle dealerships throughout Wisconsin, including the Madison, Milwaukee and Fox Valley areas where Tesla proposes to establish

dealerships. Although the independent dealers did not submit documentation of proposed business plans, they did present sworn testimony as to their experience selling and servicing electric vehicles, including used Tesla vehicles. (Id.) The independent dealers also testified that they had sufficient staffing and financial resources to meet the minimally required 25-30 employees and $2.5 million capital investment needed to establish and operate a Tesla dealership. (Id.)

To rebut Tesla's assertion that independent dealers would not make a profit selling Tesla EVs, the independent dealers presented testimony of how they anticipated making a profit from the sale of Tesla EVs even if they followed the Tesla sales model, including through the sale of extended warranties, sales from parts and service, and trade-in/used car sales. (Zimbrick testimony) The independent dealers further testified that they are already accustomed to adjusting vehicle pricing based upon fluctuating market conditions. One of the independent dealers also testified that they utilize a no haggling fixed pricing method similar to Tesla. (Hogerty testimony)

Contrary to Tesla's assertion, the evidence at hearing established that there are numerous prospective independent car dealers available to own and operate a Tesla dealership and that these independent dealers are located in the same communities within which Tesla seeks to open its dealerships. Further, credible evidence and testimony was presented to establish that the independent dealers have sufficient staffing capacities, financial stability, experience selling and servicing EVs and a commitment to selling Tesla EVs if allowed. Tesla's argument that independent dealers would not be profitable was based largely on speculation and rebutted by the independent dealers. There is insufficient evidence that the prospective independent dealers could not make a profit selling Tesla EVs. Based upon a preponderance of credible evidence, Tesla has not met its burden to establish that there are no prospective independent dealers available to own and operate a Tesla dealership.

B. Public Interest

Next Tesla asserts that the prospective independent dealers cannot own and operate a Tesla dealership in a manner consistent with the public interest. Most of the testimonial support for Tesla's exemption regarding this issue came from Wisconsin residents who own Tesla EVs. The consistent theme of testimony from the numerous Wisconsin residents was that they appreciated Tesla's pricing transparency and sales model that eliminated the price haggling common with traditional car dealerships. However, at least one of the independent dealers, Bergstrom, presented testimony that their sales model is similar to Tesla's in that they don't haggle over prices; rather, they offer price transparency online. (Hogerty testimony) Additionally, other independent dealers testified that they would be willing to utilize Tesla's sales pricing methods and that they are already accustomed to adjusting prices depending upon the market. (Darrow and Zimbrick testimony)

The majority of consumers also testified that it was inconvenient having to travel farther distances to acquire their Tesla vehicles outside the State of Wisconsin. However, allowing either Tesla or independent dealers the ability to sell Tesla vehicles would obviously address the interest/concern regarding proximity for procuring Tesla EVs. Further, having additional independent dealerships similarly allows public consumers greater choice for how and where they can purchase and service their Tesla vehicles.

WATDA and the independent Wisconsin dealers provided testimony describing how the operation of an independent Tesla dealership is consistent with public interest beyond convenience, including through increased competition, which leads to improved customer service and drives down prices. Similarly, a greater selection of locations for purchasing and servicing Tesla EVs benefits consumers. Testimony was also presented to demonstrate the independent dealers' commitment to community involvement, local sponsorships, and the public interest promoted by having locally owned independent dealerships with connections to the same community within which they operate. (Hogerty, Zimbrick, Sepic hearing testimony)

While Tesla asserts that the public interest is better or best served by a manufacturer owned dealership, that is not the standard. The evidence presented does not support the premise that ownership and operation of Tesla dealerships by independent dealers is not consistent with the public interest. On the contrary, testimony established that the public interest could be served by the opening of independent Tesla dealerships just as equally as a Tesla owned dealership. While it is clear that the public interest of Wisconsin consumers is served by allowing Tesla dealerships to operate in Wisconsin, regardless of whether they are operated by independent dealers or wholly owned by Tesla, the issue in this proceeding is whether Tesla has established that no independent dealer is available to operate a Tesla dealership consistent with the public interest. Based upon the preponderance of the evidence presented, Tesla has not met its burden.

C. Reasonable Standard and Uniformly Applied Qualifications

It is Tesla's burden to demonstrate that there is no independent dealer to own and operate a Tesla dealership that meets Tesla's reasonable standards and uniformly applied qualifications. It was incumbent upon Tesla to both set forth such reasonable standards and uniformly applied qualifications and present evidence that independent dealers cannot meet them. Tesla seems to argue that its direct sales model and fixed pricing sales methods are the standards and uniformly applied "qualifications" that independent dealers cannot meet.

As previously discussed above, the primary reason that independent dealerships have not previously sold new Tesla EVs is due to Tesla's refusal to engage in franchise agreements that might allow independent dealers to own and operate Tesla dealerships. Tesla has not explained or demonstrated how its business practice to disallow franchise agreements with independent dealers equates to a reasonable standard or uniformly applied qualification of a Tesla factory. Similarly, Tesla suggested without credible evidence that independent dealers would not be able to operate profitable dealerships under Tesla's fixed pricing methods and due to Tesla's refusal to offer reduced wholesale prices or by charging customers add-ons. Not only did testimony by the independent dealers refute this assertion, but again, Tesla has not demonstrated how its market pricing amounts to a reasonable standard or uniformly applied qualification, let alone one that cannot be met by the independent dealers. Tesla has also suggested that independent dealers would not be as committed to furthering the mission of increasing access to EV technology because the independent dealers also sell gas powered vehicles; but that argument was similarly not supported by the evidence.

Independent dealers testified that they were willing and able to sell Tesla vehicles consistent with Tesla's standard sales and pricing model. (Hogerty, Darrow and Zimbrick testimony) Each of the independent Wisconsin licensed dealers who testified hold franchise agreements with various vehicle manufacturers to sell and service vehicles, including EVs. Accordingly, the independent dealers already are experienced in meeting the standards and qualifications of other factories, including those who also manufacture EVs. To the extent that Tesla presented evidence of any "standards" and "qualifications" at the hearing, that evidence did not sufficiently demonstrate that independent dealers are unable to own and operate an independent Tesla dealership consistent with the "standards" and "qualifications."

Accordingly, Tesla has failed to meet its burden to establish that no prospective independent dealers is available to own and operate a Tesla dealership in a manner that meets the reasonable standard and uniformly applied qualifications of the Tesla factory.

II. WHETHER DENYING TESLA A DEALERSHIP LICENSE VIOLATES WISCONSIN LAW AND THE CONSTITUTION.

Finally, Tesla asserts in post-hearing briefing that it should not be prevented from selling EVs directly to consumers under Wisconsin law and that such a bar is unconstitutional. (Tesla Brief, pp. 31-34). Specifically, Tesla asserts that Wisconsin motor vehicle dealership law does not explicitly bar non-franchising manufacturers like Tesla from operating dealerships and selling direct to consumers. (Tesla Reply, p. 8) Tesla's argument suggests that under Wis. Stat. § 218.0121(2m) only franchising manufacturers should be barred from operating dealerships in Wisconsin unless they meet an applicable exception. However, the legislature did not differentiate between franchising and non-franchising manufacturers in barring factories from operating a motor vehicle dealership under Wis. Stat. § 218.0121(2m). Interpreting Wisconsin's Factory Store rule in such a limiting way would render the statute meaningless.

Consistent with Wisconsin Supreme Court precedent, it is assumed "that the legislature's intent is expressed in statutory language." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. "[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results" and "to give reasonable effect to every word, in order to avoid surplusage." *Fleming v Amateur Athletic Union of United States, Inc*., 2023 WI 40 ¶ 14, 407 Wis. 2d 273, 990 N.W.2d 244, citing *Kalal*, 2004 WI 58 at ¶ 46. Further, statutory interpretation should not result in rendering portions meaningless. *Fleming*, 2023 WI 40 at ¶ 31, citing *Belding v. Demoulin*, 2014 WI 8, ¶ 33, 352 Wis. 2d 359, 843 N.W.2d 373.

The legislature set forth the rule that manufacturers cannot also operate as a dealership in Wisconsin unless they meet an identified exception. Wis. Stat. § 218.0121(2m). The legislature also set forth certain exceptions to the Factory Store rule under Wis. Stat. § 218.0121(3m). As written, the law bars all manufacturers, regardless of whether they enter into franchise agreements, from selling directly to consumers unless they fall under an exception set forth under Wis. Stat. § 218.0121(3m). Tesla's suggested interpretation would require the legislature to revise the existing

law or create new law to explicitly exempt non-franchising manufacturers like Tesla from the Factory Store rule. See *Evers v. Marklein*, 2024 WI 31, ¶ 12, 412 Wis. 2d 525, 8 N.W.3d 395 (constitutional authority to make laws is vested in the legislature); *Metz v. Veterinary Examining Bd.*, 2007 WI App 220, ¶ 21, 305 Wis. 2d 788, 741 N.W.2d 244 (administrative agency does not have authority to find statutes unconstitutional).

Not only is an administrative law judge without authority to create law, but an administrative law judge's authority is limited to what is expressly conferred by statute. *Grafft v. DNR*, 2000 WI App 187, ¶ 6, 238 Wis. 2d 750, 618 N.W.2d 897 (2000) (*review denied*). Applying the existing statute, manufacturers are prohibited from selling vehicles directly to consumers unless evidence supporting an exception created under the law has been demonstrated. Subverting the existing law as written could open the door to other vehicle manufacturers seeking to sell vehicles directly to consumers in contravention of the existing law's clear intent. Regardless, Tesla's arguments for why Wisconsin law should not be interpreted to bar it from opening a dealership are neither supported by existing precedent nor persuasive in this administrative proceeding.

In summary, it is Tesla's burden to establish that no prospective independent dealers are available to own and operate a Tesla dealership in a manner "consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the [Tesla] factory." A preponderance of the credible evidence refutes Tesla's contention that there are no prospective independent dealerships available to own and operate a Tesla dealership, that no independent dealer is available to operate a Tesla dealership consistent with the public interest, or that no independent dealer is available to operate a Tesla dealership in the manner that meets the reasonable standard and uniformly applied qualifications of the Tesla factory. Finally, Tesla has not established that Wisconsin law does not bar a non-franchising manufacturer from operating a dealership the same as a manufacturer that offers franchises.

Therefore, based upon all of the above, Tesla has not satisfied its burden to establish it is entitled to an exemption of the Factory Store rule under Wis. Stat. § 218.0121(3m)(c).

CONCLUSIONS OF LAW

1. Tesla, Inc. has not satisfied the burden of showing that no prospective independent dealers are available to own and operate a Tesla dealership in a manner consistent with the public interest and that meets the reasonable standards and uniformly applied qualifications of the Tesla factory.

2. The Division of Hearings and Appeals has authority pursuant to Wis. Stat. § 218.0121(3m)(c) to issue the following order.

ORDER

Based upon the evidence in the record, Tesla's petition is denied as it has not established by a preponderance of the evidence that it is entitled to an exemption from the Factory Store rule pursuant to Wis. Stat. § 218.0121(3m)(c).

Dated at Madison, Wisconsin on December 17, 2024.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By:_____
Brian Hayes
Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.