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December 20, 2024

VIA E-MAIL AND FIRST CLASS MAIL

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Antony Klapper, Esq.
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Re: Cease and Desist: Volkswagen Group of America's and Scout Motors Inc.'s Violation of California Vehicle Code Section 11713.3(o)

Dear Messrs. Sitron and Klapper:

Our firm is counsel to the California New Car Dealers Association ("CNCDA"). CNCDA is the nation's largest state dealer trade association, representing the interests of over 1,200 dealers, including over fifty Volkswagen dealers. We are writing to inform you that Volkswagen Group of America Inc.'s ("VW") and Scout Motors Inc.'s ("Scout") current plan to sell Scout vehicles directly to consumers in California wrongfully cuts new and existing VW dealers out of an opportunity to sell Scout vehicles and directly violates California Vehicle Code section 11713.3(o). CNCDA demands that both VW and Scout cease from engaging in further misconduct immediately, including taking deposits on Scout vehicles from California residents.

Under Vehicle Code section 11713.3(o), automobile manufacturers and their affiliates are forbidden from competing with their own vehicle franchisees. Scout is an affiliate of VW under California law. Vehicle Code section 11713.3(z) defines 'affiliate' as "a person who directly or indirectly through one or more intermediaries, *controls, is controlled by, or is under common control* with, another person." (emphasis added). Since as early as 2022, VW has been directly and substantively involved in Scout's development and revitalization of its vehicles, including VW's investment of billions of dollars into a Scout production plant in South Carolina.

As background, Vehicle Code section 11713.3(o) was amended in 2023 by Assembly Bill 473 (“AB 473”) to prohibit automakers like VW from establishing affiliate brands to compete with dealers by directly selling vehicles. Scout was active throughout the legislative process, and the legislature adopted amendments in response to some of Scout’s arguments. On April 24, 2023, the California Assembly Committee on Transportation wrote:

Scout Motors is opposing [AB 473], arguing the anti-competition language in the bill “would serve to prohibit Scout Motors [...] from using newly appointed [independent] dealers, using existing independent dealers, or selling direct to California [residents.]”

To address this concern the author amended the bill to permit competition so long as the vehicle is being sold using new or existing franchisees to sell and service those vehicles. **[AB 473] would still prohibit Scout Motors or any new vehicle line from a manufacturer with a dealership network in California from being sold directly to consumers. Volkswagen, the parent company of Scout Motors, could sell Scout vehicles in the state if they sell them at any of their other vehicle line company’s dealerships like Volkswagen, Audi, Porsche, Bentley or Lamborghini. Volkswagen Group could also create a new franchise network for Scout Motors if they want to keep a separate brand distinct from their other models.** This provision would not affect Tesla, which does not have a dealership network to directly compete against. (emphasis added)

After the AB 473’s language was finalized, Mr. Sitron (Scout’s General Counsel) acknowledged that the law would prohibit Scout from selling Scout vehicles directly to California consumers:

AB 473, as amended, could effectively prohibit Scout Motors (or any other new-to-the market manufacturer seeking to introduce new EV line-makes) from entering the California market. Under this language, a new-to-the-market manufacturer with new and innovative EVs would be statutorily banned from deciding its distribution model in California, potentially killing off any reasonable opportunity to operate in the state.

See Scout’s August 21, 2023 Letter from General Counsel Neil Sitron to California Senate President Toni Atkins and Appropriations Chairman Anthony Portantino.

AB 473 was unanimously approved by the legislature, signed into law, and became effective January 1, 2024. AB 473 blocks VW from using Scout to sell vehicles directly to consumers but it includes amendments in response to VW’s and Scout’s legislative advocacy, and these amendments allow Scout vehicles to be sold through existing VW dealers or through a

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new dealer network. Despite being fully aware of all of this, VW has chosen to launch the Scout brand in a manner that is brazenly unlawful.

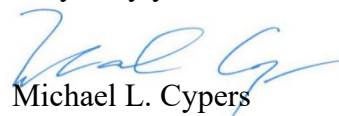
The above, which is in no way intended to be exhaustive or comprehensive, establishes that the misconduct in which Scout and VW have engaged constitutes, at a minimum, a violation of the Vehicle Code. CNCDA is presently in the process of evaluating its claims and will not hesitate to take immediate legal action to vindicate injuries it has already suffered and to prevent any further wrongdoing by Scout and VW. In the meantime, CNCDA demands that Scout cease marketing Scout vehicles to California consumers and taking deposits from California residents for Scout vehicles. To the extent Scout vehicles will be marketed in the state of California, CNCDA demands hereby that existing California VW dealers be given the opportunity to become Scout franchisees in order to be able to sell Scout vehicles to consumers. Please immediately confirm that you have received this letter and confirm your compliance with the demands set forth herein.

In anticipation of litigation regarding the foregoing matters, please be advised that you have a duty to immediately preserve all data from any and every source that is or is potentially relevant to this matter. CNCDA hereby demands that Scout and VW immediately take all necessary steps to preserve such data. This demand applies not only to paper documents, but also encompasses all data existing in digital or electronic form, irrespective of the medium, including but not limited to all emails, text messages, private messages, web-based messages, SMS messages, letters, correspondence, documents, notes, and communications of any nature whatsoever. The sources for this data, which must be preserved, include smartphones, tablets, laptops, desktops, and other devices as well as any servers, external email storage, backup systems, and other systems where such information was created or may be stored.

This letter is not intended to constitute a full or complete recitation of all relevant facts or contentions relating to the matters discussed above. Nothing in this letter is intended to be, or should be construed as, a waiver or relinquishment of any of CNCDA's or any of its members' rights, claims, remedies, or contentions, whether at law or in equity, all of which CNCDA hereby expressly reserves.

Thank you in advance for your attention to this matter.

Very truly yours,



Michael L. Cypers

cc: Julie R. F. Gerchik
Wogai Mohmand