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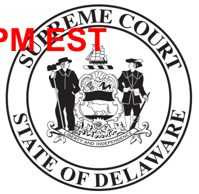

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TESLA, INC. Appellant, v. THE DELAWARE DIVISION OF MOTOR VEHICLES, Appellee.	))))))))))	No. 375,2022 CASE BELOW: SUPERIOR COURT OF THE STATE OF DELAWARE C. A. No. N21A-09-001-CLS

APPELLANT'S CORRECTED OPENING BRIEF

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NATURE OF THE PROCEEDINGS

This appeal concerns Tesla, Inc. ("Tesla")'s December 2020 application for a dealer's license to sell its motor vehicles directly to the public from a Tesla store in Delaware. The Delaware Division of Motor Vehicles (the "Division") denied Tesla's application based on its view that the Motor Vehicle Franchising Practices Act ("Franchise Act") prohibits all manufacturers from operating dealerships, and the Superior Court upheld that decision. The Division and the Superior Court erred as a matter of law for two independent reasons. *First*, the Franchise Act bars only manufacturers who sell their vehicles through independent franchised dealers from selling their vehicles directly to the public. It does not prohibit direct sales by non-franchising manufacturers such as Tesla. *Second*, neither the Vehicle Dealer Licensing Act ("Licensing Act") nor the Franchise Act empowers the Division to deny a dealer's license based on non-compliance with the Franchise Act, which instead creates other exclusive enforcement mechanisms. Each of these errors warrants reversal.

Tesla is an American company that produces the world's most advanced electric vehicles. Tesla's vehicles represent nearly 70 percent of electric vehicles

sold in the United States.[1] Since its founding, Tesla has used a unique direct-sales model. Unlike most other vehicle companies that sell through independent franchised dealers, Tesla markets and sells its vehicles directly to consumers. This non-franchising sales model is key to Tesla's success in the unique electric-vehicle market. Franchised dealerships derive their profit from quick transactions, price markups, and convincing consumers to purchase expensive upgrades. By instead relying on its own well-trained employees, Tesla is better able to educate customers about electric vehicles and win their confidence in this novel technology. Tesla has opened stores where it sells its vehicles directly to the public in dozens of states throughout the country. But because of the Division's denial of Tesla's application, Delawareans remain unable to purchase vehicles in-state from the manufacturer of 70 percent of the country's electric vehicles.

The Division's decision contravenes the Franchise Act's plain text and erroneously assumes authority the General Assembly did not delegate to the Division under the Licensing Act. The Superior Court compounded that error by upholding its decision. The Court should reverse the Superior Court's decision and

[1] Lambert, *Tesla (TSLA) still dominates US electric car market with 68% market share*, Electrek (Aug. 5, 2022), https://electrek.co/2022/08/15/tesla-tsla-dominates-us-electric-car-market-share/#:~:text=In%202021%2C%20that%20number%20went,in%20the%20US%20EV%20market.

remand with instructions to vacate the Division’s decision and remand to the agency with instructions to grant Tesla’s application.

SUMMARY OF THE ARGUMENT

1. The Division incorrectly concluded that granting Tesla a dealer's license would violate the Franchise Act's prohibition on a "manufacturer … act[ing] in the capacity of a dealer." 6 *Del. C.* § 4913(b)(14). As this Court has explained, the Franchise Act was passed as "remedial legislation intended to regulate the relationship *between motor vehicle dealers and manufacturers*" by reducing "the gross disparity in bargaining power [that] permitted motor vehicle manufacturers to exert economic pressure over *franchises*" and "protect[ing] existing dealers from unfair competition." *See Future Ford Sales, Inc. v. Public Serv. Comm'n of Del.*, 654 A.2d 837, 842, 844 (Del. 1995) (emphases added). The Franchise Act consequently defines "manufacturer" to include only manufacturers who sell their vehicles to a third-party dealer, which Tesla does not do because it sells its vehicles directly to the public. The Franchise Act establishes that limitation through its definitions of "[m]anufacturer," "[n]ew motor vehicle," and "[n]ew motor vehicle dealer," which together limit the scope of the Franchise Act to manufacturers that sell their vehicles through dealers "hold[ing] … a valid sales and service agreement, franchise or contract" with the manufacturer. *See* 6 *Del. C.* § 4902(7), (8)(b), (9). Because Tesla's vehicles in Delaware are not and will not be sold to any dealer that "holds … a valid sales and service agreement, franchise or contract granted" by Tesla, *id.* § 4902(9), Tesla does not meet the definition of a

"manufacturer"—and has no franchised dealers that need protecting from unfair competition. The Division committed legal error by ignoring the Franchise Act's express definitions and instead extending the Act to reach non-franchising manufacturers, such as Tesla.

2. The Division also independently erred in holding that it could deny a license based on non-compliance with the Franchise Act. The General Assembly expressly enumerated the specific Delaware laws that may provide "[g]rounds for denying" a license under the Licensing Act, and notably did not include the Franchise Act on that list. 21 *Del. C.* § 6313(4), (5). The Division relied on a Licensing Act provision that states that, once the Division is "satisfied that the applicant is of good character and, so far as can be ascertained, the applicant has complied with and will comply with, the laws of this and other states, the [Division] shall approve the application and issue a dealer license." *Id*. § 6312. When read in that context, however, it is clear that Section 6312 does not expand the specific list of Delaware laws that may provide grounds for denying a license application enumerated in Section 6313. This interpretation accords with basic principles of statutory interpretation; as this Court has observed, "specific provisions should prevail over general provisions." *A.W. Fin. Servs., S.A. v. Empire Res., Inc.*, 981 A.2d 1114, 1131 (Del. 2009). Moreover, "it is blackletter law that 'administrative agencies ... derive their powers and authority solely from

the statute creating such agencies and which define their powers and authority.'" *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 176 A.3d 632, 661 (Del. 2017). Neither the Franchise Act nor the Licensing Act grants the Division the authority to enforce the Franchise Act. Instead, the Franchise Act creates a private right of action and expressly grants the Public Service Commission ("Commission") "administrative responsibility for enforcement of the Act." *Future Ford Sales*, 654 A.2d at 839; *see* 6 *Del. C.* §§ 4902(1), 4903(b), 4915(a). By enforcing the Franchise Act through its evaluation of a dealer license application, the Division improperly assumed the authority expressly delegated to another agency and expanded the limited remedies that the General Assembly created to enforce the Act.

STATEMENT OF FACTS

A. Tesla's Innovative Business Model

Tesla is a global manufacturer, developer, and producer of the most advanced electric vehicles on the market. A127. Since its founding in 2003 by a group of physicists and engineers motivated by environmental concerns, dependence on imported oil, and volatile fuel prices, Tesla has employed cutting-edge technology to manufacture and provide customers with affordable and innovative electric vehicles that reduce emissions and do not require petroleum-based fuel. A127-128. Tesla's innovation has enabled it to grow rapidly: As of 2020, Tesla had more than 70,000 employees around the world and manufactured more than half a million vehicles in that year alone. A128.

Tesla's success is due in part to its unique business model, under which Tesla has always exclusively sold its vehicles directly to its customers rather than through third-party, franchised dealers. A130-131. Traditional franchised dealerships operate by driving a high volume of rapid transactions and derive their profit primarily from convincing customers to purchase expensive upgrades or service contracts. *See* A135-136. That approach to vehicle sales does not incentivize the types of in-depth conversations that are so important to many of Tesla's customers—many of whom are purchasing their first electric vehicle and have numerous questions about electric-vehicle technology. A131-132. Nor are

many franchised dealers sufficiently informed about Tesla's electric-vehicle technology to answer customers' questions. Studies show that franchised dealers cannot provide even basic information about things like charging, battery range, and financial incentives to purchase an electric vehicle and, in some cases, even *discourage* interested customers from purchasing an electric vehicle in favor of a conventional gasoline-fueled vehicle. *See* A135-136 & n.6 (citing Sierra Club, *Rev Up Electric Vehicles: A Nationwide Study of the Electric Vehicle Shopping Experience* 5-6 (Nov. 2019), https://tinyurl.com/evstudy).

Tesla sells its cars in an entirely different manner. Tesla's stores are filled with its own employees, who are paid a fixed salary rather than by commission. A132. Tesla does not derive meaningful profit from repairs, so it is not motivated to upsell ancillary services. A134. Tesla employees have no incentive to rush customers through the buying process, so customers can browse, ask questions, and make multiple visits before purchasing a Tesla vehicle. A132. And because the salespeople are educated by Tesla directly, they have all necessary information to assist buyers in making their choice. *Id*. Finally, Tesla vehicles are sold at a fixed, transparent price, which eliminates haggling and instead allows customers to learn about their options and make an educated decision about the right vehicle for them. A133. All this transforms the buying experience, making it completely unlike a typical car purchase under the franchised dealer sales model.

Interest in electric vehicles is expected to continue to accelerate as states, including Delaware, adopt measures designed to transition the cars in the state to electric vehicles. Progress in Delaware has been hindered, however, by the fact that Delaware residents cannot purchase the most popular electric vehicle—Tesla vehicles—in person in their home state. A136-137.

B. Tesla's History In Delaware

Tesla is not able to make in-person sales in Delaware because it does not have a dealer's license. Thus, to purchase a Tesla vehicle, Delaware residents must either order a vehicle through Tesla's website or travel to Maryland, New Jersey, or Pennsylvania, where Tesla vehicles are sold at brick-and-mortar stores. A137. Despite that significant disadvantage, Tesla vehicles remain popular. As of May 2021, Tesla had sold more than 1,500 electric vehicles to Delaware residents, and Tesla vehicles comprised more than 70% of Delaware's registered electric vehicles. *Id.*

Tesla's ability to meet the growing demand for its vehicles in Delaware depends on being able to continue operating under its longstanding business model in the State. Tesla currently operates several charging stations in Delaware, a service center in Wilmington, and a gallery in Newark—where customers can view Tesla vehicles but not purchase them. But it is unable to sell vehicles directly to Delaware consumers from an in-state store. A137. To ensure that Tesla can

continue to effectively serve Delaware customers, it submitted an application to the Division for a dealer's license pursuant to the Delaware Licensing Act. A7-A28.

C. Delaware's Licensing Act And Franchise Act

The Division evaluated Tesla's application for a license under two statutes: the Licensing Act, which regulates the issuance of dealer's licenses; and the Franchise Act, which regulates franchise relationships between automobile manufacturers and their dealers.

1. The Licensing Act

The Licensing Act, codified at Chapter 63 of Title 21 of the Delaware Code, regulates the issuance of dealer's licenses. The Licensing Act provides that no person may "carry on or conduct the business of buying, selling or dealing in new or used vehicles unless issued a dealer's license by the [Division]."[2] 21 *Del. C.* § 6302(a). The Act defines "vehicle" to encompass, *inter alia*, all "motor vehicles … and any other device, in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by animal power, human power, off-highway vehicles, special mobile equipment and farm

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[2] The statute refers here to the "Department," but the Licensing Act's definitional provision makes clear that all references to either "Department" or "Division" refer to the Division of Motor Vehicles. *See* 21 *Del. C.* § 6301(4) ("'Department' shall mean the Department of Transportation, Division of Motor Vehicles."); *id.* § 6301(6) ("'Division' shall mean the Division of Motor Vehicles.").

equipment." *Id.* § 6301(9). The Act also defines "dealer" broadly to "include[] … *[a]ny* person, corporation, partnership, proprietorship or any other legal entity who offers to sell, sells, displays or permits the display for sale, of 5 or more vehicles within a 12-month period" or "who is in the business of buying, selling or exchanging during any 12-month period 5 or more vehicles." *Id.* § 6301(2)(a), (b) (emphasis added).[3]

Section 6312 mandates that, upon receiving an application for a dealer's license, if the Division is "satisfied that the applicant is of good character and, so far as can be ascertained, the applicant has complied with and will comply with, the laws of this and other states, the [Division] *shall* approve the application and issue a dealer license." 21 *Del. C.* § 6312 (emphasis added). Section 6313 of the Licensing Act sets forth the nine specific "grounds" on which an application for a license "may be denied, suspended, or revoked." *Id.* § 6313. These grounds include: "[f]ailure to comply with this title [Title 21] or Title 30," or "[c]onviction of the dealership licensee or licensees of any fraudulent or criminal act in violation of Title 11 or Title 30 in connection with the business of selling vehicles." *Id.*

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[3] Section 6301(3) lists several narrow exclusions from the definition of "dealer" that are not implicated here, including "manufacturer[s] … who sell[] or distribute[] vehicles to licensed dealers … if th[ose] manufacturer[s] do[] not sell vehicles to retail buyers." *Id.* § 6301(3)(f) (emphasis added). Thus, the Act expressly only excludes manufacturers from its ambit when they sell their vehicles to "licensed dealers" rather than to the public directly.

§ 6313(4)-(5). These three Titles of the Delaware Code—Titles 11, 21, and 30—encompass "Crimes and Criminal Procedure," "Motor Vehicles," and "State Taxes," respectively. None of the nine "[g]rounds for den[ial]" include any prohibition on a non-franchising manufacturer obtaining a dealer's license. Nor does the list include an applicant's compliance with the Franchise Act, which is found in Title 6.

2. The Franchise Act

The Franchise Act, first enacted in 1983 and codified at Chapter 49 of Title 6 of the Delaware Code, regulates franchise relationships between automobile manufacturers and their dealers. The Franchise Act's Declaration of Purpose sets forth the General Assembly's intent to "regulate franchises issued by" "vehicle manufacturers," both to protect the public and to "preserve the investments and properties of the citizens of this State." 6 *Del. C.* § 4901. As this Court has explained, the Franchise Act "is remedial legislation intended to regulate the relationship *between motor vehicle dealers and manufacturers*" by reducing "the gross disparity in bargaining power [that] permitted motor vehicle manufacturers to exert economic pressure over *franchises*." *Future Ford Sales*, 654 A.2d at 842 (emphases added).

Consistent with these purposes, the Franchise Act regulates only manufacturers that sell vehicles through franchised dealers. The Franchise Act

expressly limits its scope in this way through its definition of “manufacturer.” The Act defines a “manufacturer” as (in relevant part) “any person, resident or nonresident, who manufactures or assembles new motor vehicles.” 6 *Del. C.* § 4902(7). “New motor vehicles” are, in turn, defined as “vehicle[s] which ha[ve] been sold to a new motor vehicle dealer.” *Id.* § 4902(8)(b). A “new motor vehicle dealer” is defined as “any person or entity engaged in the business of selling, offering to sell, soliciting or advertising the sale of new motor vehicles and who holds … a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the retail sale of said manufacturer’s or distributor’s new motor vehicles.” *Id.* § 4902(9). Thus, only a business that manufactures vehicles that are sold to dealers that “hold … a valid sales and service agreement, franchise or contract” for the sale of those vehicles qualifies as a “manufacturer” under the Franchise Act. Nothing in the Act extends its reach to non-franchising manufacturers that sell their vehicles directly to the public.

The Franchise Act sets forth extensive limitations on franchising manufacturers, including prohibiting franchising manufacturers from directly selling vehicles. Section 4913(b)(14) prohibits “manufacturers”—which are, again, defined by the Franchise Act to include only franchising manufacturers—from “directly or indirectly own[ing] an interest in a dealer or dealership; or operat[ing] or control[ling] a dealer or dealership; or act[ing] in the capacity of a

dealer except as provided by this section." 6 *Del. C.* § 4913(b)(14). As this Court has explained, the purpose of this restriction is to prevent franchising manufacturers from competing with their own franchised dealers—in other words, to regulate "intrabrand competition." *Future Ford Sales*, 654 A.2d at 843; *see also id.* at 842 ("The Delaware [Franchise] Act, like its counterpart at the federal level and in a large number of states, is remedial legislation intended to regulate the relationship between motor vehicle dealers and manufacturers. Historically, the gross disparity in bargaining power permitted motor vehicle manufacturers to exert economic pressure over franchises which prompted Congress and many states to enact regulatory legislation to prevent such abusive practices.").

Provisions of the Franchise Act can be enforced in two ways. The Commission is charged with administrative enforcement of the Franchise Act. *See* 6 *Del. C.* § 4903(b)(4) (permitting dealers to protest manufacturers' denial of payment for dealer warranty service to the Commission); *id.* § 4915(a) (providing for Commission to adjudicate franchised dealers' challenges to a manufacturer's decision to establish a new dealership or relocate an existing one). The Franchise Act also confers a private right of action for damages or equitable relief on "any person who is or may be injured by a violation of a provision of [the Franchise Act] or any party to a franchise who is … injured in such party's business or property by a violation of a provision of this chapter relating to that franchise." *Id.*

§ 4916(a). The Franchise Act nowhere provides for enforcement of its provisions by the Division or via denial of a dealer's license.

D. The Division's Denial Of Tesla's License

In December 2020, Tesla applied to the Division for a license to open a store in Delaware. A7-28. On April 19, 2021, Karen A. Carson, the Division's Chief of the Compliance and Investigations Unit, denied the application via letter.[4] A30-31. The stated reason for the denial was that Section 4913 of the Franchise Act—not the Licensing Act under which Tesla had applied for a license and under which the Division was charged with evaluating that application—"prohibits a manufacturer from directly or indirectly owning an interest in a dealer or dealership" or from "act[ing] in the capacity of a dealer," 6 *Del. C.* § 4913(b)(14), and Tesla therefore would not be in compliance with the Franchise Act if it were to sell vehicles from a store in Delaware. A30-31. The Division concluded that "Tesla will not be in compliance with the laws of Delaware as required by [Section] 6312" of the Licensing Act. A31. Tesla timely requested a hearing on April 30, 2021. A32-36.

Hearing Officer Crystal Stump conducted the hearing on June 23, 2021. On July 23, 2021, she issued a decision in the form of a report and recommendation denying Tesla a license on the same grounds listed in the original letter. *See* A392-

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[4] Although the letter heading was "RE: Intent to Deny New Vehicle Dealer License pursuant to 21 *Del. C.* § 6312," A30, the body of the letter indicated that "the new dealership license application for Tesla is denied," A31.

403. Hearing Officer Stump concluded that Section 6312 of the Licensing Act, which requires the Division to "ascertain[]" an applicant's "compl[iance] with the laws of this and other states," required a prospective dealer to comply with the Franchise Act's prohibition on a manufacturer "directly or indirectly own[ing] an interest in a dealer or dealership; or operat[ing] or control[ling] a dealer or dealership; or act[ing] in the capacity of a dealer except as provided by this section," 6 *Del. C.* § 4913(b)(14). A402-403.

The Hearing Officer expressly found that Tesla "and its business model" do not meet the definition of a "new motor vehicle dealer" under the Franchise Act because Tesla's "business model is direct sales between Tesla and the consumer" and it does not sell its vehicles through any franchised dealer. A402; *see* 6 *Del. C.* § 4902(9) (defining "new motor vehicle dealer" as "any person or entity engaged in the business of selling … new motor vehicles and who holds … a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles"). She nonetheless concluded that Tesla was a "manufacturer" under the Franchise Act, and that it therefore could not sell vehicles directly without contravening Section 4913(b)(14) of the Franchise Act. A402. Although under the Franchise Act's terms, an entity only qualifies as a "manufacturer" if it sells the vehicles it

produces to a "new motor vehicle dealer," *see* 6 *Del. C.* § 4902(7), (8)(b), she did not attempt to reconcile her two determinations.

On August 9, 2021, Division Director Jana Simpler issued a final decision upholding the hearing officer's report and recommendation. A404-405. The Director agreed with the Hearing Officer that issuing Tesla a dealership license would violate Section 4913 of the Franchise Act, which, "in turn, would be a violation of the requirement of 21 Del. C. § 6312 that a dealer will comply with the laws of this state." A404. Therefore, "despite the interests of the State of Delaware and its citizens in encouraging and supporting the sale and use of electric vehicles," the Director determined that "the hearing officer's decision [denying the application] is hereby upheld." A404-405. The Director, like the Hearing Officer, did not explain how Tesla could be a "manufacturer" and therefore fall within Section 4913 of the Franchise Act when it does not sell vehicles to "new motor vehicle dealer[s]." *Id*.

E. Superior Court Proceedings

Tesla timely appealed the Division's determination to the Superior Court on September 3, 2021. Tesla argued that the Division exceeded its statutory authority under the Licensing Act by denying Tesla a dealer's license under the Franchise Act, and by interpreting the Franchise Act to prohibit a non-franchising

"manufacturer" from "act[ing] in the capacity of a dealer." 6 *Del. C.* § 4913(b)(14).

On September 23, 2022, the Superior Court issued a decision affirming the Division Director. *See* A551-571. The court affirmed, with little analysis, the Division's determination that it could enforce the Franchise Act through a licensing proceeding, holding that the "plain language" of 21 *Del. C.* § 6312, as well as "the reading of 21 *Del. C.* § 6313(6)" permitted the Division to deny a dealer's license based on the Franchise Act because that statute "was enacted by the legislature in this State and therefore, any violation of the Franchising Act would be in violation of the laws of this State." A564-565.

With regard to the Franchise Act, the court acknowledged that the General Assembly that adopted the Act likely did not "contemplate[]" non-franchising manufacturers like Tesla who sell directly to consumers because "no manufacturers, up until Tesla, have sold direct to consumer." A566. The court further concluded that, because the Franchise Act does not apply to Tesla and it does not sell its vehicles through franchisees, "Tesla's vehicles do not qualify under the [Franchise Act's] definition of new motor vehicle." *Id.* And the court also appeared to agree with the Division that Tesla is not a "new motor vehicle dealer" within the meaning of the Franchise Act because "it does not enter into franchise agreements with third party entities." A567.

But despite acknowledging that the General Assembly "likely [did] not … contemplate[]" regulating non-franchising manufacturers, like Tesla, and agreeing with Tesla that it falls outside the Franchise Act's definitions of "new motor vehicle" and "new motor vehicle dealer," the Court did not vacate the agency's decision. A566. Instead, it explained that because, in its view, "the only Statute which clearly defines a new motor vehicle is the Franchising Act," Tesla simply "cannot sell its cars in [Delaware] because the only way for a dealer to sell new cars is for those cars to be considered new motor vehicles." *Id*. In reaching that conclusion, the court did not mention that it is the Licensing Act, not the Franchise Act, that comprehensively regulates motor vehicle sales in Delaware. Nor did it acknowledge the Licensing Act's broader definition of "vehicle," which *does* encompass Tesla's vehicles. *See* 21 *Del. C.* § 6301(9). The Superior Court accordingly affirmed the Division's denial of Tesla's license application based on its own alternative rationale. *Id*.[5]

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[5] Tesla also argued below that the Division contravened the General Assembly's statutory directive that "[t]he [Division] shall promulgate all rules and regulations necessary to implement [the Licensing Act]," *Motor Vehicles—Sale of Motor Vehicles*, 1998 Del. Laws ch. 449 § 6 (H.B. 615), because it failed to promulgate any rules governing dealer licensure hearings and instead ruled on Tesla's requests for certain procedural protections on an *ad hoc* basis without citing any legal authority. The Superior Court did not even mention that argument. Instead, it rejected an argument that Tesla did not make: Namely, that the Division's hearing violated Tesla's Due Process rights. *See* A568-570.

ARGUMENT

I. THE FRANCHISE ACT DOES NOT PROHIBIT NON-FRANCHISING MANUFACTURERS FROM SELLING VEHICLES DIRECTLY

A. Question Presented

Whether the Division and the Superior Court erred in interpreting the Franchise Act to prohibit a non-franchising manufacturer from "act[ing] in the capacity of a dealer." Tesla raised this claim in its notice of appeal and briefing in the Superior Court. *See* A407; AR439-446.

B. Scope Of Review

"When an administrative decision is on appeal from the Superior Court, this Court examines the agency's decision directly." *Delmarsh, LLC v. Environmental Appeals Bd.*, 277 A.3d 281, 289 (Del. 2022) (quotation marks omitted). The Court reviews a determination of a question of law by an administrative agency or the Superior Court *de novo*. *Delaware Dep't of Nat. Res. & Env't Control v. Sussex Cnty.*, 34 A.3d 1087, 1090 (Del. 2011). The question of whether the Franchise Act bars Tesla from selling vehicles directly is one of statutory interpretation, and "[s]tatutory interpretation is a question of law." *Id.* Indeed, this Court has explained that an agency is entitled to no deference even for an interpretation of a statute that the agency administers—which is not the case for the Division and the Franchise Act, *infra* pp. 38-40. *See Public Water Supply Co. v. DiPasquale*, 735 A.2d 378, 382-383 (Del. 1999) (explaining that "[a] reviewing court may accord

due weight, but not defer, to an agency interpretation of a statute administered by it," and "expressly declin[ing] to adopt [the *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984)] standard with respect to review of an agency's interpretation of statutory law and reaffirm[ing] our plenary standard of review").

The Superior Court concluded that the agency decision under review was a "discretionary" decision subject to abuse-of-discretion review because the Licensing Act provision that governs the Division Director's review of a hearing officer's decision provides that the Director "*may* … refuse to approve an application." A562 (quoting 21 *Del. C.* § 6315(a) (emphasis in original)). Applying that standard, the court determined that "no abuse of discretion [was] present" because issuance of a dealer's license to Tesla would violate the statute. A568. The Superior Court's application of abuse-of-discretion review was erroneous for two reasons. First, Tesla's dealer's license application was in fact subject to the Licensing Act's non-discretionary standard for review of such applications, which provides that "the Department *shall* approve the application and issue a dealer license." 21 *Del. C.* § 6312 (emphasis added). Second, as explained, the Division's construction of the Franchise Act is a legal question that must be reviewed *de novo*.

C. Merits Of Argument

The Division erred in determining that the Franchise Act prohibits Tesla from selling its vehicles directly to the public in Delaware. Although the Superior Court's rationale for upholding the Division's determination differed in some respects from the agency's, both misconstrued the statute, which prohibits only franchising manufacturers from selling vehicles directly.

1. The Plain Text Of The Franchise Act Limits The Act's Restrictions To Franchising Manufacturers

The Division believed that Tesla's operation of a dealership would violate 6 *Del. C.* § 4913(b)(14) of the Franchise Act, which makes it unlawful for a "manufacturer" to "act in the capacity of a dealer except as provided by this section." *Id.* Through its express definitions of "manufacturer," "new motor vehicle dealer," and "new motor vehicle," however, the Franchise Act makes clear that none of its provisions—including its prohibition on "act[ing] in the capacity of" a "dealer"—apply to non-franchising manufacturers like Tesla.

Interpretation of the Franchise Act begins with the text of the statute. *See Leatherbury v. Greenspun*, 939 A.2d 1284, 1288 (Del. 2007) ("If the statute as a whole is unambiguous and there is no reasonable doubt as to the meaning of the words used, the court's role is limited to an application of the literal meaning of those words."). The Franchise Act limits its scope to only franchising manufacturers and franchised dealers through a series of nested definitions,

beginning with the term “manufacturer.” *Supra* pp. 11-12; *see C.F. Schwartz Motor Co. v. International Truck & Engine Corp.*, 2004 WL 772068, at *2-3 (Del. Super. Ct. Mar. 26, 2004) (explaining that subsections of § 4902, including definition of “new motor vehicle dealer,” must be “read in light of all others in the enactment” to effectuate statutory purpose). The Franchise Act defines a “manufacturer” as, *inter alia*, “any person, resident or nonresident, who manufactures or assembles *new motor vehicles*,” 6 *Del. C.* § 4902(7) (emphasis added), which are defined as “vehicle[s] which ha[ve] been sold to a *new motor vehicle dealer*,” *id.* § 4902(8)(b) (emphasis added). In turn, the Act defines “new motor vehicle dealer” to mean only those who are “engaged in the business of selling, offering to sell, soliciting or advertising the sale of new motor vehicles *and who hold[] … a valid sales and service agreement, franchise or contract* granted by the manufacturer or distributor for the retail sale of said manufacturer’s or distributor’s new motor vehicles.” *Id.* § 4902(9) (emphasis added). Read together, a company qualifies as a “manufacturer” under the Franchise Act only if it “manufactures or assembles” vehicles that are “sold to a new motor vehicle dealer” that “holds … a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the retail sale of said manufacturer’s or distributor’s new motor vehicles.”

Given these express and carefully circumscribed definitions, it does not matter that Tesla is a "manufacturer" in the traditional sense of that word. As the U.S. Supreme Court has emphasized, "[w]hen a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Tanzin v. Tanvir*, 141 S. Ct. 486, 490 (2020) (quotation omitted). Nor does it matter, as the Hearing Officer noted, that Tesla grouped itself with other manufacturers such as Ford, General Motors, and Toyota in an exhibit submitted as part of the hearing. *See* A402. What matters is that Tesla falls outside the Franchise Act's specific statutory definitions: Tesla does not qualify as a "manufacturer" under the Franchise Act because Tesla does not manufacture any vehicles that it would sell to any dealer that holds a franchise with Tesla in Delaware. And Tesla likewise does not qualify as a "new motor vehicle dealer" under the Franchise Act because it lacks any franchise relationship with any manufacturer. Indeed, the Hearing Officer recognized this when she acknowledged that because "Tesla's business model is direct sales between Tesla and the consumer," it could not qualify as a "new motor vehicle dealer." *Id.* Tesla therefore cannot violate Section 4913(b)(14)'s prohibition on "manufacturer[s] … act[ing] in the capacity of" "dealer[s]." The Hearing Officer erred in construing the plain language of the Franchise Act.

2. The Superior Court's Alternative Rationale Likewise Contravenes The Plain Text Of The Franchise Act

The Superior Court affirmed the Division, but it did so based on a different (and equally erroneous) reading of the Franchise Act. The Superior Court agreed with the Division's Hearing Officer (and Tesla) that "Tesla does not qualify as a [new motor vehicle] dealer," within the meaning of the Franchise Act. A567. Unlike the Division, however, the Superior Court concluded that "Tesla's vehicles do not qualify under the [Franchise Act's] definition of new motor vehicle" because Tesla does not and will not sell through franchisees in Delaware. A566. These two conclusions should have led the Superior Court to conclude that Tesla does not and will not violate the Franchise Act by selling its vehicles directly. After all, as explained above, the Franchise Act's definition of "manufacturer" encompasses only a person or entity who assembles "new motor vehicles" and "new motor vehicles" include only vehicles sold to a "new motor vehicle dealer." 6 *Del. C.* § 4902(7), (9). So, if Tesla does not sell "new motor vehicles" and does not qualify as a "new motor vehicle dealer," as those terms are specifically defined in the Franchise Act, it cannot be a "manufacturer" within the meaning of the Act and thus cannot violate the Act by selling directly.

Rather than reverse the Division, however, the Superior Court adopted an entirely new rationale for the Division's conclusion that Tesla would violate the Franchise Act—one that the Division had never articulated during agency

proceedings or even in its briefing to the Superior Court. According to the court, because Tesla's vehicles are not "new motor vehicles" within the meaning of the Franchise Act, "Tesla cannot sell its cars in the State" *at all*, "because the only way for a dealer to sell new cars is for those cars to be considered new motor vehicles." A566. From the Court's perspective, "new cars may only be sold in the State of Delaware if they are in fact new motor vehicles under Delaware Law and the only Statute which clearly defines a new motor vehicle is the Franchising Act." *See id.*

The Superior Court's alternative rationale cannot support the Division's decision for multiple reasons. Most basically, a reviewing court may not affirm the decision of an agency by supplying an entirely new rationale than the one articulated by the agency itself, as the Superior Court did here. *See Delaware Alcoholic Beverage Comm'n v. Mitchell*, 196 A.2d 410, 412 (Del. 1963); *see also JNK, LLC v. Kent Cnty. Reg'l Plan. Comm'n*, 2007 WL 1653508, at *7 & n.44 (Del. Super. Ct. May 9, 2007) (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168-169 (1962)).

Even beyond that procedural error, the Superior Court's post hoc rationale misapprehended the limited function played by the Franchise Act in regulating vehicle sales in Delaware. Contrary to what the Superior Court appears to have understood, the *Licensing Act*, not the Franchise Act, sets forth the basic requirements for selling vehicles in the State. It is the Licensing Act that provides

that no person may "carry on or conduct the business of buying, selling or dealing in new or used vehicles unless issued a dealer's license by the [Division]." 21 *Del. C.* § 6302(a); *see also supra* p. 9. The Franchise Act, by contrast, more narrowly governs *franchising* relationships, and in that context, sets forth specific restrictions that apply to franchising manufacturers and their franchised dealers. 6 *Del. C.* §§ 4901, 4913(b)(14); *see infra* pp. 27-30. To the extent the Franchising Act could ever be relevant, it would only be as a source of additional restrictions on manufacturers and dealers—restrictions that do *not* apply to Tesla precisely because it falls outside the Franchise Act's definitions of "manufacturer," "new motor vehicle dealer," and "new motor vehicle dealer." For Tesla to obtain a dealer's license authorizing it to sell new motor vehicles in Delaware, Tesla's vehicles and Tesla itself need only be capable of fitting within the *Licensing Act*'s definitions of "vehicle" and "dealer."

Unlike the Franchise Act, the Licensing Act defines both "vehicle" and "dealer" broadly, in terms that *can* encompass Tesla's electric vehicles. The Licensing Act defines "vehicle" to include all "motor vehicles … and any other device, in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by animal power, human power, off-highway vehicles, special mobile equipment and farm equipment." 21 *Del. C.* § 6301(9). And the Licensing Act defines "dealer" to "include[] … *[a]ny*

person, corporation, partnership, proprietorship or any other legal entity who offers to sell, sells, displays or permits the display for sale, of 5 or more vehicles within a 12-month period," or "is in the business of buying, selling or exchanging during any 12-month period 5 or more vehicles." *Id.* § 6301(2)(a), (b) (emphasis added). In addition, the Licensing Act excludes from its definition of "dealer" a narrow class of "manufacturers"—those that, unlike Tesla, "sell[] or distribute[] vehicles *to licensed dealers*" and "do[] *not* sell vehicles to retail buyers." *Id.* § 6301(f) (emphases added). Because Tesla's vehicles and Tesla itself can fit within the Licensing Act's capacious definitions of "vehicle" and "dealer," Delaware Law does indeed authorize Tesla to obtain a dealer's license allowing it sell its vehicles in Delaware.

3. <u>Limiting The Franchise Act To Franchising Manufacturers Advances The Act's Purpose Of Regulating Franchising Relationships</u>

In addition to the statutory text, the Franchise Act's purpose leaves no doubt that the General Assembly intended it to restrict only franchising manufacturers, and not also non-franchising manufacturers. The Act's Declaration of Purpose provides that the General Assembly promulgated the legislation to "*regulate franchises* issued by" "vehicle manufacturers," to protect the public, and to "preserve the investments and properties of the citizens of this State." 6 *Del. C.* § 4901 (emphasis added). The General Assembly made the focus of its legislative

effort doubly clear by naming the statute the "Motor Vehicle *Franchising* Practices Act." Del. S.B. 26, 132nd Gen. Assembly (May 3, 1983) (emphasis added). *See Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) ("[T]he title of a statute … [is a] tool[] available for the resolution of a doubt about the meaning of [the] statute." (quotation marks omitted)).

As this Court explained in *Future Ford Sales*, the Franchise Act is thus "remedial legislation intended to regulate the relationship *between motor vehicle dealers and manufacturers*" by reducing "the gross disparity in bargaining power [that] permitted motor vehicle manufacturers to exert economic pressure over franchises." 654 A.2d at 842 (emphasis added). The General Assembly sought to rectify that power imbalance by "protect[ing] existing dealers from unfair competition." *Id.* at 844; *see also C.F. Schwartz Motor Co.*, 2004 WL 772068, at *2-3 ("Taken together, the [provisions of the Franchise Act] implicate *the relationship between manufacturer and franchiser*." (emphasis added)); *Future Ford Sales, Inc. v. Public Serv. Comm'n of State of Del.*, 1996 WL 291106, at *3 (Del. Super. Ct. Apr. 30, 1996) ("The [Franchise] Act … is not a regulatory obstacle course by which established dealers can stymie fair competition indefinitely."), *aff'd*, 692 A.2d 412 (Del. 1997).

Consistent with that purpose, the Franchise Act's substantive provisions focus on protecting existing franchised dealers from unfair dealings by their own

franchising manufacturers. For example, the Franchise Act requires franchising manufacturers to compensate franchised dealers when they perform required warranty service and parts, 6 *Del. C.* § 4903; imposes liability for all damage to vehicles that occurs before delivery to the dealership on the franchising manufacturer rather than the dealer, *id.* § 4904(a); imposes notice and good-cause requirements on franchising manufacturers before they terminate a franchise relationship, *id.* § 4906(a)-(e); and requires a franchising manufacturer that terminates or cancels a franchise agreement to compensate the dealer for vehicles and parts in its inventory and pay the remaining term of the dealer's facilities lease, *id.* §§ 4907-4908. Reading the Franchise Act to prevent entry of non-franchising manufacturers like Tesla into Delaware's new vehicle market would deviate from

this otherwise consistent focus on regulating the relationship between franchised dealers and franchising manufacturers.[6]

The Franchise Act's legislative history likewise confirms the statute's narrow purpose. As explained in the Delaware Senate's synopsis of the amendment that added Section 4913(b)(14) to the Franchise Act, the amendment ensured that a manufacturer "will not compete directly with *its* dealers." Del. Bill Summary, 2001 Reg. Sess. S.B. 80 (June 20, 2001) (emphasis added). A non-franchising manufacturer like Tesla does not have dealers with which it could compete, and so applying the Act to Tesla would not advance this objective.

The Delaware Franchise Act's limited focus on protecting franchised dealers from unfair competition against their own franchising manufacturers is consistent with the similarly limited focus of franchising laws in other states, which were

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[6] Federal Trade Commission staff have repeatedly opined that interpreting or amending state motor-vehicle laws to prohibit the sale of vehicles directly will harm consumers' interests. *See* Letter from FTC Directors, Office of Policy Planning, Bureau of Competition, Bureau of Economics to Assemblyman Paul D. Moriarty, New Jersey General Assembly, at 6 (May 16, 2014) ("Perhaps the central concern reflected in the current laws regulating the manufacturer-dealer relationship is that government intervention is required to protect independent dealers from abusive behavior *by their suppliers*." (emphasis added), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-new-jersey-general-assembly-regarding-assembly-bills-2986-3096-3041-3216-which/140516nj-autoadvocacy.pdf); Letter from FTC Director, Office of Policy Planning to Rep. Michael J. Colona, Missouri House of Reps., at 7-8 (May 15, 2014), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-missouri-house-representatives-regarding-house-bill-1124-which-would-expand/140515mo-autoadvocacy.pdf.

likewise adopted to "prohibit[] automobile manufacturers from adding dealerships to the market areas of its existing franchisees where the effect of such intrabrand competition would be injurious to the existing franchisees and to the public interest." *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 439 U.S. 96, 101-102 (1978); *see also American Motors Sales Corp. v. Division of Motor Vehicles of Commw. of Va.*, 592 F.2d 219, 222 (4th Cir. 1979). As the Missouri Court of Appeals explained, for example, "the purpose of the [Missouri Franchise] Act is to protect franchisees 'from the 'unlawful' practices *of franchisors with respect to franchises in the possession of franchisees*,'" not to "regulate motor vehicle dealer licensing procedures." *State ex rel. Missouri Auto. Dealers Ass'n v. Missouri Dep't of Revenue & Its Dir.*, 541 S.W.3d 585, 591 (Mo. Ct. App. 2017) (rejecting argument that dealer association challenge to Tesla's dealer license fell within the Franchise Act's zone of interests) (emphasis added).

A New York court reached the same conclusion, holding that its franchise law "regulates the relationship between a car company (manufacturer) and *its* franchised dealers." *Greater N.Y. Auto. Dealers Ass'n v. Department of Motor Vehicles*, 969 N.Y.S.2d 721, 726 (Sup. Ct. 2013) (emphasis added). Accordingly, "[m]anufacturers and dealers [could not] utilize the [New York] Franchised Dealer Act as a means to sue their [non-franchising] competitors." *Id*.

And the Massachusetts Supreme Judicial Court similarly held that Massachusetts' franchise statute "was intended and understood only to prohibit manufacturer-owned dealerships when, … the manufacturer already had an affiliated dealer or dealers in Massachusetts." *Massachusetts State Auto. Dealers Ass'n v. Tesla Motors MA, Inc.*, 15 N.E.3d 1152, 1162 (Mass. 2014). The Massachusetts court thus rejected a dealer association's standing to challenge to Tesla's dealer license and opined that it likely would have read the Massachusetts' franchise law not to apply to Tesla if it had it reached the question because the Massachusetts law, like Delaware's statute, expressly limits its definition of "motor vehicle dealership" to dealers selling "pursuant to a franchise agreement." *See id.* at 1157.[7]

In short, all principles of statutory construction, including the statute's text, structure, and purpose, compel the conclusion that Section 4913(b)(14) of the Franchise Act bars only franchising manufacturers from acting in the capacity of a

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[7] Similar to the Delaware Franchise Act, the Massachusetts franchise law defines a "motor vehicle dealer" as "any person who, in the ordinary course of its business, is engaged in the business of selling new motor vehicles to consumers or other end users *pursuant to a franchise agreement*." Mass. Gen. Laws Ann. ch. 93B, § 1 (emphasis added). The Massachusetts court explained that because "there appears to be a question whether Tesla's business model involves the operation of a 'motor vehicle dealership' within the meaning of [the relevant statute]," there was therefore reason to doubt "whether, by its literal terms, the proscription [of manufacturers' sales] applies to [Tesla] at all." *Massachusetts State Auto. Dealers*, 15 N.E.3d at 1157.

dealer. The Division and the Superior Court thus erred in extending that provision to a non-franchising manufacturer like Tesla.

II. THE DIVISION EXCEEDED ITS AUTHORITY BECAUSE NO STATUTE AUTHORIZES DENIAL OF A LICENSE FOR NONCOMPLIANCE WITH THE FRANCHISE ACT

A. Question Presented

Whether the Division exceeded its statutory authority by adding the Franchise Act's requirements to the limited grounds set forth in the Licensing Act for denying a dealer's license. Tesla raised this claim in its notice of appeal and briefing in the Superior Court. *See* A407; A434-439.

B. Scope Of Review

"When an administrative decision is on appeal from the Superior Court, this Court examines the agency's decision directly." *Delmarsh*, 277 A.3d at 289 (quotation marks omitted). Courts review an administrative agency's determination of a question of law—including its statutory interpretation—*de novo*. *See Delaware Dep't of Nat. Res. & Env't Control*, 34 A.3d at 1090.[8]

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[8] As with its construction of the Franchise Act, the Superior Court stated that it would review the Division's decision for abuse of discretion, but appeared to also independently construe the Licensing Act, albeit cursorily. *See* A464-565 ("Based on the plain language of 21 *Del. C.* § 6312, [the Division] may enquire regarding Tesla's compliance with the laws of this State and other states and based on the reading of 21 *Del. C.* § 6313(6) a dealer license may be denied based on noncompliance with the laws of this State. … The Franchising Act was enacted by the legislature in this State and therefore, any violation of the Franchising Act would be in violation of the laws of this State." (footnotes omitted)). It was error to review that question of statutory interpretation for abuse of discretion. *Supra* pp. 19-20.

C. Merits of Argument

The Licensing Act is the sole statutory authority authorizing the Division to grant or deny a dealer's license. *See* 21 *Del. C.* §§ 6301 *et seq.* The Division, however, denied Tesla's license application based not on any specific restriction in the Licensing Act but on one plucked from an entirely separate statute, the Franchise Act. As set forth above, the Division misconstrued the scope of the Franchise Act's restrictions. But independent of that error, nothing in either statute authorizes the Division to deny a license based on non-compliance with the Franchise Act. The Licensing Act expressly enumerates the specific Delaware laws that may provide "[g]rounds for denying" a license. *See id.* § 6313(4), (5). The Franchise Act is notably omitted from that list. And the Franchise Act creates two—and only two—specific enforcement mechanisms. 6 *Del. C.* §§ 4902(1), 4903(b), 4915(a), 4916(a). Denial of a dealer's license is not among them. "It is blackletter law that 'administrative agencies ... derive their powers and authority solely from the statute creating such agencies and which define their powers and authority.'" *See Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 176 A.3d 632, 661 (Del. 2017). The Division thus erred as a matter of law by expanding the limited grounds for denying a license under the Licensing Act to include enforcement of the Franchise Act.

1. The Plain Text Of The Licensing Act Bars The Division From Denying A License Based On The Franchise Act

Interpretation of the Licensing Act begins with the statute's text. *See Leatherbury*, 939 A.2d at 1288. Section 6313 of the Licensing Act sets forth the specific "[g]rounds for denying" a license application, including based on an applicant's noncompliance with certain Delaware statutory provisions. 21 *Del. C.* § 6313. That list provides that a license "may be denied" based on the applicant's violation of certain provisions within three specific Titles of the Delaware Code, which encompass "Crimes and Criminal Procedure," "Motor Vehicles," and "State Taxes." *Id*. § 6313(4), (5). Notably omitted from the list is Title 6—the title that contains the Franchise Act. As this Court has recognized, where, as here, authority is "affirmatively or negatively designated, there is an inference that all omissions were intended by the legislature." *Leatherbury*, 939 A.2d at 1291 (applying *expressio unius* maxim) (emphasis added). Section 6313's instruction is thus clear. It tasks the Division with ensuring compliance with only a specific subset of Delaware laws—those affirmatively listed in Section 6313—while withholding any power to deny a license based on other Delaware laws (such as the Franchise Act) that are omitted from the list. Indeed, the chronology of statutory enactments makes it particularly unlikely that the General Assembly intended to silently empower the Division to enforce the Franchise Act. The General Assembly enacted the Licensing Act in 1998, fifteen years after the Franchise Act. Because

"[i]t is assumed that when the General Assembly enacts a later statute in an area covered by a prior statute, it has in mind the prior statute," *State v. Fletcher*, 974 A.2d 188, 193 (Del. 2009), the omission of Title 6 from Section 6313 is especially instructive.

Notwithstanding Section 6313's narrow mandate, the Division and the Superior Court located unrestricted authority for denying an application based on all other Delaware laws (and apparently all the laws of all forty-nine other States) in Section 6312's general instruction to issue a dealer license once the Division is "satisfied that the applicant is of good character and, so far as can be ascertained, the applicant has complied with and will comply with, the laws of this and other states." 21 *Del. C.* § 6312. The Division read this language to mandate "compliance with *all* laws of the State of Delaware." A402 (emphasis added); *see also* A404; A565. The Division's sweeping interpretation, however, contravenes fundamental principles of statutory construction.

Most basically, it is an elementary rule of statutory construction "that specific provisions should prevail over general provisions." *A.W. Fin. Servs., S.A.*, 981 A.2d at 1131 (Del. 2009). Section 6312's general reference to "the laws of this … state[]" thus cannot override Section 6313's more specific enumeration of the particular Delaware laws that may be grounds for denying a license.

Moreover, "[s]tatutory construction … is a holistic endeavor." *Salzberg v. Sciabacucchi*, 227 A.3d 102, 117 (Del. 2020). "Each part or section of a statute should be construed in connection with every other part or section to produce a harmonious whole." *Id.* The Division's interpretation of Section 6312, however, would inject disharmony into the Licensing Act by nullifying specific limits set forth in Section 6313. For instance, Section 6313(5) expressly limits denial based on a criminal violation to criminal laws connected to "the business of selling vehicles," and requires that an applicant have been "convict[ed]" of violating such a law. But according to the Division, Section 6312 would permit it to ignore both limitations and deny a license based on criminal laws that are wholly removed from vehicle sales and without regard to whether the applicant had been convicted of violating such a law.

The Superior Court (A565) thought this atextual reading of the statute was required because one of Section 6313's nine grounds for denial is the "determination" by the Division that "the applicant or licensee no longer meets the standard set forth in § 6312 of this title." 21 *Del. C.* § 6313(6). The only unique "standard[s]" in Section 6312, however, are that the applicant be "of good character," and comply with the laws of other states. *Id.* § 6312. Those provisions offer no support to the Division's denial, which was expressly premised on Tesla's purported non-compliance with Delaware law. For all the reasons already given,

Section 6312's reference to "the law of this … state[]" merely refers back to the specific laws expressly enumerated in Section 6313 itself and, with respect to that clause, Section 6312 sets forth only a procedural requirement for the Division to "ascertain[]" "so far as [it] can" whether "the applicant has complied with and will comply with" the titles listed in Section 6313.

2. The Division's Interpretation Would Impermissibly Expand The Limited Remedies Set Forth In The Franchise Act And Usurp Authority Expressly Delegated To Another Agency

The specific and limited enforcement mechanisms set forth in the Franchise Act further confirm that the General Assembly did not intend to empower the Division to deny a license based on expected future non-compliance with the Franchise Act. The General Assembly delineated two specific mechanisms for enforcing the Franchise Act. It tasked the Public Service Commission "with administrative responsibility for enforcement of the [Franchise] Act." *Future Ford Sales*, 654 A.2d at 839; *see* 6 *Del. C.* §§ 4902(1), 4903(b), 4915(a). And it created a private right of action for damages or injunctive relief that can be asserted by "injured" persons or "part[ies] to a franchise … injured … by a violation of [the Franchise Act] relating to that franchise." 6 *Del. C.* § 4916(a). In contrast, nowhere does the Franchise Act ever mention enforcement by the Division. Nor does any provision of the Franchise Act contemplate the remedy that the Division imposed here: the denial of a dealer's license under the Licensing Act.

In light of the Franchise Act's silence, it was error for the Division to claim the power deny a license based on that entirely separate statutory scheme. By enforcing the Franchise Act through its evaluation of a dealer license application, the Division improperly "assum[ed] the authority expressly delegated to another" agency. *Union Pac. R.R. Co. v. Surface Transp. Bd.*, 863 F.3d 816, 823 (8th Cir. 2017); *see also Bayou Lawn & Landscape Servs. v. Secretary of Lab.*, 713 F.3d 1080, 1085 (11th Cir. 2013) ("[W]e would be hard-pressed to locate that power in one agency where it had been specifically and expressly delegated by [the legislature] to a different agency.").[9] And it created entirely new remedies that appear nowhere in the Franchise Act itself. In so doing, the Division upended the careful allocation of responsibility that the General Assembly created to enforce the Franchise Act.

[9] *See also Country Place Waste Treatment Co. v. Pennsylvania Pub. Util. Comm'n*, 654 A.2d 72, 76 (Pa. Commw. Ct. 1995) (vacating agency order because the legislature had granted "specific authority" over the subject matter to another agency and "nowhere in the Law is there any grant of authority to the [Public Utility Commission] by the Legislature, either directly or indirectly"); *Joseph v. Secretary, Louisiana Dep't of Nat. Res.*, 265 So. 3d 945, 953 (La. Ct. App. 2019) (holding that "the authority that the Appellees argue DNR has is actually delegated to another agency," and "DNR cannot usurp the authority granted to LOSCO or any other state agency").

3. <u>The Division's Interpretation Would Create Unjustifiably Absurd Consequences</u>

The Division's sweeping interpretation of Section 6312 would also lead to a host of unintended and absurd consequences by permitting the Division to deny licenses for reasons wholly unrelated to an applicant's fitness to operate a dealership. For instance, the Division could deny a license to a person convicted of a misdemeanor for disorderly conduct at a political protest. The Division might opt to enforce other States' laws by denying a dealer's license to a person cited for failing to leash her dog. Indeed, the Division might view § 6312's statement that an applicant "will comply with[] the laws of this and other states" to permit it to deny licenses based on theorized future violations of unrelated laws. 21 *Del. C.* § 6312 (emphasis added).

These considerations are all, like the Franchise Act's provisions regarding manufacturer-franchisee relations, wholly irrelevant to an applicant's fitness to sell vehicles to the public, and enforcement of the statute in such fashion would be absurd. Because an alternative and more reasonable interpretation is available, the Court should decline to adopt the Division's unmoored interpretation of Section 6312. *See Doroshow, Pasquale, Krawitz & Bhaya v. Nanticoke Mem'l Hosp., Inc.*, 36 A.3d 336, 343 (Del. 2012) ("According to the golden rule of statutory interpretation, 'unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in

favor of another which would produce a reasonable result.'"). Properly construed, the only other Delaware statutes the Division may enforce via denial of a license application are those listed in Section 6313—namely, Titles 11, 21, and 30.

Because the Division erroneously assumed the power to enforce the Franchise Act, the Superior Court's decision should be reversed.

CONCLUSION

The Court should reverse the Superior Court's decision with instructions to vacate the Division's decision and remand to the Division with instructions to grant Tesla's dealer's license application.

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Respectfully submitted,

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