



### **UNDERTAKING**

#### **IN THE MATTER OF THE *MOTOR DEALER ACT R.S.B.C. 1996 c. 316* and the *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT S.B.C. 2004, c. 2***

**THIS UNDERTAKING** is made, jointly and severally, with an effective date of  
December 12th, 2019,

by:

0976736 BC Ltd. dba Surrey Mitsubishi (#40045) and  
Daniel Paul DeBartolo (#107612)

#### **WHEREAS:**

1. 0976736 BC Ltd. dba Surrey Mitsubishi (#40045) ("Surrey Mitsubishi") is a "motor dealer" as defined under the *Motor Dealer Act R.S.B.C. 1996 c. 316* (the "Act").
2. Daniel DeBartolo (#107612) ("Mr. DeBartolo") is a "salesperson" as defined under the Act and the guiding mind behind Surrey Mitsubishi.
3. The "Registrar of Motor Dealers" ("Registrar"), as defined under the Act, is responsible for the administration and enforcement of the Act, its regulations, and prescribed provisions of the *Business Practices and Consumer Protection Act S.B.C. 2004 c. 2* (the "BPCPA").
4. The Registrar has received and investigated a complaint from Jonathon Nikirk ("Mr. Nikirk"), who alleges that Surrey Mitsubishi:
  - a. Failed to disclose to Mr. Nikirk that the Dodge Grand Caravan (the "Vehicle"), he was purchasing had previously sustained damage over \$2,000;
  - b. Failed to disclose to Mr. Nikirk that the Vehicle had Rebuilt status;
  - c. Provided an incorrect VIN to TD Auto Finance on the Credit Application completed on March 20, 2018 for the Vehicle;
  - d. Provided Mr. Nikirk with an incorrect copy of the Credit Application;

- e. Incorrectly completed ownership documents, by failing to list Mr. Nikirk as the owner of the Vehicle;
  - f. Sold Mr. Nikirk the Vehicle on March 4, 2018, while the Vehicle was still considered having "salvage status" in the BC Vehicle Registry and while the Vehicle was still registered to Coast Way Auto Sales and undergoing a Structural Integrity Test, Body Integrity Test and a Private Vehicle Inspection by the Ministry of Transportation;
  - g. Did not formally purchase the Vehicle from Coast Way Auto until May 3, 2018. Twenty-seven days after they had presumably sold it to Mr. Nikirk; and
  - h. Encouraged Mr. Nikirk into signing a Release of All Claims document which among other things states that the Releasor..." will refrain from making claims against the "Releasee" in any media, social media or MVSA..."
5. The Registrar has received and investigated a separate complaint made by a consumer who claims that during the purchase of a 2013 Nissan Sentra (the "Sentra"), Surrey Mitsubishi involving consumers Nehad Am Bakhit and Razan Suliman:
- a. Completed or facilitated the completion of registration and ownership documents that were inconsistent with each other and the facts of the purchase;
  - b. Failed to make mandatory statutory declarations by not disclosing the Sentra was previously a lease vehicle;
  - c. Made or facilitated false representations to TD Auto Financing regarding the odometer reading on the Sentra; and
  - d. Made or facilitated false representations to TD Auto Financing regarding the consumer's personal information.
  - e. Failed to provide full disclosure of file material to the VSA in the course of the investigation.
6. The Registrar asserts that Surrey Mitsubishi has contravened the following provisions of the Act, the BPCPA and their associated regulations:
- a. Section 4 and 5 of the BPCPA; and
  - b. Section 21(1), 22 and 23 of the Motor Dealer Act Regulation.

**NOW THEREFORE** Surrey Mitsubishi and Mr. DeBartolo undertake, acknowledge and agree with the Registrar:

7. To comply with the Act, the BPCPA, the *Motor Vehicle Act* R.S.B.C 1996 c. 318, (the "MVA") and the regulations made thereunder;
8. To compensate Mr. Nikirk in the amount of **\$340** for out of pocket travel expenses to attend the Settlement Conference on September 3, 2019.
9. To ensure that purchase agreements, credit applications and vehicle registration forms, are filled out correctly and that they remain consistent in describing the vehicle purchaser(s);
10. Not to advertise vehicles for sale that do not meet the MVA's standards, unless specifically described as "not suitable for transportation", "salvage" or "non-repairable";
11. To provide prompt and comprehensive disclosure of all subject file material to the Vehicle Sales Authority (the "VSA") when responding to a consumer transaction complaint and upon the request of the VSA.
12. To comply with all disclosure obligations relating to past vehicle history, including but not limited to odometer readings, prior damage and prior lease use;
13. To pay an Administrative Penalty, in the amount of **\$10,000** to deter Surrey Mitsubishi from continuing to engage in conduct similar to the aforementioned contraventions of the Act and the BPCPA in the future;
14. To pay an Administrative Penalty in the amount of **\$2,500** for breaching the Undertaking made on November 29, 2018, specifically in relation to the failure to disclose responsive and relevant file material to the VSA in the course of the Suliman/Bakhit file, with the corresponding risk of misleading the Registrar;
15. For Mr. DeBartolo to pay an Administrative Penalty in the amount of **\$2,500** to deter him from continuing to engage in conduct similar to the aforementioned contraventions of the Act and the BPCPA in the future;
16. For Mr. DeBartolo to re-take the VSA's Salesperson Licensing Course, at his own expense, within sixty (60) days of signing of this Undertaking;
17. For Surrey Mitsubishi to reimburse the Registrar a total of **\$9,943.72** representing 100% of the investigation, hearing and legal costs incurred to

date in relation to this matter within thirty (30) days of the execution of this Undertaking;

18. For Surrey Mitsubishi to withdraw Small Claims Action No. 84989 against Mr. Nikirk and provide the VSA with a filed Notice of Withdrawal within thirty (30) days of signing of this Undertaking;
19. That this Undertaking is binding on Surrey Mitsubishi and Mr. DeBartolo until such time as it is either terminated in writing by the Registrar or terminated by Order of the Supreme Court of British Columbia;
20. That in addition to rendering Surrey Mitsubishi and Mr. DeBartolo liable to further penalties and proceedings as provided for under the BPCPA, it is an offence under the BPCPA to fail to comply with any part of this Undertaking that has not been previously terminated;
21. That the Registrar may, upon breach of any part of this Undertaking by Surrey Mitsubishi or Mr. DeBartolo, declare the Undertaking to be at an end and may institute such proceedings and take such action under the BPCPA or the Act as considered necessary;
22. That nothing herein is intended to resolve any other complaint or investigation not specifically referenced in this Undertaking;
23. That any communication with the Registrar in connection with this Undertaking shall be made to the following address:

Registrar of Motor Dealers  
Vehicle Sales Authority of BC  
#280 – 8029 199<sup>th</sup> Street  
Langley, BC V2Y 0E2  
Fax: (604)-574-5883

And in the case of Surrey Mitsubishi and Mr. DeBartolo, to the following address:

Surrey Mitsubishi  
13820 104<sup>th</sup> Avenue  
Surrey, BC V3Y 1W9

Unless another address for delivery is given to the other party, in writing by either the Registrar or by Surrey Mitsubishi and Mr. DeBartolo; and

24. Surrey Mitsubishi and Mr. DeBartolo have read this Undertaking and have had a reasonable opportunity to seek and obtain legal advice as to its terms.

**DATED** this 12 day of December 2019

Signature: "Original is signed"  
Daniel DeBartolo (#107612)  
Individually and on behalf of  
0976736 BC Ltd. dba Surrey Mitsubishi (#40045)

**ACCEPTED** by the Registrar of Motor Dealers this 13 day of December 2019

"Original is signed"  
Ian Christman  
Registrar of Motor Dealers