BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

GEORGIA AUTOMOBILE DEALERS ASSOCIATION,	:	
Petitioner,	:	**Docket No.:**
	:	**OSAH-REV-MVFPA-1512455-33-Malihi**
	:	
v.	:	
	:	
TESLA MOTORS, INC.,	:	
Respondent.	:	

FILED
OSAH
FEB 20 2015

Kevin Westray, Legal Assistant

ORDER

The Court is currently entertaining the following Motions:

(1) Tesla's Motion in Limine to Exclude the Testimony of Donald Panoz

(2) Tesla's Motion in Limine to Exclude the Testimony of Bruce Bowers

(3) GADA's Motion to Exclude Testimony of Fiona M. Scott Morton or, in the Alternative, to Limit that Testimony

(4) Tesla's Motion to Quash GADA's Subpoena of Bruce Bowers

As an initial matter, the Court deems it necessary to delineate the general rules governing the admissibility of testimony in this proceeding:

Pursuant to OSAH Rule 18 and the Georgia Rules of Evidence, an expert witness may testify as to scientific, technical, or other specialized knowledge only if such knowledge "will assist the Administrative Law Judge to understand the evidence or to determine a fact in issue." Ga. Comp. R. & Regs. 616-1-2-.18(4) (2014); *see also* O.C.G.A. § 24-7-702(b) (2014). Expert testimony consisting of legal conclusions cannot possibly assist the undersigned in either respect. *Wilson v. Pepsi Bottling Group, Inc.*, 609 F. Supp. 2d 1350, 1360 (N.D. Ga. 2009); *see United States v. Frazier,* 387 F.3d 1244, 1261 (11th Cir. 2004) ("Proffered expert testimony generally will not help the trier of fact when it offers nothing more than what lawyers for the parties can argue in closing arguments."). Moreover, interpretation of the governing law, in this case the

Franchise Practices Act ("FPA"), is the province of this Court, and may not be presented through expert testimony. *See United States v. House*, 684 F.3d 1173, 1209 (11th Cir. 2012); *United States v. Oliveros,* 275 F.3d 1299, 1306–07 (11th Cir. 2001) (upholding district court's decision to exclude attorney's testimony explaining visa and immigration law).

The meaning or proper application of the FPA may not be established by the testimony of a layperson. According to Rule 701 of the Georgia Rules of Evidence, a lay witness may testify in the form of an opinion only to the extent that such testimony is "[h]elpful to a clear understanding of the witness's testimony or the determination of a *fact* in issue." O.C.G.A. § 24-7-701(a)(2) (2014) (emphasis added). As discussed *supra*, testimony consisting of a witness's interpretation of the FPA cannot serve to assist the Court in understanding a fact in issue.

Accordingly, no witness, lay or expert, will be permitted to express his or her opinion about the correct interpretation of the FPA at the forthcoming evidentiary hearing. *See Whiteside v. Infinity Cas. Ins. Co.*, No. 4:07-CV-87(CDL), 2008 U.S. Dist. LEXIS 60512, *24–25 (M.D. Ga. Aug. 8, 2008).

Evidence is admissible only insofar as it is relevant. O.C.G.A. § 24-4-402 (2014). Relevant evidence is that which has "any tendency to make the existence of any *fact* that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." O.C.G.A. § 24-4-401 (2014) (emphasis added). Testimony concerning the meaning of the FPA or how it should be interpreted by this Court has no bearing on any fact that is of consequence to the outcome of this proceeding, and is therefore irrelevant.

However, because there is no discovery under the Administrative Procedure Act, the precise substance of the witnesses' prospective testimony remains uncertain, and the Court is unable to discern the relevance of each witness's testimony from the limited descriptions

provided in the witness lists. Therefore, the Court is more inclined to hear the witnesses' testimony and thereafter exclude irrelevant or otherwise deficient portions of their testimony from consideration. Since the undersigned sits as both trier of fact and law, there is no danger that inclusion of potentially irrelevant testimony would affect this Court's Decision. *See, e.g., E.E.O.C. v. Farmer Bros. Co.*, 31 F.3d 891, 898 (9th Cir. 1994) ("[I]n a bench trial, the risk that a verdict will be affected unfairly and substantially by the admission of irrelevant evidence is far less than in a jury trial.").

Three of the above-described Motions have yet to elicit a responsive filing,[1] and the Court will not rule on the Motions in the interest of affording each party a complete opportunity to respond. Tesla responded to GADA's motion to exclude or otherwise limit the testimony of Professor Fiona M. Scott Morton on February 19, 2015. Having carefully reviewed GADA's Motion and Tesla's response, it appears that Professor Scott Morton's proposed testimony is directly relevant to Tesla's constitutional claims. Therefore, the Court is not prepared to exclude or impose any preemptive limitations on her testimony and GADA's Motion is **DENIED.**

SO ORDERED, this 20th day of February, 2015.

MICHAEL MALIHI, Judge

[1] GADA opposed Tesla's request for an expedited ruling on its Motion to Quash the Subpoena of Bruce Bowers, but has yet to respond to the substance of that Motion.